



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
APPEAL NO. 5 OF 2014

GEORGE OMONDI & 210 OTHERS CLAIMANTS

VERSUS

RETIREMENT BENEFITS APPEALS

TRIBUNAL 1ST RESPONDENT

CENTRAL BANK OF KENYA

PENSION FUND 2ND RESPONDENT

RETIREMENT BENEFITS AUTHORITY 3RD RESPONDENT

Mr. Koceyo for the Appellant

Mr. Waziri for the 2nd Respondent

Mr. Kitche for the 3rd Respondent

JUDGMENT

1. The two hundred and ten (210) Appellants, who are former employees of the Central Bank of Kenya filed an Appeal No. 554 of 2013 in the High Court of Kenya at Nairobi, Milimani Law Courts on 10th October 2013.
2. The Appeal was subsequently transferred to the Industrial Court at Nairobi and was noted as Industrial Court of Kenya Appeal No. 5 of 2014.
3. The Appeal arises from a Decision of The Retirement Benefits Appeals Tribunal at Nairobi, Tribunal, Appeal No. 4 of 2010.
4. The Memorandum of appeal lists twenty nine (29) grounds of Appeal against the judgment of the Retirement Benefits Appeals Tribunal at Nairobi delivered on 11th day of September 2013.
5. The 3rd Respondents herein, the Retirement Benefits Authority filed a notice of preliminary objection to the Appeal dated 30th March 2015. The notice of preliminary objection is supported by a list of authorities attached thereto.
6. The preliminary objection is as follows:
 1. This Honourable Court lacks the jurisdiction to hear and determine the appeal herein;

2. There is no right of appeal to this Honourable Court from the decision of the Retirement Benefits Appeals Tribunal in view of the express provisions of the Retirement Benefits Act No. 3 of 1997.
3. The Appeal herein is an abuse of the process of the Court.

7. The Appellants filed written submissions on 12th march 2013, addressing the merits of the Appeal but did not address the matters raised in the preliminary objection.
8. The 2nd Respondent filed an extensive Response to the Appeal on the merits under protest, reserving the right to raise a preliminary objection during the hearing of the Appeal.
9. On the matter of jurisdiction, the Objector relies on the Court of Appeal, decision in Lilian 'S' V Caltex Oil (K) limited (1989) LLR 1653 (CAK) as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction“ per Nyaragi, Masime, Kwach JJA. In this respect, the Court was referred to the decision of Nduma J. in the Industrial Court of Kenya, at Nairobi Petition No. 16 of 2013 Pension Scheme V. The Attorney General; Retirement Benefits Authority and 4 others as follows:

“the Court finds that a party aggrieved by a decision of the Appeals Tribunal has recourse to the High Court and the Industrial Court by way of a Judicial Review Application and the provisions of section 49(4) and 50(2) of the Act are not unconstitutional as alleged by the Petitioner or at all.”

10. In that case, the Petitioner had submitted that the provisions of Retirement Benefits Authority Act, were unconstitutional to the extent that they purported to elevate the status and Jurisdiction of the Retirement Benefits Appeals Tribunal to that of the High Court in all matters appealed to it under Section 46 of the Act.
11. The Court was persuaded by the decision of Justice David Onyancha in HCCA No. 141 of 2012 where the learned Judge held;

“it is my view and finding very clear, therefore, that the Retirement Benefits Appeals Tribunal established under Section 47 of the Retirement Benefits Act, Cap 197 of the Laws of Kenya is an Appeals Tribunal endowed with appellate jurisdiction equivalent with that of the High Court in all matters appealed to it under Section 46 of the Act.”

This Court still holds that view and is not persuaded that it has jurisdiction to entertain an Appeal from a decision of the Retirement Benefits Appeals Tribunal established under Section 47 of the Retirement Benefits Act, Cap. 197 of the Laws of Kenya. To hold otherwise would be resulting to innovation and craft since the Act does not expressly confer such appellate jurisdiction on the High Court or the Employment and Labour Relations Court.”

12. The Appeal is therefore dismissed with costs to the Respondents.

Dated and Delivered at Nairobi this 28th day of August, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE