



**Standard Chartered Bank Kenya Limited & 10 others v Retirement Benefits Appeal Tribunal & 3 others (Petition (Application) E011 of 2025) [2025] KESC 55 (KLR) (5 September 2025) (Ruling)**

Neutral citation: [2025] KESC 55 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
PETITION (APPLICATION) E011 OF 2025  
PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ  
SEPTEMBER 5, 2025**

**BETWEEN**

**STANDARD CHARTERED BANK KENYA LIMITED ..... 1<sup>ST</sup> PETITIONER  
DAVID GICO KAMAU ..... 2<sup>ND</sup> PETITIONER  
WALTER MUNGAI ..... 3<sup>RD</sup> PETITIONER  
AZIRIKAM MUDIKA LUBIA ..... 4<sup>TH</sup> PETITIONER  
BARTESH SHAH (AS THE TRUSTEES OF STANDARD CHARTERED KENYA  
PENSION FUND (THE FIRST SCHEME) ..... 5<sup>TH</sup> PETITIONER  
DAVID GICO NJOROGE ..... 6<sup>TH</sup> PETITIONER  
WALTER MUNGAI ..... 7<sup>TH</sup> PETITIONER  
BEATRICE MAINGI ..... 8<sup>TH</sup> PETITIONER  
JANE CHEGE ..... 9<sup>TH</sup> PETITIONER  
NICHOLAS OTADO ..... 10<sup>TH</sup> PETITIONER  
JULIUS MWANGI (AS THE TRUSTEES OF STANDARD CHARTERED KENYA  
PENSION FUND (THE 2ND SCHEME) ..... 11<sup>TH</sup> PETITIONER**

**AND**

**THE RETIREMENT BENEFITS APPEAL TRIBUNAL ..... 1<sup>ST</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT  
ABDALLA OSMAN & OTHERS ..... 3<sup>RD</sup> RESPONDENT  
RETIREMENT BENEFITS AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for stay of execution against the Judgment and Orders of the Retirement Benefits Tribunal delivered in RBAT Appeal No. 8 of 2021, on 28th April 2022)*



## RULING

### Representation:

Mr. Chacha Odera & Mr. Jonathan Kisya for the petitioners

(Oraro & Company Advocates)

Mr. Fredrick Kariuki for the 1<sup>st</sup> & 2<sup>nd</sup> respondent

(State Counsel, Office of the Attorney General)

Ms. Ruth Wanyonyi for the 3<sup>rd</sup> respondent

(Wanyonyi & Muhia Advocates)

Mr. Brian Odongo & Mr. Clifton Ouko for the 4<sup>th</sup> respondent

(Kiptinness & Odhiambo Associates LLP)

1. Upon perusing the Motion by the petitioners dated 21<sup>st</sup> March 2025 and filed on 24<sup>th</sup> March 2025 under Articles 48, 50(1) of *the Constitution*, Sections 3, 3A, 21 and 23A of the *Supreme Court Act*, and Rules 17, 31 and 32 of the Supreme Court Rules, 2020, seeking, stay of execution of the Judgment and Decree by the Retirement Benefits Appeal Tribunal (RBAT) delivered in RBAT Appeal No. 8 of 2021 on 28<sup>th</sup> April 2025, pending the hearing and determination of the instant application and petition, both dated 21<sup>st</sup> March 2025 and filed on 24<sup>th</sup> March 2025; stay of further proceedings in RBAT Appeal No. 8 of 2021; and costs; and
2. Upon considering the petitioners' grounds on the face of the application and affidavit in support sworn by Fred Waswa on 21<sup>st</sup> March 2025, in which it is contended that the application meets the threshold for stay, particularly that; the appeal is arguable and raises weighty issues for consideration; the decision by the 1<sup>st</sup> respondent was made contrary to Section 49 of the *Retirement Benefits Act* (the Act), which requires production of evidence by sworn affidavit and interrogatories; unless stay is granted, the appeal will be rendered nugatory as there is an imminent threat of execution by the 3<sup>rd</sup> respondents; following the Judgment by the Court of Appeal, the matter has now been scheduled for directions before the 1<sup>st</sup> respondent; the petitioners are not aware of any assets by the 3<sup>rd</sup> respondents that can be attached to satisfy a Judgment of this Court should the appeal be successful; if stay is not granted, the petitioners will be exposed to irreversible fiscal liability; and it is in public interest to grant the application; and
3. Upon considering the petitioners' submissions dated 21<sup>st</sup> March 2025 in support of the application for stay, and supplementary submissions dated 24<sup>th</sup> April 2025 in opposition of the preliminary objection, to the effect that the appeal upon which the application is anchored raises issues of constitutional interpretation and application of Articles 25, 47, 50, 165 (6) & (7) and 169 (2) of *the Constitution* and Section 11 of the Fair Administrative Act; the constitutional issues were not only in contest and the subject of determination by the superior courts below, but also the Court of Appeal took a constitutional trajectory in its decision. They rely on this Court's decision in *Rutongot Farm Limited Vs Kenya Forest Services & 3 others* (Petition 2 of 2016) [2018] KESC 27 (KLR), to invoke this Court's jurisdiction under Article 163(4)(a). It is also the petitioners' submission that their judicial review application raised issues of constitutional interpretation and application and therefore, this Court has jurisdiction to conduct a merit review. They cite this Court's decisions in *Dande & 3 others Vs The Inspector General, National Police Service & 5 others* (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR) (Dande) in support of their contention; and



4. Upon further considering the petitioners' assertions that this Court has jurisdiction to grant interlocutory reliefs, including stay under Section 23A of the Supreme Court Act. The petitioners regurgitate their grounds in support and urge that they have met the principles for grant of stay espoused in *Munya Vs Dickson Mwenda & 2 others*, SC Application No. 5 of 2014; [2014] eKLR; and restated in *Kombe Vs Karisa & 3 others* (Petition E020 of 2023) [2024] KESC 25 (KLR). To this end, the petitioners emphasize that the 1<sup>st</sup> respondent acted outside the scope of its jurisdiction under Section 49 of the Act, rendering the subsequent proceedings and judgment a nullity and a breach of their fundamental rights. Furthermore, that the Court of Appeal and the High Court misapplied the decision in *Dande*, in holding that they could not conduct a merit review, despite the petitioners pleading violations of the Constitution. It is also urged that it is in the public interest to grant stay as the appeal involves over 628 pensioners and an opportunity for the Court to clarify its position in *Dande*; and
5. Upon considering the 3<sup>rd</sup> respondents' replying affidavit, sworn by Grace Njeri Ndirango on 4<sup>th</sup> April 2025, wherein it is mainly asserted that the petitioners have failed to meet the threshold for the grant of stay. Particularly, the grounds relied on in the appeal and regurgitated in the application fail to demonstrate that the appeal is arguable, and fall short of the constitutional threshold envisaged under Article 163(4)(a) of the Constitution. They also argue that the Judicial review application, the subject of the appeal before the Court of Appeal and now this Court, was brought under Order 53 of the Civil Procedure Rules, seeking orders of certiorari and prohibition, and did not purely hinge on the interpretation or application of the Constitution; the 1<sup>st</sup> respondent conducted its proceedings per the law; and in any event, the petitioners did not object or challenge the hearing directions by the 1<sup>st</sup> respondent, but instead participated willingly until an unfavorable decision was handed down.
6. Upon further considering the 3<sup>rd</sup> respondents emphatical averment that; to grant the application for stay would greatly prejudice the pensioners or families of deceased pensioners, who await the conclusion of the protracted litigation, more so, because a good number of the 3<sup>rd</sup> respondents have died during the pendency of the dispute, missing out the opportunity to enjoy the fruits of their investment; it is against public interest to continue the delay in the release of pension payment; the delay amounts to denial of the pensioners constitutional rights to life, health and social protection, especially because a majority of the pensioners are elderly and ailing. They also urge that the application is devoid of merit and is an abuse of the court process; and without prejudice to the foregoing, in the absence of sufficient security for the performance from the petitioners, it would be unjust to grant the application; and
7. Noting the 3<sup>rd</sup> respondents' preliminary objection dated 7<sup>th</sup> April 2025, and the 1<sup>st</sup> and 2<sup>nd</sup> respondents' preliminary objection dated 14<sup>th</sup> April 2025, both seeking to strike out the appeal, on grounds that: this Court lacks jurisdiction to hear and determine the intended appeal and instant application as the same is premised on an incompetent petition; the decision of the Court of Appeal from which the appeal is brought does not involve the interpretation or application of the Constitution; and that the Retirement Benefits Act does not provide an appellate process against decisions of RBAT; and
8. Upon considering the 3<sup>rd</sup> respondents' submissions dated 4<sup>th</sup> April 2025, in opposition to the application for stay, further submissions dated 30<sup>th</sup> April 2025, in support of the preliminary objection, and the 1<sup>st</sup> and 2<sup>nd</sup> respondents' submission dated 15<sup>th</sup> April 2025 in support of the preliminary objection, to the effect that this Court lacks jurisdiction to hear and determine the appeal from which the instant application emanates; it is the respondents' submission that the judicial review application and the appeal before the Court of Appeal revolved around the interpretation and application of sections 48 and 49 of the Act and not the interpretation or application of the Constitution. They



cite inter-alia, Nduttu & 6000 others Vs Kenya Breweries Ltd & another (Petition 3 of 2012) KESC 9(KLR); in support of the Preliminary objection.

9. Upon further considering the submissions by the respondents, that be that as it may, the Act does not provide for appeals against the decisions of the 1<sup>st</sup> respondent, and consequently, an appeal does not lie to this Court, in support of which they cite George Omondi & 210 others Vs Retirement Benefits Authority Appeals Tribunal & 2 others [2020] KECA 666 (KLR) as persuasive authority; the appeal is not arguable for reasons set out above; there is nothing to be rendered nugatory, or put differently, nothing to be preserved; and that public interest leans towards avoiding any further delay and abuse of the court process by the petitioners so as to hasten the release of the pension funds to the 3<sup>rd</sup> respondents; and
10. Bearing in mind this Court's authoritative pronouncement in Lawrence Nduttu & 6000 others Vs Kenya Breweries Ltd & another; SC Petition No. 3 of 2012; [2012], eKLR, regarding the circumstances pursuant to which an intending appellant may invoke the provisions of Article 163 (4) (a), wherein we stated:

“This Article must be seen to be laying down the principle that not all intended appeals lie from the Court of Appeal to the Supreme Court. Only those appeals arising from cases involving the interpretation or application of *the Constitution* can be entertained by the Supreme Court...

The appeal must originate from a court of appeal case where issues of contestation revolved around the interpretation or application of *the Constitution*. In other words, an appellant must be challenging the interpretation or application of *the Constitution* which the Court of Appeal used to dispose of the matter in that forum.”

11. Further noting that in Edwin Harold Dayan Dande & 3 others Vs The Inspector General, National Police Service & 5 others [supra], we settled the scope of judicial review, as follows;

“It is clear from the above decisions that when a party approaches a court under the provisions of *the Constitution*, then the court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of order 53 of the Civil Procedure Rules and does not claim any violation of rights or even violation of *the Constitution*, then the court can only limit itself to the process and manner in which the decision complained of was reached or action taken and following our decision in SGS Kenya Ltd and not the merits of the decision per se.”

12. Having considered the totality of the applications, responses and submissions made by the parties, We now opine as follows:
  - i. Examining the records and decisions by the superior court below, it is clear that the High Court in Miscellaneous Civil Application No. E110 of 2022 mainly interrogated whether the proceedings and judgment of the 1<sup>st</sup> respondent were ultra vires the Act. Similarly, the Court of Appeal in its judgment in Civil Appeal No. E847 of 2023 primarily confined itself to the questions whether the learned judge erred in his finding and whether the court should have conducted a merit review.
  - ii. We also note that the reliefs sought in the statement filed before the High Court (upon grant of leave) were for orders of certiorari, prohibition, and costs. Likewise, the prayers sought before



the Court of Appeal were for setting aside the Judgment by the 1<sup>st</sup> respondent and granting the prayers set out in the statement.

- iii. Consequently, even though it was indicated that the judicial review application was also brought pursuant to Articles 25, 47, 50, 165(6) (7) and 169(2), it neither involved the interpretation or application of these constitutional provisions, nor did the superior courts below interpret or apply *the Constitution* or take a constitutional trajectory. The mere allegation of constitutional violations cannot bring the appeal within the ambit of this Court's jurisdiction under Article 163(4)(a).
  - iv. On the basis of the foregoing, it is clear to us that this Court lacks jurisdiction to hear and determine the intended appeal and the application for stay attendant thereto.
13. Consequently, and for the reasons aforesaid, we make the following orders:
- i. The Preliminary Objections dated 7<sup>th</sup> April 2025 and 14<sup>th</sup> April 2025, filed on 8<sup>th</sup> April 2025 and 14<sup>th</sup> April 2025 respectively, be and are hereby upheld;
  - ii. The Notice of Motion dated 21<sup>st</sup> March 2025 and filed on 24<sup>th</sup> March 2025, be and is hereby dismissed;
  - iii. The Petition of Appeal No. E011 of 2025 dated 21<sup>st</sup> March 2025 and filed on 24<sup>th</sup> March 2025 be and is hereby struck out;
  - iv. The petitioners shall bear the respondent's costs; and
  - v. The sum of Kshs 6,000/-, deposited as security for costs upon lodging of this appeal, be refunded to the petitioners;

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF SEPTEMBER, 2025**

.....

**P.M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT**

.....

**M. K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

.....

**S. C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA**

**JUSTICE OF THE SUPREME COURT**



I certify that this is a true copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

