



**Republic v Retirement Benefits Appeals Tribunal; Post Office Savings Bank & another (Interested Parties); Kalume & 75 others (Exparte Applicant) (Judicial Review Application E162 of 2024) [2025] KEHC 5419 (KLR) (Judicial Review) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5419 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E162 OF 2024  
RE ABURILI, J  
APRIL 30, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**RETIREMENT BENEFITS APPEALS TRIBUNAL ..... RESPONDENT**

**AND**

**POST OFFICE SAVINGS BANK ..... INTERESTED PARTY**

**RETIREMENT BENEFITS AUTHORITY ..... INTERESTED PARTY**

**AND**

**ADELLA KAVISA KALUME & 75 OTHERS ..... EXPARTE APPLICANT**

**RULING**

1. This ruling determines the chamber summons dated 24<sup>th</sup> July, 2024 filed by the 76 ex parte applicants seeking leave of court to apply for judicial review orders of certiorari to quash the decision of the 1<sup>st</sup> respondent Tribunal declining to determine the merits of the decision of the 2<sup>nd</sup> respondent Authority on the ground that the issues raised had been fully determined by the Court of Appeal in Court of Appeal in Civil Appeal No. 264 of 2015 Adellah Kavisa Kalume & 66 others v Kenya Post Office Savings Bank.
2. I would have written just one sentence to close this file, despite the energy and industry put in by all parties' counsel, arguing for and against the judicial review proceedings as filed against the respondents and interested parties by the ex parte applicants.



3. However, the decision I am just about to render in this matter which consists of voluminous documents filed by the 76 ex parte applicants, all suing as former members of the Post Office Savings Bank Retirement Benefits Scheme has lessons for all of us serving as Judges, Judicial Officers and advocates in the administration of justice.
4. The lesson is derived from the need to, at all times, read and understand the volumes of documents supplied by clients before filing the pleadings so that only when one is satisfied that there exists a cause of action, would the case be instituted in court seeking a remedy.
5. For the courts, the lesson learnt is that the importance or complexity of a case is not determined by the voluminous documents filed by the parties.
6. A thorough perusal of documents is critical because as Judges, Judicial Officers and advocates, we are presumed to know the law and legal principles so that when courts make decisions, especially those that do not require discretion of the court, the decisions are well informed by the law and facts pleaded by the parties. On the other hand, advocates can save their clients from paying a heavy price in terms of costs of the suit if they can only file into court matters which are actionable or where there exists a cause of action.
7. I will therefore, before determining the merits of the application by way of chamber summons dated 24<sup>th</sup> July, 2024, attempt to explain the significance of thoroughly perusing court files, before the hearing or while writing the rulings or judgments and a few of those advantages are stated here below:

### **1. Informed Decision-Making**

8. When pleadings and filed documents are carefully read, the reader and decision maker gain a deep understanding of the facts, legal arguments and evidence presented by both parties. This thorough review helps the judge make an informed and well-reasoned decision based on all relevant information, rather than relying solely on oral arguments or brief overviews.

### **2. Fairness and Justice**

9. A thorough review of the pleadings and documents filed in court ensures that both parties' positions are fully considered, which is essential for ensuring fairness. It minimizes the risk of overlooking important details that could influence the outcome of the case. This helps to uphold the principle of justice by ensuring that all arguments are heard and considered.

### **3. Identifying Legal Issues Early**

10. Pleadings often set forth the key legal issues in a case. A judge who takes the time to review them carefully can identify these issues early on, helping to streamline the legal proceedings. This allows the judge to guide the parties toward focusing on the most critical aspects of the case, which can improve efficiency and reduce unnecessary delays.

### **4. Clarifying Ambiguities**

11. Sometimes, pleadings can be vague or unclear, and it's the judge's responsibility to clarify ambiguities. By thoroughly perusing the pleadings, the judge can identify inconsistencies, contradictions or areas where additional information is needed. This allows the judge to ask targeted questions or issue orders that can help resolve these issues before proceeding further.



## **5. Ensuring Compliance with Procedural Rules**

12. Pleadings must meet certain procedural and substantive requirements. A judge who reviews the pleadings carefully can ensure that both parties comply with relevant rules, such as those regarding the format, deadlines and proper legal citations. If there are deficiencies in the pleadings, the judge can address them promptly, ensuring that the case proceeds in a fair and orderly manner.

## **6. Promoting Judicial Efficiency**

13. By thoroughly reviewing the pleadings, the judge can often resolve issues without requiring lengthy oral hearings or extensive evidence. If the issues are clear and the pleadings are well-structured, the judge is able to make decisions based on the written materials alone, saving time and resources for both the court and the parties involved.

## **7. Setting the Stage for Effective Case Management**

14. When a judge understands the key points from the pleadings, they are better equipped to manage the case effectively. This includes setting deadlines, ordering discovery and scheduling hearings in a manner that supports the efficient resolution of the case. Additionally, the judge will identify settlement opportunities or areas where mediation could be beneficial.

## **8. Preventing Misunderstandings**

15. In some cases, one party may misinterpret the other party's claims or defences. A judge who reads the pleadings thoroughly is in a better position to understand the intended meaning behind each party's arguments and prevent misunderstandings from influencing the outcome.

## **9. Strengthening the Judge's Authority**

16. If a Judge is well-prepared and has thoroughly reviewed the pleadings tend to gain greater respect from the parties, attorneys, and the public. This preparation demonstrates professionalism and authority, which can enhance the judge's credibility in making decisions and ensuing rulings.

## **10. Better Opportunities for Settlement or Alternative Dispute Resolution (ADR)**

17. Understanding the strengths and weaknesses of each party's case puts us in a better position to facilitate settlement discussions or recommend alternative dispute resolution methods. This may result in a more efficient resolution, reducing the burden on the court system.

## **11. Finally, a thorough review the pleadings filed by the parties ensures a fairer, more efficient and more informed legal process, ultimately benefiting the judicial system and the parties involved in the case.**

18. In the present case, and after both parties had argued out their respective positions on whether this court should grant leave to the ex parte applicants to apply for judicial review orders sought in the chamber summons dated 24<sup>th</sup> July 2024, I asked the parties only one question and requested them to submit on the same and the question was, whether the cause of action was alive, even assuming that the applicants had a meritorious claim.
19. The respondent and the interested parties responded in unison that the claim by the ex parte applicants was statute barred as was found by the Employment and Labour Relations Court and the Court of Appeal in similar proceedings.



20. Initially, as stated above, the respondent and the interested parties had argued in contention that the proceedings herein are res judicata the ELRC decision as affirmed by the Court of Appeal, with the Court of Appeal proceedings which determined the same issues which the applicants were seeking to re-litigate before this Court and that therefore, this court lacks jurisdiction to hear and grant the leave sought. Parties argued the application simultaneous with the preliminary objection on the question of res judicata.
21. I have brought out this issue of limitation of actions because whereas the question of whether a claim is res judicata can be canvassed in the merit determination, courts should generally not determine the merits of a case where it is apparent that the claim is barred by the [Limitation of Actions Act](#) (or similar legislation governing time limits for filing claims).
22. Thus, if a claim is barred by the statute of limitations, the court's role is typically to dismiss the case on the grounds that the case was not filed within the prescribed time frame, as the limitation period is a defense that goes to the jurisdiction of the court to hear the case.
23. It follows, therefore, that, assuming that the Court of Appeal found that the claim by the applicants herein was statute barred when it was first filed before the ELRC and all the way to the Court of Appeal, which is the same claim that is before this court, save that this is now a different forum, then this court would have no jurisdiction to grant leave and to proceed to hear and determine the merits of the applicants' grievances.
24. The reasons for the above position are as follows:

### **1. Barred by Law**

25. Statutes of limitations are laws that limit the time period during which a party can bring a legal claim. Once the time period has expired, the claim is considered "time-barred," and the court does not have the authority to hear or determine its merits, unless there are exceptional circumstances that could excuse the delay (e.g., fraud, concealment, or other equitable considerations).in which case, such statute barred proceedings would be preceded by applications for extension of time to institute suits, where applicable as allowed by the [limitation of Actions Act](#).

### **2. Efficiency of the Judicial System**

26. Courts aim to ensure efficient use of judicial resources. If a claim is clearly time-barred, allowing the case to proceed to a determination on the merits would waste valuable time and resources. Dismissing the case early on saves the court from dealing with matters that have no legal standing due to the expiration of the limitation period.

### **3. Certainty and Finality**

27. Limitation periods are designed to encourage certainty and finality in legal disputes. If courts were to hear cases despite the time-bar, it could create uncertainty about when claims can be brought, undermining the purpose of these laws. A claim brought after the expiration of the limitation period is seen as an attempt to reopen or re-litigate matters that should have been resolved within a specific time frame.

### **4. Prevention of Injustice**

28. The purpose of statutes of limitations is also to protect defendants from being unfairly burdened by claims that are too old, where evidence may have been lost or witnesses may no longer be available. Even



if the merits of the claim are strong, it is the law's policy to prevent legal claims from being litigated upon when the said claims are barred by statutes of limitation.

## **5. Judicial Economy and Fairness**

29. Courts should focus on the legal issues that can impact the outcome of a case, and a limitation defense is a legal issue that can dispose of a case quickly without needing to delve into the facts or merits. To allow a claim to proceed to a judgment on the merits when it is barred by the limitation period could be seen as inefficient and unfair to the defendant, who may have lost their ability to adequately defend against an old claim.

## **6. Procedure**

30. If the defendant raises the limitation defense (typically through a plea in bar or preliminary objection), the court is obligated to first address that defense. If the claim is indeed time-barred, the court should dismiss or strike out the case at that point before proceeding to examine the merits. The primary role of the court in such cases is to recognize the time bar and dismiss the case on procedural grounds.
31. In the instant case, albeit the parties were allowed to urge the application as a whole simultaneously with the preliminary objection on whether the proceedings are res judicata the previous proceedings, I would not belabour determine the merits and the question of res judicate on its own. I will determine the question of whether the proceedings herein are, in any event, statute barred as was held by the ELRC and the Court of Appeal, and therefore whether this Court has jurisdiction to grant the orders sought.
32. Can this Court in exercise of its judicial review jurisdiction and relitigate or entertain a matter which the Court of Appeal has already found to be statute barred? The answers lie below:
1. Res Judicata (Finality of Judgment)
33. The principle of res judicata prevents the re-litigation of issues that have already been decided by a competent court. If the Court of Appeal has made a finding that the specific claim, which, from the consideration of the material before this court, is primarily similar to the proceedings that were conducted before the ELRC and the Court of Appeal, is statute-barred, that judgment is final (subject to any rare and exceptional circumstances such as an appeal to a higher court or a review on grounds of fraud or new evidence). Bringing a new claim through judicial review would be an attempt to relitigate a matter that has already been conclusively settled by a higher court whose decisions bind this Court.

## **2. Judicial Review is Not an Appeal Mechanism**

34. Generally, and except in a few cases, Judicial review is not intended to be a way to appeal or reexamine the substantive merits of a case. Instead, judicial review focuses on whether a public body or tribunal acted unlawfully, irrationally, or unfairly in making its decision. Even if a party is dissatisfied with the Court of Appeal's decision on the question or statute of limitations, judicial review cannot be used to challenge or relitigate that decision. The grounds for judicial review are limited, and a claim being statute-barred would not typically fall within these grounds.

## **3. Finality of Court of Appeal Decisions**

35. Once the Court of Appeal has determined that the case is statute-barred, its ruling stands unless there are exceptional circumstances justifying a further appeal (for example, to the Supreme Court, depending on the jurisdiction) or extraordinary grounds for reopening the case. A Judicial Review application to the High Court would not be appropriate because the applicants would be seeking to



overturn or ignore the appellate decision on the merits of the case, which is outside the scope of judicial review.

#### 4. Judicial Review and the Statute of Limitations

36. The High Court has no power to litigate and affirm or overturn the decision of the Court of Appeal in the name of Judicial Review of the decision of the Court of Appeal. This Court's jurisdiction as far as judicial review is concerned is over subordinate courts, tribunals, bodies, authorities or persons exercising judicial or quasi-judicial function as stipulated in Article 165(6) of *the Constitution*. The Court of Appeal is superior Court to the High Court and Article 165 (6) of *the Constitution* expressly provides that the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

#### 5. Alternative Remedies (if any)

37. If the applicants believe that the Court of Appeal's decision was wrong or unjust due to reasons like misapplication of the law or procedural errors, their option is to seek leave to appeal the Court of Appeal's decision to the Supreme Court, if applicable. Alternatively, if they can demonstrate a significant legal or factual error, they may be able to request a review of the Court of Appeal's decision through appropriate legal channels, but this is not judicial review.
38. Going into the specifics of limitation of actions, the question of statutory limitation is a jurisdictional issue because it directly affects the court's authority to hear and determine a claim. If a claim is barred by the statute of limitations, the court lacks the jurisdiction to hear the case, meaning it has no legal power to consider the merits of the claim. Here's a deeper look at why statutory limitation is a jurisdictional issue:

#### 1. Jurisdiction and Court Authority

39. Jurisdiction refers to the legal authority of a court to hear and decide a case. A court can only hear cases that fall within its jurisdiction—this includes issues of subject matter jurisdiction (the type of case) and personal jurisdiction (the parties involved). The statute of limitations is a part of a court's jurisdiction because it defines whether the court can hear a claim in the first place.
40. Thus, if a claim is filed after the limitation period has expired, the court is deprived of the authority to entertain the case, regardless of how strong the merits might be. The expiration of the time limit bars the court from considering the claim. In *Masulal Maganlal Rawal v Maneklal Maganlal Rawal* [1989] it was held, inter alia that:

“As was stated by Crabbe JA in the case of *Mehta v Shah* [1965] EA 321 at p 330, the object of any limitation enactment is to prevent a plaintiff from prosecuting “stale claims on the one hand, and on the other hand protect a defendant after he had lost evidence for his defence from being disturbed after a long lapse of time.” It is not to extinguish claims. By the bringing of the application to substitute the plaintiff it was made clear both to the Court and the defendant that the estate of the deceased plaintiff was desirous of continuing the prosecution of the cause of action which had survived for the benefit of the estate notwithstanding that the suit had abated.”

41. It follows that Courts cannot exercise jurisdiction over claims that are time-barred, as the statute of limitations is a procedural rule that serves to limit the power of the court to entertain certain disputes. Furthermore, the Limitation Period as a Legal Bar means that the statute of limitations sets a legal bar to bringing claims after a specified period. This is not just a procedural matter; it is a substantive legal



requirement that governs whether a claim can be brought at all. When the limitation period expires, the right to sue is extinguished. Courts have no authority to hear cases that are barred by the statute because the right to bring the case no longer exists legally.

42. In effect, the statute of limitations prevents the court from assuming jurisdiction over the case. Even if a court has the physical power to hear the case (i.e., it has subject matter jurisdiction), the law removes the court's power to hear the case if the time limit has expired.
43. In *Anaclek Kalia Musau v Attorney General & 2 Others* [2020] eKLR, Civil Appeal 111 of 2017, the Court of Appeal stated as follows:

“The solitary issue in this appeal is, whether the suit before the High Court was statutorily time barred. To demonstrate that time limitation is a jurisdictional question and that if a matter is statute-banned a court has no jurisdiction to entertain it, we cite the decision of the Supreme Court in the case of *Nasra Ibrahim Ibren V. Independent Electoral and Boundaries Commission & 2 others*, Supreme Court Petition No. 19 of 2018, where that court stressed the fact that jurisdiction is everything and that a court may even raise a jurisdictional issue suo motu. It said:

A jurisdictional issue is fundamental and can even be raised by the court suo motu as was persuasively and aptly stated by Odunga J in *Political Parties Dispute Tribunal & another v Musalia Mudavadi & 6 others Ex Parte Petronila Were* [2014] eKLR. The learned Judge drawing from the Court of Appeal precedent in *Owners and Masters of The Motor Vessel “Joey” vs. Owners and Masters of The Motor Tugs “Barbara” and “Steve B”* [2008] 1 EA 367 stated thus:

What I understand the Court to have been saying is that it is not mandatory that an issue of jurisdiction must be raised by the parties. The Court on its own motion can take up the issue and make a determination thereon without the same being pleaded...”

## **2. Access to Courts as a Right**

44. Statutes of limitations reflect a balance between ensuring access to the courts for those with valid claims and promoting finality and certainty in legal disputes. A time limit serves to ensure that claims are brought within a reasonable period while evidence is still fresh and witnesses are still available. After the statute of limitations expires, the court is considered to have no jurisdiction over the case, because allowing the claim to proceed would undermine these principles.

## **3. Enforcement of Time Limits**

45. When a court considers whether a claim is barred by the statute of limitations, it is enforcing the law that governs when a claim can be made. The time limit serves as a condition precedent to the court's jurisdiction—without compliance with the limitation period, the court has no duty or power to act. This is why the expiration of the limitation period is often treated as a jurisdictional matter rather than a mere procedural defense. The court's power to act depends on whether the claim is brought within the prescribed time.

## **4. Public Policy and Legal Certainty**

46. The statute of limitations serves important public policy goals such as promoting legal certainty, encouraging plaintiffs to pursue claims promptly, and protecting defendants from the harm of defending stale claims. If a claim is brought after the statute has expired, there is a presumption that the claimant's right to bring the case has been waived or forfeited. Courts follow this rule strictly to uphold



the public interest in the timely resolution of legal matters. Therefore, a court will often dismiss a claim as time-barred without delving into the merits of the case, as the issue goes to the court's jurisdiction.

## 5. Avoidance of Unfairness

47. Allowing claims to be heard after a long passage of time could create unfairness to the defendant, who may have lost evidence, witnessed events, or otherwise been prejudiced by the delay. The statutory limitation period serves to protect defendants from such unfairness, and the court's inability to hear a time-barred claim is part of this protection. The lack of jurisdiction over time-barred claims helps ensure that the judicial system doesn't entertain claims that are considered legally invalid due to their age.

## 6. Distinction from Other Procedural Defenses

48. Unlike other procedural defenses (like failure to state a claim or improper venue), the statute of limitations goes to the fundamental authority of the court to hear a case. Courts will often rule on the statute of limitations issue before engaging with the substance of the case because it determines whether they have the jurisdiction to proceed at all.
49. In this matter, the Court of Appeal in Civil Appeal No. 264 of 2015 Adellah Kavisa Kalume & 66 others v Kenya Post Office Savings Bank found as follows:

“The Governing Statute in force then was the Employment Act 2007 under which the period of limitation is 3 years. The appellants' suit was filed in December 2012, which is 5 years after the date of the last deduction. This would therefore clearly mean that the claim was time barred and the learned Judge cannot be faulted for so finding.”

50. It was after the above decision of the Court of Appeal that the applicants filed a claim before the Retirement Benefits Authority since the ELRC had found that in any event, the applicants should first have initiated their claim through the established procedure, and the Authority dismissed their claim upon which they filed an appeal to the RBAT vide Civil Appeal No. 2 of 2020. It is the dismissal of their appeal by the RBAT on account that the issues raised had been fully ventilated by the Court of Appeal that gave rise to these judicial chamber summons dated 24<sup>th</sup> July 2024 for leave to challenge that decision of the RBAT rendered on 25<sup>th</sup> January, 2024.
51. Therefore, the Court of Appeal in Civil Appeal No. 264 of 2015 Adellah Kavisa Kalume & 66 others v Kenya Post Office Savings Bank having rendered itself on the matter and found that indeed the claim by the applicants was statute barred, the question is whether by the applicants now going to the right forum to ventilate their grievances, time stopped running and their claim was revived.
52. The answer to the above question is a clear NO for the following reasons, some of which are repetitive of my analysis above:

### 1. Finality of Judicial Decisions (Res Judicata)

53. The Court of Appeal's decision that the applicants' claim was statute-barred as held by the ELRC Judge represents a final judgment on the matter. In our legal systems, as stipulate din section 7 of the Civil Procedure Act, once a court has rendered a decision on the substantive issue, and in this case, a jurisdictional issue under the statute of limitation, that decision is binding and cannot be revisited, relitigated or revived in another forum. This includes any attempt to pursue the same claim through different channels as is the case herein.



## 2. Statutory Bar on Claims

54. The statute of limitations operates as a legal bar to the claim, meaning that once the time limit has passed, the claim cannot be pursued in court or any alternative forum unless there are specific legal exceptions (such as fraud, concealment, or new evidence, which are rare). The Court of Appeal has already determined that the claim is barred by this statute, and this judgment stands unless there is a legal mechanism to reopen or appeal the decision (e.g., an appeal to a higher court or an application for a review based on exceptional circumstances).

## 3. Different Forum Does Not Override Legal Bar

55. Whether the applicants seek to ventilate their grievance in a different forum (for example, a tribunal, ombudsman, or administrative body or before this court by way of judicial review, the statutory time limit still applies. The fact that the claim is statute-barred means that it cannot be pursued in any legal setting unless there is an exception that excuses the delay. Different forums are not immune to the limitations imposed by the statute of limitations and no forum can override a statutory time bar unless the applicable law provides for such an exception.

## 4. Principle of Legal Certainty and Finality

56. Allowing the revival of a claim that the Court of Appeal has determined to be statute-barred would undermine legal certainty and finality. Statutes of limitations are designed to provide certainty by setting clear time limits within which claims must be brought. To allow the same claim to be relitigated in another forum after it has been dismissed by a higher court would be inefficient and contrary to the purpose of limitation laws.
57. Accordingly, I find and hold that the applicant's chamber summons dated 24<sup>th</sup> July 2024 for leave to apply is incompetent, frivolous, vexatious and incapable of being granted. There is no prima facie case to be ventilated on merit in the intended substantive motion. The application is equally an abuse of court process, to say the least.
58. The Black's Law Dictionary describes 'abuse of process' as "the improper and tortious use of a legitimately issued Court process to obtain a result that is either unlawful or beyond the process' scope. The Supreme Court in Kenya Section of the International Commission of Jurists v Attorney General and 2 others [2012] eKLR, described abuse of court process in the following terms:
- “The concept of “abuse of the process of the Court: bears no fixed meaning, but has to do with the motives behind the guilty party's actions: and with a perceived attempt to maneuver the Court's jurisdiction in a manner incompatible with the goals of justice. The bottom line in the case of abuse of Court process is that, it “appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption...” [D. T. Dobbie & Company (Kenya) Ltd. V. Muchina [1982] KLR 1 – per Madan, JA at p.9]. Beyond that threshold, lies an unlimited range of conduct by a party that may more clearly point to an instance of abuse of Court process.” (Emphasis added)
59. In the end, I decline to grant leave to the applicant to apply for judicial review orders sought in the chamber summons dated 24<sup>th</sup> July 2024 which application is hereby dismissed for being res judicata and for want of jurisdictional foundation, legal backing or cause of action.
60. I would have condemned the applicants to pay costs of these proceedings. I however note that it is the duty of an advocate to advise his client on the law and therefore the applicants herein being retirees



must have relied on the expertise of their advocates in filing these proceedings which I have found to be frivolous vexatious and an abuse of court process. It follows that if I were to order for costs, it is the advocate who would be responsible for the costs. However, as this matter involves retirees who must be struggling to raise funds, in the circumstances, I order that each party shall bear their own costs of the dismissed chamber summons.

61. This file is closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 30<sup>TH</sup> DAY OF APRIL, 2025**

**R.E. ABURILI**

**JUDGE**

