REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCJR/E376/2025

BEATRICE NJERI NGUGI AND OTHERS VS STATE LAW OFFICE AND RETIREMENT BENEFITS AUTHORITY AND 2 OTHERS

JUDGMENT

BEFORE HON. JUSTICE W. MUSYOKA

1. The ex parte applicants have moved this court by way of a motion, dated 28th November 2025, in which they seek the orders of certiorari, to quash the judgement of the 1st respondent, dated 2nd October 2025, in RBAT Appeal No. 7 of 2011; mandamus to compel the 1st respondent to determine their amended appeal, dated 11th March 2025, in accordance with the Retirement Benefits Act, Cap. 197, Laws of Kenya, and the Telposta Pension Scheme Rules; a declaration that the application of reduction and discounting factors, by the 1st interested party, to reduce the accrued pension benefits of the applicants is unconstitutional, unlawful, illegal and null and void ab initio and violates Article 47 and 57 of the Constitution, the Retirement Benefits Act and Regulations 16(1) of the Retirement Benefits (Occupational Scheme) Regulations; and a permanent injunction restraining the 1st interested party from applying the discounting and reduction factors in computation of the applicants' pension benefits.

2. The said motion is supported by the affidavits of Mr. Boniface Mariga, sworn on 15th November 2025, in HJCR No. E376 of 2025, and of Mr. George Odhiambo Oloo, sworn on 6th March 2026, in HCJR No. E061 of 2026. The ex-parte applicants aver that they are former employees of the Kenya Post and Telecommunications Corporation and later, Telkom Kenya Limited, and long-standing members of the Telposta Pension Scheme. As members of the scheme, the ex-parte applicants' pension rights, including benefits upon early retirement or retrenchment, were expressly defined in the binding and registered Trust Deed and Rules. It is averred that between the year 2004 and 2007, the ex parte applicants were involuntarily retired, pursuant to restructuring exercises undertaken by the employer. Upon accessing their benefits, the ex parte applicants discovered that the Trustees of the Scheme had not applied the prescribed formula, instead, the trustees introduced actuarial discounting factors, resulting in significant reduction of the lump-sum pension benefits payable to them.

3. The ex-parte applicants lodged complaints with the 2nd interested party, in 2011, on the unlawful

diminution of their benefits. The 2nd interested party dismissed their complaints, on 3rd October 2012, upholding the computations by the 1st interested party, without examining the legality of the discontinued method. The ex parte applicants exercised their statutory right of appeal by filing RBAT Appeal No. 7 of 2011, Boniface Mariga & 948 others vs. Retirement Benefits Authority and Another, before the 1st respondent. The tribunal allowed the appeal, and found that the ex parte applicants had been underpaid. The 1st interested party filed a judicial review application, being Milimani HCJR Miscellaneous No. 141 of 2017, which was dismissed by the High Court, a further appeal was lodged to the Court of Appeal, being Nairobi CACA No. E767 of 2023. On 20th December 2024, the Court of Appeal remitted the matter back to the 1st respondent for a re-hearing. The 1st respondent delivered a judgement, dated 2nd October 2025, dismissing the ex-parte applicants' appeal, in RBAT Appeal No. 7 of 2011, and upholding the determination of the 2nd interested party of 2011.

4. The 1st respondent has filed grounds of opposition herein, dated 17th December 2025, arguing that the 1st respondent, being a subordinate court, under Article 169(1)(d) of the Constitution cannot be sued on its judicial decisions. The 1st interested party filed a replying affidavit, sworn by Mr. Peter K. Rotich, who is the Administrator and Trust Secretary of the 1st interested party, on 26th January 2026. He avers that the judgement of the 1st respondent was the result of a lawful, exhaustive and a procedurally fair re-hearing, and the findings therein were rational and compliant with all relevant laws and the scheme governing instruments. The 2nd interested party filed a replying affidavit, dated 13th January 2026, sworn by Mr. Antony Kiarahu, its Deputy Director, Legal Services. He avers that permitting the application to proceed would amount to an abuse of the court process, and would defeat the purpose of the specialized statutory dispute resolution mechanism.

5. The application was canvassed by way of written submissions, following directions given on 1st December 2025.

6. The ex-parte applicants, in HJCR No. E376 of 2025, in their written submissions, dated 11th December 2025, argue for judicial review orders to quash the judgement of the 1st respondent, of 2nd October 2025, to compel a lawful and rule-based re-determination of their pension benefits, and pray that any re-consideration strictly apply the express provisions of Rules 10(d) and or 8(d) of the Trust Deed. It is submitted that the decision of the 1st respondent is unreasonable, irrational and unfair. Weru vs. Nderitu [2022] KEHC 29678 (KLR), Victoria Commercial Bank vs. Intra Africa Insurance Company Limited [2000] KEHC 520 (KLR), Standard Chartered Bank Kenya Limited vs. General & 3 Others [2025] KECA 433 (KLR), Pius Okumu & 100 others vs. Board of Trustees, Kenya Ports Authority Pension Scheme [2014], Pastoli vs. Kabale District Local Government Council & others [2008] 2 EA 300, Republic vs. Public Procurement Administrative Review Board ex parte Syner-Chemie [2016] eKLR, Municipal Council of Mombasa vs. Republic & Umoja Consultants Limited [2002] eKLR, Suchan Investments Limited vs. Ministry of National Heritage & Culture [2016] eKLR and Kenya National Examinations Council; GGN & 9 others (Ex parte) vs. Republic [1997] KECA 58 (KLR) are cited.

7. The ex parte applicants, in HJCR No. E061 of 2026, in their written submissions, dated 29th May 2026, submit around whether the impugned decision is amenable to judicial review; failure to comply with the Fair Administrative Action Act, Cap 7L, Laws of Kenya; illegality, irrationality and procedural impropriety; violation of their constitutional and statutory rights; and whether the reliefs sought are available. Municipal Council of Mombasa vs. Republic & Umoja Consultants Limited [2002] eKLR, Suchan Investments Limited vs. Ministry of National Heritage & Culture [2016] eKLR, Pastoli vs. Kabale District Local Government Council & others [2008] 2 EA 300, Judicial Service Commission vs. Mbalu Mutava & another [2015] eKLR, Council of Civil Service Union vs. Minister for Civil Service [1985] AC 374 and Communications Commission of Kenya & 5 others vs. Royal Media Services Limited & 5 others [2014] eKLR are relied upon.

8. The 1st respondent submits that the Retirement Benefits Act establishes the 1st respondent, and vests it with jurisdiction to handle appeals filed by any party, on any matter relating to the Act. Section 48(1) of the Retirement Benefits Act is cited, which provides that any person, aggrieved by a decision of the 2nd interested party or of the Chief Executive Officer, under the provisions of the Act, or any regulations made thereunder, may appeal to the 1st respondent, within 30 days, of the receipt of the decision. Section 48(2), provides that, where any dispute arises between any person and the 2nd interested party, as to the exercise of the powers conferred upon the 2nd interested party by the Act, either party may appeal to the 1st respondent, in such a manner as may be prescribed. Speaker of the National Assembly vs. James Njenga Karume [1992] eKLR is cited, where the court held that "In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.''

9. The 1st respondent further submits that the application is anchored on section 7 of the Fair Administrative Act which states that "Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to; (a) a court in accordance with section 8 or (b) by a tribunal in exercise of its jurisdiction conferred in that regard under any written law." It is further submitted that the ex parte applicants have failed to present any exceptional circumstances to warrant this court invoking its judicial review jurisdiction, and that the entire application ought to be dismissed. Republic vs. National Environmental Management Authority Ex-parte Sound Equipment Ltd (2011) eKLR, is cited, where the court stated:
"Where there was an alternative remedy especially where parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted and that in determining whether exception should be made and judicial review granted, it is necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself whether the statutory appeal procedure was suitable to determine it."

10. The 1st respondent has also cited Attorney General vs. Okoiti & 3 others [2025[KECA 309 (KLR), Republic vs. RO Mbogo & another; Alfred Ndemo Nyakundi (Interested Party) Ex parte Diana Mutheu & another [2020] eKLR, Republic vs. Chief Magistrate Mombasa & 3 others; Sega Ventures Limited & another (Interested Parties) Kirima (Exparte) [2023] KEELC 180 (KLR), National Social Security Fund vs. Sokomania Limited & Chief Magistrate's Court Milimani [2021] eKLR, Republic vs. National Environment Management Authority Ex-parte Sound Equipment Limited [2011] and Bellevue Development Company vs. Francis Gikonyo & 3 others [2020] eKLR.

11. The 2nd interested party has filed their submissions, dated 13th January 2026. It is submitted that the applicants have not proved to the court that the decision of the 1st respondent was tainted with illegality, irrationality and procedural impropriety. It is averred that the grounds, raised in this judicial review application, touch on the merits of the case, making the application an appeal disguised as a judicial review application. It is submitted that the application, is, therefore, incompetent, fatally defective, frivolous, lacks merit, an abuse of the court's time and ought to be dismissed.

12. It is also submitted that the decision cannot be faulted merely because the ex parte applicants feel that the 1st respondent made a wrong decision in failing to uphold their position. It is further argued that the grounds, raised in the motion, should have been raised as grounds for an appeal, as opposed to grounds in judicial review. It is contended that judicial review is concerned with the decision-making process, not with the merits of the decision itself, where the court would only be concerned with the process leading to the making of the decision. It is also contended that the ex parte applicants are questioning procedural impropriety, by the 1st respondent, and, in order to succeed in the application for judicial review, on that score, the ex parte applicants have to show

that the decision, or act complained of, is tainted with illegality, irrationality and procedural impropriety.

13. The 2nd interested party relies on Municipal Council of Mombasa vs. Republic & Umoja Consultants Limited [2002] eKLR, Republic vs. Communications Authority of Kenya ex-parte Geonet Communications Limited & 5 others [2016] KEHC 8085 (KLR), Peninah Nadako Kiliswa vs. Independent Electoral & Boundaries Commission (IEBC) & 2 others [2015] eKLR, Pastoli vs. Kabale District Local Government Council and Others (2008) 2 EA 300, Albert Chaurembo Mumba & 7 others vs. Maurice Munyao & 148 others [2019] eKLR , Republic vs. Retirement Benefits Appeals Tribunal; Post Office Savings Bank & Another (Interested Parties); Kalume & 75 others (Exparte Applicant) (2025) KEHC 5419 (KLR) and Republic vs. Commissioner of Customs Services Exparte Africa K-Link International Limited [2012] eKLR.

14. There is only 1 issue for determination, and that is whether the ex parte applicants are entitled to the orders that they seek in the application.

15. The courts, in such cases as Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 & another vs. Ann Wangui Ngugi & 524 others [2018] eKLR [2018] KECA 710 (KLR) and George Omondi & 210 others vs. Retirement Benefits Appeals Tribunal & 2 others [2020] eKLR [2020] KECA 666 (KLR) have stated that the Retirement Benefits Act does not provide for a right of appeal, from a decision of the 1st respondent, adding that such a decision is only challengeable by way of judicial review, at the High Court or the Employment and Labour Relations Court, depending on the nature of the dispute. It has been emphasized that the jurisdiction, exercised by the High Court and the Employment and Labour Relations Court, would be supervisory, not appellate.

16. A court acting without jurisdiction acts in vain, and all it engages in would be a nullity, according to Owners of the Motor Vessel 'Lilian S'' vs. Caltex Oil (Kenya) Ltd (1989) KLR 1. The same principle was espoused in Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 others (2012) eKLR, where it was stated that, "A court's jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law." The High Court, therefore, would have no jurisdiction to entertain an appeal, from a decision of the 1st respondent, but there would be jurisdiction to handle a judicial review application.

17. The supervisory jurisdiction of the High Court and the Employment and Labour Relations Court, in judicial review proceedings, focuses on process, and not the merits of the decision. It would be concerned with how the decision was made, around whether it was fair, lawful and reasonable, and not with the correctness of the decision itself. The grounds for review are typically around lack of jurisdiction, procedural impropriety, illegality or irrationality. Illegality is about the tribunal acting beyond its legal powers or jurisdiction; procedural impropriety is about failure to follow fair procedures, such as denying a party a right to be heard; and irrationality is about a decision being so unreasonable that no reasonable tribunal could have arrived at it.

18. In Municipal Council of Mombasa vs. Republic & Umoja Consultants Limited [2002] eKLR, the court stated as follows, on the mandate of the court, with respect to judicial review:
"Judicial Review is concerned with the decision-making process not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account irrelevant matters. The court

should not act as a court of appeal over the decider which would involve going into the merits of a decision itself, such as whether there was or there was not sufficient evidence to support the decision. It is the duty of the decision maker to comply with the law in coming to its decision and common sense and fairness demand that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but it a statutory body which can only do what is authorized by the statue creating it and, in the manner, authorized by statute."

19. In Republic vs. Retirement Benefits Appeals Tribunal; Post Office Savings Bank & Another (Interested Parties); Kalume & 75 others (Exparte Applicant) (2025) KEHC 5419 (KLR), it was asserted that "Judicial Review is not an appeal mechanism." Judicial Review is not intended to be a way to appeal or re-examine the substantive merits of a case, it focuses on whether a public body or tribunal acted unlawfully, irrationally, or unfairly in making its decision.

20. In cases such as this, under the Retirement Benefits Act, where the decision of the Tribunal is seemingly final, to the extent of an appeal not being provided for, most parties, who challenge it by way of judicial review, tend to proceed as though they are articulating an appeal, by raising grounds that go into the merits of the decision rather than the process. I have very scrupulously gone through the grounds upon which the judicial review applications are premised, in Milimani HCJR No. E359 of 2025 and Milimani HCJR No. E061 of 2026, although couched as brought under the judicial review subtitles on illegality, ultra vires, irrationality, arbitrariness and procedural impropriety, in reality they raise issues that go into merit around the 1st respondent erring in law and fact, going wrong on the evaluation of evidence, re-writing benefits, failing to enforce terms of trust deeds and scheme rules, getting it wrong on how benefits are supposed to be paid, among others, all of which are issues around merit.

21. The dispute has had a chequered history, for it dates back to 2011, and the parties hereto have had the issues herein litigated and re-litigated, before the 2nd interested party, the 1st respondent and the courts. It was initially before the 2nd interested party, in 2011, after the applicants were unhappy with the way their benefits were calculated by the employer and the 1st interested party, on basis that there were miscalculations, which led to underpayment. The 2nd interested party dismissed their complaints, on grounds that their benefits had been properly computed. The matter was escalated to the 1st respondent, in RBAT Appeal No. 7 of 2011, which was decided in their favour. The 1st interested party was dissatisfied, and moved the High Court, by way of judicial review, in Milimani HCJR No. 141 of 2017, seeking to quash the decision of the 1st respondent and to prohibit its enforcement. The High Court dismissed the judicial review application, in 2023, on grounds that it was a disguised appeal. The matter was escalated to the Court of Appeal, in Nairobi CACA No. E767 of 2023, which allowed the appeal, and reverted the matter to the 1st respondent, for the re-hearing of RBAT Appeal No. 7 of 2011.

22. A re-hearing was conducted, in RBAT Appeal No. 7 of 2011, where oral evidence was taken, from the applicants, their witnesses and the interested parties. A variety of documents were submitted. In the end, a 118-page and 200-paragraph judgment was delivered, upon reciting or narrating the respective cases of both sides, as per the pleadings and other filings, and consideration of the testimonies of the witnesses presented and the submissions made, the provisions of the Constitution and the relevant statutes, the Trust Deed of the 1st interested party and the Rules, and independent research, it was found and held that the evidentiary burden was not discharged, to warrant displacement of the decision of the 2nd interested party.

23. The 1st respondent rendered a detailed and well-reasoned decision on 2nd October 2025, where, as indicated above, it received the testimonies of the witnesses who testified orally, it had copies of

the written witness statements, it also recited the submissions made by the parties inclusive of the issues identified by them for determination, it framed the issues for determination, analysed the evidence in thematic areas, before arriving at the findings and holdings. There was analysis of evidence, before some was accepted and the other rejected, and reasons were given in each case. There was citation of relevant statutory provisions and case law, and interpretations given to the provisions, based on the law cited. There was scrutiny of the evidence presented by actuarial experts, before the same was discounted for recorded reasons.

24. The applicants invite me to re-visit that decision, in RBAT Appeal No. 7 of 2011, and quash it, and thereafter direct the 1st respondent to consider the matter afresh, so as to re-determine the appeal, in accordance with the Retirement Benefits Act and the Telposta Pension Scheme Rules. It has not been demonstrated that the impugned decision was not handled in accordance with the Retirement Benefits Act and the Telposta Pension Scheme Rules, to warrant a re-hearing in accordance with those provisions.

25. My mandate, in these judicial review proceedings, is looking into whether the process, to assess and evaluate if the handling of the re-hearing of RBAT Appeal No. 7 of 2011, was proper, in terms of whether the applicants and the other parties got a fair hearing, were given adequate time to present their case, and, generally whether the 1st respondent handled the whole process of re-hearing them properly. There was back and forth, between the 1st respondent and the interested parties, and even before the courts, before RBAT Appeal No. 7 of 2011 was heard afresh, and determined with finality. The applicants were entertained and heard by all 4 judicial and quasi-judicial bodies. I have very closely scrutinized the judgment, in RBAT Appeal No. 7 of 2011, and I have noted that the applicants and the interested parties were all given a fair chance before the 1st respondent, to present their respective cases, and their respective cases were narrated and analysed in the said judgement, before the determination was made. I am not at all persuaded that the applicants were not heard, or were denied an adequate chance to present their case, or the material they presented was not properly handled, or the 1st respondent exceeded jurisdiction or mishandled the process in any way.

26. There are prayers for declarations and injunctive relief. These proceedings are premised on sections 8 and 9 of the Law Reform Act, Cap. 26, Laws of Kenya and Order 53 of the Civil Procedure Rules. Under those provisions, judicial review is strictly limited to certiorari, mandamus and prohibition. There would be no room, therefore, for consideration of grant of reliefs relating to declarations and injunctions.

27. I would agree with the 1st respondent and the interested parties, that the instant application is an appeal disguised as a judicial review. It lacks merit, and it is for dismissal, and I hereby, accordingly, dismiss it. There shall be no order for costs.

DELIVERED VIA CTS, DATED AND SIGNED IN CHAMBERS, AT MILIMANI, NAIROBI, THIS 27TH DAY OF JULY 2026.

W MUSYOKA
JUDGE

Mr. Abdirahman, Court Assistant.

Advocates
Ms. Atieno, instructed by Koceyo & Company, the Advocates for the ex parte applicants, in HCJR No. E376 of 2015.
Ms. Ndugire, instructed by Amadi & Amadi, the Advocates for the ex parte applicants, in HCJR No.

E061 of 2026.
Mr. Kennedy Ogutu, Advocate, instructed by the Office of the Chief Registrar of the Judiciary, for the 1st respondent.
Mr. Oraro SC and Ms. Mutua, instructed by Oraro & Company, the Advocates for the 1st interested party.
Ms. Gloria Kosgei, Advocate, instructed by the Retirement Benefits Authority, the 2nd interested party.

SIGNED BY: HON. JUSTICE W. MUSYOKA

THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT JUDICIAL REVIEW
DATE: 2026-07-27 18:16:05+03

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCJR/E061/2026

GEORGE ODIAMBO OLOO AND OTHERS VS RETIREMENT BENEFITS AUTHORITY AND THE RETIREMENT BENEFITS APPEALS TRIBUNAL AND 1 OTHERS

JUDGMENT

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1. The ex parte applicants have moved this court by way of a motion, dated 28th November 2025, in which they seek the orders of certiorari, to quash the judgement of the 1st respondent, dated 2nd October 2025, in RBAT Appeal No. 7 of 2011; mandamus to compel the 1st respondent to determine their amended appeal, dated 11th March 2025, in accordance with the Retirement Benefits Act, Cap. 197, Laws of Kenya, and the Telposta Pension Scheme Rules; a declaration that the application of reduction and discounting factors, by the 1st interested party, to reduce the accrued pension benefits of the applicants is unconstitutional, unlawful, illegal and null and void ab initio and violates Article 47 and 57 of the Constitution, the Retirement Benefits Act and Regulations 16(1) of the Retirement Benefits (Occupational Scheme) Regulations; and a permanent injunction restraining the 1st interested party from applying the discounting and reduction factors in computation of the applicants' pension benefits.

2. The said motion is supported by the affidavits of Mr. Boniface Mariga, sworn on 15th November 2025, in HJCR No. E376 of 2025, and of Mr. George Odhiambo Oloo, sworn on 6th March 2026, in HCJR No. E061 of 2026. The ex-parte applicants aver that they are former employees of the Kenya Post and Telecommunications Corporation and later, Telkom Kenya Limited, and long-standing members of the Telposta Pension Scheme. As members of the scheme, the ex-parte applicants' pension rights, including benefits upon early retirement or retrenchment, were expressly defined in the binding and registered Trust Deed and Rules. It is averred that between the year 2004 and 2007, the ex parte applicants were involuntarily retired, pursuant to restructuring exercises undertaken by the employer. Upon accessing their benefits, the ex parte applicants discovered that the Trustees of the Scheme had not applied the prescribed formula, instead, the trustees introduced actuarial discounting factors, resulting in significant reduction of the lump-sum pension benefits payable to them.

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9. The 1st respondent further submits that the application is anchored on section 7 of the Fair Administrative Act which states that "Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to; (a) a court in accordance with section 8 or (b) by a tribunal in exercise of its jurisdiction conferred in that regard under any written law." It is further submitted that the ex parte applicants have failed to present any exceptional circumstances to warrant this court invoking its judicial review jurisdiction, and that the entire application ought to be dismissed. Republic vs. National Environmental Management Authority Ex-parte Sound Equipment Ltd (2011) eKLR, is cited, where the court stated:
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13. The 2nd interested party relies on Municipal Council of Mombasa vs. Republic & Umoja Consultants Limited [2002] eKLR, Republic vs. Communications Authority of Kenya ex-parte Geonet Communications Limited & 5 others [2016] KEHC 8085 (KLR), Peninah Nadako Kiliswa vs. Independent Electoral & Boundaries Commission (IEBC) & 2 others [2015] eKLR, Pastoli vs. Kabale District Local Government Council and Others (2008) 2 EA 300, Albert Chaurembo Mumba & 7 others vs. Maurice Munyao & 148 others [2019] eKLR , Republic vs. Retirement Benefits Appeals Tribunal; Post Office Savings Bank & Another (Interested Parties); Kalume & 75 others (Exparte Applicant) (2025) KEHC 5419 (KLR) and Republic vs. Commissioner of Customs Services Exparte Africa K-Link International Limited [2012] eKLR.

14. There is only 1 issue for determination, and that is whether the ex parte applicants are entitled to the orders that they seek in the application.

15. The courts, in such cases as Staff Pension Fund & Kenya Commercial Bank Staff Retirement (DC) Scheme 2006 & another vs. Ann Wangui Ngugi & 524 others [2018] eKLR [2018] KECA 710 (KLR) and George Omondi & 210 others vs. Retirement Benefits Appeals Tribunal & 2 others [2020] eKLR [2020] KECA 666 (KLR) have stated that the Retirement Benefits Act does not provide for a right of appeal, from a decision of the 1st respondent, adding that such a decision is only challengeable by way of judicial review, at the High Court or the Employment and Labour Relations Court, depending on the nature of the dispute. It has been emphasized that the jurisdiction, exercised by the High Court and the Employment and Labour Relations Court, would be supervisory, not appellate.

16. A court acting without jurisdiction acts in vain, and all it engages in would be a nullity, according to Owners of the Motor Vessel 'Lilian S'' vs. Caltex Oil (Kenya) Ltd (1989) KLR 1. The same principle was espoused in Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Ltd & 2 others (2012) eKLR, where it was stated that, "A court's jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law." The High Court, therefore, would have no jurisdiction to entertain an appeal, from a decision of the 1st respondent, but there would be jurisdiction to handle a judicial review application.

17. The supervisory jurisdiction of the High Court and the Employment and Labour Relations Court, in judicial review proceedings, focuses on process, and not the merits of the decision. It would be concerned with how the decision was made, around whether it was fair, lawful and reasonable, and not with the correctness of the decision itself. The grounds for review are typically around lack of jurisdiction, procedural impropriety, illegality or irrationality. Illegality is about the tribunal acting beyond its legal powers or jurisdiction; procedural impropriety is about failure to follow fair procedures, such as denying a party a right to be heard; and irrationality is about a decision being so unreasonable that no reasonable tribunal could have arrived at it.

18. In Municipal Council of Mombasa vs. Republic & Umoja Consultants Limited [2002] eKLR, the court stated as follows, on the mandate of the court, with respect to judicial review:
"Judicial Review is concerned with the decision-making process not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account irrelevant matters. The court

should not act as a court of appeal over the decider which would involve going into the merits of a decision itself, such as whether there was or there was not sufficient evidence to support the decision. It is the duty of the decision maker to comply with the law in coming to its decision and common sense and fairness demand that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but it a statutory body which can only do what is authorized by the statue creating it and, in the manner, authorized by statute."

19. In Republic vs. Retirement Benefits Appeals Tribunal; Post Office Savings Bank & Another (Interested Parties); Kalume & 75 others (Exparte Applicant) (2025) KEHC 5419 (KLR), it was asserted that "Judicial Review is not an appeal mechanism." Judicial Review is not intended to be a way to appeal or re-examine the substantive merits of a case, it focuses on whether a public body or tribunal acted unlawfully, irrationally, or unfairly in making its decision.

20. In cases such as this, under the Retirement Benefits Act, where the decision of the Tribunal is seemingly final, to the extent of an appeal not being provided for, most parties, who challenge it by way of judicial review, tend to proceed as though they are articulating an appeal, by raising grounds that go into the merits of the decision rather than the process. I have very scrupulously gone through the grounds upon which the judicial review applications are premised, in Milimani HCJR No. E359 of 2025 and Milimani HCJR No. E061 of 2026, although couched as brought under the judicial review subtitles on illegality, ultra vires, irrationality, arbitrariness and procedural impropriety, in reality they raise issues that go into merit around the 1st respondent erring in law and fact, going wrong on the evaluation of evidence, re-writing benefits, failing to enforce terms of trust deeds and scheme rules, getting it wrong on how benefits are supposed to be paid, among others, all of which are issues around merit.

21. The dispute has had a chequered history, for it dates back to 2011, and the parties hereto have had the issues herein litigated and re-litigated, before the 2nd interested party, the 1st respondent and the courts. It was initially before the 2nd interested party, in 2011, after the applicants were unhappy with the way their benefits were calculated by the employer and the 1st interested party, on basis that there were miscalculations, which led to underpayment. The 2nd interested party dismissed their complaints, on grounds that their benefits had been properly computed. The matter was escalated to the 1st respondent, in RBAT Appeal No. 7 of 2011, which was decided in their favour. The 1st interested party was dissatisfied, and moved the High Court, by way of judicial review, in Milimani HCJR No. 141 of 2017, seeking to quash the decision of the 1st respondent and to prohibit its enforcement. The High Court dismissed the judicial review application, in 2023, on grounds that it was a disguised appeal. The matter was escalated to the Court of Appeal, in Nairobi CACA No. E767 of 2023, which allowed the appeal, and reverted the matter to the 1st respondent, for the re-hearing of RBAT Appeal No. 7 of 2011.

22. A re-hearing was conducted, in RBAT Appeal No. 7 of 2011, where oral evidence was taken, from the applicants, their witnesses and the interested parties. A variety of documents were submitted. In the end, a 118-page and 200-paragraph judgment was delivered, upon reciting or narrating the respective cases of both sides, as per the pleadings and other filings, and consideration of the testimonies of the witnesses presented and the submissions made, the provisions of the Constitution and the relevant statutes, the Trust Deed of the 1st interested party and the Rules, and independent research, it was found and held that the evidentiary burden was not discharged, to warrant displacement of the decision of the 2nd interested party.

23. The 1st respondent rendered a detailed and well-reasoned decision on 2nd October 2025, where, as indicated above, it received the testimonies of the witnesses who testified orally, it had copies of

the written witness statements, it also recited the submissions made by the parties inclusive of the issues identified by them for determination, it framed the issues for determination, analysed the evidence in thematic areas, before arriving at the findings and holdings. There was analysis of evidence, before some was accepted and the other rejected, and reasons were given in each case. There was citation of relevant statutory provisions and case law, and interpretations given to the provisions, based on the law cited. There was scrutiny of the evidence presented by actuarial experts, before the same was discounted for recorded reasons.

24. The applicants invite me to re-visit that decision, in RBAT Appeal No. 7 of 2011, and quash it, and thereafter direct the 1st respondent to consider the matter afresh, so as to re-determine the appeal, in accordance with the Retirement Benefits Act and the Telposta Pension Scheme Rules. It has not been demonstrated that the impugned decision was not handled in accordance with the Retirement Benefits Act and the Telposta Pension Scheme Rules, to warrant a re-hearing in accordance with those provisions.

25. My mandate, in these judicial review proceedings, is looking into whether the process, to assess and evaluate if the handling of the re-hearing of RBAT Appeal No. 7 of 2011, was proper, in terms of whether the applicants and the other parties got a fair hearing, were given adequate time to present their case, and, generally whether the 1st respondent handled the whole process of re-hearing them properly. There was back and forth, between the 1st respondent and the interested parties, and even before the courts, before RBAT Appeal No. 7 of 2011 was heard afresh, and determined with finality. The applicants were entertained and heard by all 4 judicial and quasi-judicial bodies. I have very closely scrutinized the judgment, in RBAT Appeal No. 7 of 2011, and I have noted that the applicants and the interested parties were all given a fair chance before the 1st respondent, to present their respective cases, and their respective cases were narrated and analysed in the said judgement, before the determination was made. I am not at all persuaded that the applicants were not heard, or were denied an adequate chance to present their case, or the material they presented was not properly handled, or the 1st respondent exceeded jurisdiction or mishandled the process in any way.

26. There are prayers for declarations and injunctive relief. These proceedings are premised on sections 8 and 9 of the Law Reform Act, Cap. 26, Laws of Kenya and Order 53 of the Civil Procedure Rules. Under those provisions, judicial review is strictly limited to certiorari, mandamus and prohibition. There would be no room, therefore, for consideration of grant of reliefs relating to declarations and injunctions.

27. I would agree with the 1st respondent and the interested parties, that the instant application is an appeal disguised as a judicial review. It lacks merit, and it is for dismissal, and I hereby, accordingly, dismiss it. There shall be no order for costs.

DELIVERED VIA CTS, DATED AND SIGNED IN CHAMBERS, AT MILIMANI, NAIROBI, THIS 27TH DAY OF JULY 2026.

W MUSYOKA
JUDGE

Mr. Abdirahman, Court Assistant.

Advocates
Ms. Atieno, instructed by Koceyo & Company, the Advocates for the ex parte applicants, in HCJR No. E376 of 2015.
Ms. Ndugire, instructed by Amadi & Amadi, the Advocates for the ex parte applicants, in HCJR No.

E061 of 2026.
Mr. Kennedy Ogutu, Advocate, instructed by the Office of the Chief Registrar of the Judiciary, for the 1st respondent.
Mr. Oraro SC and Ms. Mutua, instructed by Oraro & Company, the Advocates for the 1st interested party.
Ms. Gloria Kosgei, Advocate, instructed by the Retirement Benefits Authority, the 2nd interested party.

SIGNED BY: HON. JUSTICE W. MUSYOKA

THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT JUDICIAL REVIEW
DATE: 2026-07-27 18:18:01+03