



REPUBLIC OF KENYA



**Goren & 19 others v Ondego & 10 others (Constitutional Petition
7 of 2020) [2023] KEHC 2769 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CONSTITUTIONAL PETITION 7 OF 2020
WM MUSYOKA, J
MARCH 24, 2023
(FORMERLY NAIROBI HCCP NO. 116 OF 2020)**

BETWEEN

REVEREND HUMPHREY GOREN & 19 OTHERS PETITIONER

AND

REVEREND NATHAN ONDEGO & 10 OTHERS RESPONDENT

RULING

1. The Motion that I am called upon to determine is dated March 20, 2020. It is at the instance of the petitioners. It seeks a variety of conservatory orders, principally against the 1st and 2nd respondents, to restrain them from operating bank accounts of the 3rd respondent, receiving monies as contributions from members for the 3rd respondent, accessing assets and properties belonging to the 5th respondent, holding meetings and generally managing the affairs of the 3rd respondent, appointing Advocates to act for the 3rd and the 5th respondents, and for orders directing the respondents individually and severally to submit certain documents and records.
2. The grounds upon which the orders are sought are set out on the face of the application. It is said that the 1st respondent does not qualify to be a scheme administrator, the scheme has been mismanaged and the assets are being wasted, the 7th respondent has recognised the mismanagement hence the appointment of an inspector to look at the records of the 3rd respondent, among others. The grounds are explained and the factual background to them given in the supporting affidavit sworn by the 1st petitioner.
3. The application has been responded to by some of the parties named in the proceedings as respondents and interested parties, by way of affidavits and grounds of opposition.



4. The Motion of March 20, 2020 is interlocutory, as it is filed within substantive proceedings, being the constitutional cause initiated herein by way of the petition dated March 20, 2020. The petition seeks a variety of orders against the respondents, with respect to the administration, management and operations of the retirement benefits scheme; as well as numerous declarations relating to the said scheme, which operates as the 3rd respondent.
5. In the petition and the Motion, the petitioners have cited liberally from the provisions of the [Retirement Benefits Act](#), No 3 of 1997, Laws of Kenya, and the [Retirement Benefits \(Administrators\) Regulations, 2007](#). In the grounds on the face of the Motion, the petitioners describe themselves as members of the scheme.
6. The [Retirement Benefits Act](#) carries provisions on the regulation and supervision of retirement benefits schemes by the Retirement Benefits Authority. It also carries provisions on inspection of the records and operations of schemes by the Retirement Benefits Authority, either impromptu and as a matter of course, or where directed by the Board on need basis, to satisfy itself that the scheme is being run and administered in accordance with the relevant laws and regulations, and to take remedial steps whenever it establishes that there are problems. In extreme cases of maladministration and mismanagement, the Retirement Benefits Authority may appoint interim administrators to take over the administration and management of the scheme.
7. The Act also has provisions on handling complaints by members of the scheme, who are dissatisfied with decisions or actions of the scheme managers, administrators or trustees. Such are to be forwarded to the Chief Executive Officer of the Retirement Benefits Authority, for review of any such decisions. The Act creates a Tribunal, with powers similar to those of a subordinate court, to handle appeals from decisions of the Authority or the Chief Executive Officer, including on review of decisions of scheme managers, administrators or trustees.
8. I have carefully gone through the petition and the Motion, and I have noted that the issues raised relate to matters that are within the jurisdiction of the Chief Executive Officer of the Retirement Benefits Authority, and the Retirement Benefits Tribunal. The petitioners say that an inspection had been ordered by the Authority, but have not dwelt on its outcome. It would appear that certain actions are under way, in accordance with the law and structures created to monitor and regulate retirement benefits schemes. If there are any disputes with relation to the way the 3rd respondent is being ran, the recourse should be to the dedicated structures created under the Act. If the petitioners, as members of the retirement benefits scheme, are unhappy with decisions of the managers of the scheme or its trustees, in the management and administration of the scheme, then they ought, as members, to raise the matter with the Chief Executive Officer of the Authority for review, and if dissatisfied, approach the Tribunal on appeal, and thereafter to the High Court by way of review. See *Jimmy R. Kavilu and 16 Others vs. Stanbic Bank Kenya Ltd and 7 Others* (2019) eKLR (M. Onyango, J) and *Joseph Kimani Kamau vs. Sundeep K Raichura and 5 Others (sued as trustees of Alexander Forbes Retirement Fund (Provident Section 3)* (2019) eKLR (Muchelule, J).
9. I am not persuaded that the orders sought are available, before the petitioners exhaust the mechanisms for dispute resolution established under the [Retirement Benefits Act](#). Resort to the High Court should be a last option. The mechanisms set out in the Act ought not be bypassed. See [In re Estate of JKN](#) [2021] eKLR (Onyiego, J).
10. Consequently, I decline to grant the orders sought in the Motion, dated March 20, 2020, and I hereby dismiss it. Costs shall abide the outcome of the petition. As the headquarters of the relevant scheme are domiciled at Nyang'ori, Vihiga County, within the local limits of the jurisdiction of the High Court at Vihiga, I hereby direct that this file be transferred to the said High Court.



**RULING IS DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24TH
DAY OF MARCH 2023**

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Dr. Khaminwa, instructed by Khaminwa & Khaminwa, Advocates for the petitioners.

Mr. Wasilwa, instructed by HM Wasilwa & Company, Advocates for the 1st respondent.

Mr. Oginga, instructed by Ochieng Oginga & Company, Advocates for the 2nd and 3rd respondents.

Mr. Mokuwa, instructed by Zablon Mokuwa & Company, Advocates for the 4th and 5th respondents.

