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Your Pension Belongs to You: *Supreme Court Settles the Debate on Pension Funds and Public Procurement*

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Every month, a portion of your salary is deducted and placed into a pension scheme, money you earned, held in trust for your retirement. **Now imagine being told that money is actually public money.** That the fund must run government tenders and obtain ministerial approvals every time it hires a fund manager at a cost that quietly eats into your retirement savings. That is exactly what Section 2(o) of the Public Procurement and Asset Disposal Act (PPADA) required of pension schemes linked to public employers since 2015.

On 15th May 2026, the Supreme Court of Kenya said: enough. *In Association of Retirement Benefits Schemes v Attorney General & 3 Others (SC Petition No. E017 of*

2024), the court declared Section 2(o) unconstitutional restoring pension savings to where they always belonged: with the employees who earned them.

The Problematic provision: section 2(o) of the PPDA Act

The PPADA was enacted in 2015 to give effect to Article 227 of the Constitution, which requires State organs and public entities to procure goods and services fairly, transparently and competitively. By including “pension fund for a public entity” in its definition of a public entity under Section 2(o), parliament required pension schemes linked to public institutions to comply with the full public procurement framework establishing procurement

departments, advertising tenders, and obtaining ministerial approvals. Private sector pension schemes operating under the same Retirement Benefits Act (RB Act) faced none of these requirements.

The Association of Retirement Benefits Schemes (ARBS) challenged this provision, arguing that pension funds are irrevocable trusts under the RB Act, funded by employee and employer contributions, and administered independently by trustees solely for members' benefit. Both the High Court and the Court of Appeal rejected the challenge. A subsequent appeal to the Supreme Court was allowed.

The Supreme Court's decision

The trust structure is decisive

Once contributions are remitted into a pension scheme, they undergo a fundamental legal transformation, they cease to be the employer's property and become part of a private trust held exclusively for members. Trustees, managers, and administrators are not public officers and are not paid from the Consolidated Fund. Their mandate flows from a trust deed, not government directive.

Regulation is not the same as ownership

While the RB Act subjects pension schemes to oversight by the Retirement Benefits Authority, the court drew a firm line between regulatory supervision and the deep, pervasive State control that would justify treating an entity as an instrument of government. The court relied on its own precedent in *Outa v Okello*, which requires more than mere oversight before an entity can be classified as a State instrumentality.

The constitutional context confirms it

To further drive the point home, the court noted that article 227 of the Constitution is dedicated to Public Finance and the PPADA defines public money as resources appropriated through the budgetary process. On the other hand, Pension contributions deducted from salaries and matched by employers are not drawn from the public exchequer and do not meet that definition. In the court's holding, to hold otherwise would be tantamount to asserting that because an employee earns a salary from a public entity, their personal expenditure should be regulated as public funds, an outcome the court rightly described as absurd.

Legal implications of the decision

Trustees and scheme administrators are at liberty to undertake procurement process outside the framework of the PPADA. Open tendering for fund managers, custodians,

and administrators need no longer follow government procurement procedures, selection can be guided by fiduciary principles and the RB Act framework alone.

Sponsors including State corporations, government ministries, and county governments should note that their contributions, once remitted to the scheme, are no longer public funds. The scheme is a legally distinct entity from its sponsor.

Members stand to benefit most directly. The compliance costs that Section 2(o) imposed ultimately came out of members' retirement savings. Those costs now fall away. Parliament should also consider formally amending the PPADA to remove

Section 2(o), as its continued presence even as a void provision creates unnecessary uncertainty.

Conclusion

This judgment settles a question that should have been clear from the start: money earned by an employee, deducted from their salary, and held in trust for their retirement belongs to that employee. It does not become public money simply because their employer happens to be a public institution. The Supreme Court's ruling restores the integrity of the trust structure, reaffirms trustee autonomy, and for thousands of public sector workers, saving towards retirement delivers a measure of financial justice long overdue

By:

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