

Kustaafu

FROM THE COUNCIL



ARBS

ASSOCIATION OF
RETIREMENT
BENEFITS SCHEMES

ISSUE No. 14

WELCOME

Dear valued members,

It is with great pleasure that we welcome you back to our quarterly newsletter after a long break. We apologize for the hiatus and hope that you have been keeping well and staying safe during these unprecedented times.

As always, our team has been working tirelessly to bring you the latest updates and news on matters that are important to you.

We appreciate your continued support and look forward to keeping you informed and engaged through our newsletter.

OUR VISION

“To be the first point of reference for all retirement benefits matters and a key facilitator of rapid development of a vibrant retirement benefits industry for all Kenyans”.

OUR MISSION

“To be a strong, effective and recognized forum to represent and promote the interests of member schemes and other stakeholders through innovative advocacy and education”

OUR GOALS

Central to the services to members are:

1. Member Education Programme
2. Lobbying for changes
3. Communication on industry changes
4. Problem solving assistance

PUBLIC PROCUREMENT, ASSET DISPOSAL OF ACT 2015, and alleged violation of the Constitution of Kenya Articles 27 and 40.

ARBS received feedback on the industry players' displeasure with public sector pension schemes' inclusion as one of the public entities subject to the Act. The association requested financial support from its members/schemes and instituted court action. The High Court dismissed the petition, and the Court of Appeal dismissed the appeal. The association filed an Application for Certification of the matter before the Supreme Court, which was certified as urgent. However, the association has yet to receive a response from the Respondents. The ruling to refer the matter to the Supreme Court is scheduled for 9th February 2024. The advocate received advice from the court that the ruling was not ready and would be delivered on notice.

AMENDING TAXATION OF BENEFITS FOR INDIVIDUALS AGED 65 AND ABOVE.

The Finance Act 2007 introduced Paragraph 53 of the Income Tax Act which provides that monthly pensions and lumpsum benefits granted to a person who is sixty-five years of age or more are exempt from tax. However, the Finance Bill 2020 proposed to delete the paragraph exempting from tax retirement benefits paid to persons who are sixty-five years of age and above so that only monthly pensions are tax-exempt. ARBS agreed to lobby for the continued exemption from taxation of all retirement benefits for persons aged 65 years, including monthly pensions and lump sum retirement benefits. We took the matter to court through a constitutional Petition and the Honourable Court has issued certified conservatory orders. The highlighting of submissions will be on 16th April 2024.

IN THE MATTER OF NSSF ACT 45 OF 2013

The National Social Security Fund (NSSF) Act 2013's constitutionality has been in dispute since it was assented to by the president on 24th December 2013. After the Employment and Labour Relations Court (ELRC) heard various organizations' cases, the matter went to the Court of Appeal and then to the Supreme Court.

The Supreme Court held that the ELRC had jurisdiction to determine the NSSF Act's constitutional validity under Article 162(2)(a) of the Constitution. The Court of Appeal was wrong to assume original jurisdiction, and the case should be remitted to the Court of Appeal to determine the substantive merits of the ELRC Judgment on a priority basis. The NSSF Act 2013 remains unconstitutional, null, and void until the Court of Appeal renders its decision. No deductions can be made under the act, and the previous rates under the National Social Security Fund Act No. 28 of 1965 will apply

Note to members ;

From this newsletter on we invite members to submit a range of articles that we believe will be of interest to the sector, from industry insights to member stories and helpful tips.