



**COMMUNIQUE TO MEMBERS: THE SUPREME COURT TODAY DECLARES THAT PENSION FUNDS ARE NOT PUBLIC ENTITIES SUBJECT TO PUBLIC PROCUREMENT SYSTEMS**

TO: All Members and Stakeholders of the Association of Retirement Benefits Schemes (ARBS)

DATE: May 15, 2026

Dear Members,

We are pleased to inform you of a landmark victory for the retirement benefits industry. Today, May 15, 2026, the Supreme Court of Kenya delivered its final judgment in **Supreme Court Petition No. E017 of 2024 between The Association of Retirement Benefit Schemes (Appellant) vs- The Attorney General and three others (Respondents)**, effectively setting aside previous decision of the Court of Appeal.

We (ARBS) challenged the constitutionality of Section 2(o) of the PPADA, which listed "pension fund for a public entity" as a public entity subject to the Act's procurement procedures. ARBS maintained that:

*Pension funds are registered as irrevocable trusts under the Retirement Benefits Act (RB Act) and are autonomous from the public entities that sponsor them.*

The funds consist of private employee savings and employer contributions, which are not "public money" but private property held in trust and vest immediately on the member upon remittance to the Scheme.

Subjecting these funds to the PPADA created double regulation and placed onerous financial and administrative burdens on schemes, ultimately reducing benefits for members.

**The Supreme Court's Findings**

The Supreme Court evaluated whether treating privately earned pension savings as public funds aligns with Article 227 of the Constitution. While the lower courts previously held that these schemes were public bodies due to state oversight and the public nature of their functions, the Supreme Court took a different view.

Key considerations in the Judgement included:



1. **The Nature of Funds:** The Court recognized that pension contributions vest in the employee and are held in trust, distinguishing them from traditional public funds.
2. **Avoidance of Double Regulation:** The Court noted the extensive existing regulatory framework under the Retirement Benefits Authority (RBA), designed to ensure transparency and protect member interests without the added layer of procurement law.
3. **Unconstitutionality:** The Court declared Section 2(o) of the PPADA inconsistent with Article 227(1) of the Constitution to the extent that it subjects pension funds for public entities to public procurement systems.

#### Final Orders of the Court

The Supreme Court issued the following orders:

1. **Appeal Allowed:** The appeal dated April 9, 2024, is hereby allowed.
2. **Judgment Set Aside:** The previous judgment of the Court of Appeal was set aside.
3. **Declaration of Nullity:** Section 2(o) of the PPADA was declared void to the extent that it subjects pension funds for a public entity to the application of public procurement systems.

#### What this means for our Members

This Judgement restores the autonomy of pension schemes for public entities. Schemes are no longer legally required to follow the procurement and asset disposal procedures prescribed in the PPADA. Instead, matters procurement are now governed by the Trustee Act, the RB Act, and the regulations overseen by the Retirement Benefits Authority.

This is yet another milestone achievement for ARBS which has been steadfast in defending, lobbying and securing the interests of the Sector & our members. We are determined to continue to do so, but we earnestly request and plead with our members to reinvigorate financial support for the Association to enable us continue the good work.

We congratulate our legal team at Simba & Simba Advocates and all members for their steadfast support throughout this long litigation journey.

Signed,

Association of Retirement Benefits Schemes (ARBS) (The Appellant)