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# Legal Alert

**NSSF Contributions: What the Court of Appeal's Ruling  
Means for Employers — Updated Position**

**JUNE 2026**

## Background

The validity of the National Social Security Fund Act No. 45 of 2013 (“2013 NSSF Act”) has been the subject of protracted litigation. The key developments are summarized below.

In September 2022, the Employment and Labor Relations Court (ELRC) declared the 2013 NSSF Act unconstitutional on several grounds, including that the Bill was not tabled before the Senate as required under the Constitution, that it violated competition law by favoring NSSF over third-party pension providers, that it usurped the Salaries and Remuneration Commission's constitutional mandate, and that the mandatory enrolment requirement unjustifiably restricted freedom of choice.

In February 2023, the Court of Appeal reversed the ELRC decision, finding that the ELRC lacked authority to hear the original case. Pursuant to that reversal, implementation of the 2013 NSSF Act commenced in February 2023.

In February 2024, the Supreme Court overturned the Court of Appeal, holding that the ELRC had authority to hear the case because the validity of a pension law directly touches on the employer-employee relationship. The Supreme Court directed the Court of Appeal to rehear the appeal on its actual merits.

Consequently, the ELRC's 2022 judgment was restored, and contributions should have reverted once more to the old NSSF rates. We reported this development in our [February 2024 alert](#).

## The Stay Application and the Court of Appeal's Ruling of 29 May 2026

Following the Supreme Court's direction, the appeal against the ELRC's 2022 judgment is pending before the Court of Appeal. Pending the hearing of that appeal, NSSF applied to the Court of Appeal Rules, 2022 for an order stating the ELRC's judgment. In effect, NSSF sought to continue implementation of the 2013 NSSF Act while its appeal was being heard.

On 29 May 2026, the Court of Appeal rejected this request by NSSF. The Court was not convinced that the ELRC judgment had created a governance vacuum that would destabilize the fund's operations. The Court held that the previous law, Cap. 258, automatically fills the legislative void and that NSSF had operated under the old Act for many years without difficulty.

Accordingly, even though the court was convinced that NSSF's appeal raised serious concerns about the ELRC decision, it was not convinced that without the stay orders the appeal would become pointless.

## Current Position

The effect of the Ruling of 29 May 2026 is that ELRC's judgment of 19 September 2022, which declared the 2013 NSSF Act unconstitutional and void, remains in force and enforceable. NSSF contributions and deductions are now guided by the old NSSF Act.

This position will apply until either the Supreme Court gives different guidance, or the Court of Appeal delivers a final decision allowing implementation of the 2013 NSSF Act

### Implications for Employers

- ❖ The ruling provides further judicial guidance on the applicable NSSF contribution framework pending determination of the substantive appeal.
- ❖ Employers may need to consider the impact of the ruling on current payroll administration, contribution calculations and remittance processes.
- ❖ As the appeal remains before the Court of Appeal, the position is not yet finally settled and further developments are expected. Employers should monitor developments keenly.

### What to Expect Next

The Court of Appeal is expected to hear NSSF's appeal on its merits. That appeal will definitively determine whether the ELRC correctly declared the 2013 NSSF Act unconstitutional. A further appeal to the Supreme Court remains possible.

We are monitoring this matter and will update you on further developments. We are available to advise employers on the implications of the ruling, including any queries relating to implementation issues or the broader NSSF framework, please contact us at [info@kn.co.ke](mailto:info@kn.co.ke).

### Key Decisions

*Court of Appeal Civil Application No. E656 of 2022 — National Social Security Fund Board of Trustees v Kenya Tea Growers' Association & 14 Others, Ruling dated 29 May 2026 (Court of Appeal — stay application dismissed)*

*Kenya Tea Growers Association & 2 Others v National Social Security Fund Board of Trustees & 13 Others, Petition E004 & E002 of 2023 (Consolidated) [2024] KESC 3 (KLR), 21 February 2024 (Supreme Court — ELRC had jurisdiction)*

*ELRC Petition No. 38 of 2014 (Consolidated), Judgment dated 19 September 2022 (ELRC — 2013 NSSF Act declared unconstitutional)*

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