



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 3481 of 1984**

**CHARLES KOGI MAKUMI .....PLAINTIFF**

**VERSUS**

**E.A. PXYGEN LTD.....DEFENDANTS**

**JUDGMENT**

The facts leading to this litigation are not seriously in dispute and can briefly be stated.

The Plaintiff was employed by the defendant as a clerk in 1957. He rose through the ranks and was elevated to the position of Branch Manager in 1964. All these years he worked in Nairobi. In 1983 he was transferred to Mombasa in the same capacity to manage the defendant's Mombasa branch. Seemingly according to him the climate in Mombasa was not suitable to him. He requested to be transferred back to Nairobi on medical grounds and he secured a letter from the doctor recommending that he be transferred back to Nairobi. This would not be possible according to the defendant since his post in Nairobi had been scraped.

On 27<sup>th</sup> March 1984 the Plaintiff wrote to the defendant in which he informed the defendant that come what may he could not remain in Mombasa after April 1984.

Arrangement were made and the Plaintiff was paid all his dues which was calculated at Shs. 272,254/= which he accepted and went home. At the time his services were terminated he was only 55 years and 9 months and according to his letter of employment his retirement age was 60 years and therefore he had 51 months to his retirement.

He filed this suit against the defendant claiming

- (a) Salary at Shs. 14,900/= for 51 months calculated at shs. 759,000/=
- (b) House allowance of shs. 5000/= for 51 months calculated at shs. 255,000/=.
- (c) Miscellaneous allowance at shs. 2420/= for 51 months calculated at shs. 123,420/=.
- (d) Leave allowance calculated at shs. 52,774.40
- (e) Balance in respect of house allowance calculated at Shs. 2,500/=

There is no dispute that the plaintiff was employed by the defendant in 1957 and one of the terms of his employment was that his retirement age was 60 years and it is conceded that he was retired at the age of 55 years and 9 months and was given his retirement dues.

The only issue before this court for determination is whether or not after retirement at the age of 55 years and 9 months the plaintiff was entitled in law to any of the benefits and/or emoluments claimed as above set out.

As a retiree he would not be entitled to any such claims apart from his normal retirement benefits. This was so stated by the Court of Appeal in the case of Kenya

Authority vs Edward Otieno Civil Appeal No. 120 of 1997. In that case the Plaintiff was employed by the Defendant pursuant to a letter of appointment dated 25<sup>th</sup> September 1971. It was a term of his contract that he could only be made to retire on attainment of 55 years and by a letter dated 23<sup>rd</sup> August 1994 the defendant purported to retire him at the age of 51 years. He was paid shs. 60,780/= being 3 months salary in lieu of notice which was received in protest. This was followed by another payment of shs. 424,446/= as his pension benefits which was also received under protest. He then instituted proceedings claiming loss of salary until the age of retirement and other benefits namely medical allowance, mileage allowance and telephone allowance.

It was held that to pay the Plaintiff his full salary and other emoluments till he attains the age of 55, as he claimed, would, on proper analysis, be tantamount as if he was being re-instated to his employment, to which he is not entitled.

The court went further to state. Otieno was no longer entitled to these claimed allowances since they are to be enjoyed by those in actual appointment and not those who have been retired.

Applying the same principle to the instant case I hold that the Plaintiff was not entitled to his salary until he attained the age of 60 years and I hold that he was not entitled to those claimed allowances since they were only meant to be enjoyed by those in actual employment and not those who have been retired.

It follows therefore that the Plaintiff's claim is dismissed with costs.

Delivered and Dated at Nairobi this 14<sup>th</sup> day of November 2007.

**J. L. A. OSIEMO**

**JUDGE**