

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL SUIT NO. 172 OF 1996

CHARLES MACKENZIE NODLA PLAINTIFF

VERSUS

KENYA POSTS & TELECOMMUNICAITONS..... DEFENDANT

R U L I N G

The plaintiff filed this suit on 14.7.1996. He is shown in the plaint to have worked as an employee of the Defendant for a period of 27 years during which period he was a holder of various offices, the last of which was manager in Welfare Industrial Relations. He was retired by the defendant in June 1994 and the records show that he filed this suit just over 24 months thereafter. It is averred in the said plaint that the forced retirement was wrongful in that it is alleged to have deprived the plaintiff of his pension and other benefits under regulations and terms governing the employment of the plaintiff, as contained under the then Kenya Posts and Telecommunications Corporation (Pensions) Regulations 1985 made under Kenya Posts and Telecommunications Corporation Act (Cap 411) of the Laws of Kenya, which itself was repealed in 1997.

It is not clear whether the plaintiff was employed under contract or permanent terms. Also in whatever capacity he was so employed, it is not revealed in the plaint what the terms of the said employment were. On the face of it therefore it cannot be said whether the act by the defendant to retire the plaintiff is breach in contract or in tort. This issue can therefore only be clarified when evidence is laid on record. That is also when the issue of whether this suit was filed out of time or within time will be clear since contract period for filing actions is six years while in tort it may be only one year. Or is limitation against the defendant statutorily reduced to 12 months whether it is under contract or tort?

The court also notes that issues agreed between the parties to be placed before this court during the hearing, include the issues now raised in these Preliminary Objections.

In my further opinion, the court should be slow in depriving a party the right to canvass his case fully unless there is sufficient evidence to show that he ought not be allowed to go to a hearing. The defendant neither laid before the court such evidence nor even guided the court upon what principles a court should deny a party a right to fully put his case before the court. The defendant needed to cite legal authorities to guide the court. This he failed to do. Even on the issue of demand notice, no relevant evidence was placed before the court, as copy of such notice was not produced. Mr. Mogeni argued this issues in the abstract. While the law applicable to various situations might be settled, the facts to be relied on to apply the law provisions cannot be taken for granted.

Having taken the above points into account, it is the view and finding of this court that the Preliminary Objections raised herein have not been established sufficiently at this stage and the case should go to a full hearing. As the court cannot say presently that the issues raised by Mr. Mogeni may not be valid, the court thinks that the costs of this Preliminary Objection, may be reserved to be granted to the successful party after the hearing of the suit.

Dated and delivered at Machakos this 3rd day of March, 2006.

D. A. ONYANCHA

JUDGE