



**Chika v Technical University of Kenya (Cause E259 of 2025)
[2025] KEELRC 2432 (KLR) (15 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2432 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E259 OF 2025
BOM MANANI, J
SEPTEMBER 15, 2025**

BETWEEN

BEATRICE AKINYI CHIKA CLAIMANT

AND

TECHNICAL UNIVERSITY OF KENYA RESPONDENT

RULING

Background

1. The Claimant has instituted these proceedings to challenge the Respondent’s decision to retire her at the age of 70 years. She contends that before the Respondent retired her in December 2024, the University Academic Staff Union (UASU) had successfully negotiated and registered a Collective Bargaining Agreement (CBA) which increased the retirement age for university academic staff to 74 years. As such, she contends that she was entitled to remain in the Respondent’s employment up to the age of 74 years.
2. The Claimant relies on the CBA dated 23rd November 2024 to anchor her case. Clause two (2) of the instrument speaks to retirement age. It caps retirement age for lecturers, senior lecturers, associate professors and professors at 74 years.
3. The clause has a transitional clause which provides that all new academic staff shall be subject to the retirement age of 74 years from the date of their appointment. However, academic staff with existing contracts and in-post academic staff (lecturers, senior lecturers, associate professors and professors) with a retirement age that was above 74 years at the time of signing the CBA were to have their terms of engagement maintained until the end of their contracts.
4. The CBA covers the period between 1st July 2021 and 30th June 2025. It became effective on the date it was signed, that is to say, 23rd November 2024.



5. The Claimant contends she serves the Respondent in the position of lecturer. She further contends that she is a member of UASU. As such, she avers that she is a beneficiary of the CBA.
6. The Claimant avers that she was born on 23rd September 1954. As such, she avers that at the time of signing the CBA, she had just attained the age of 70 years. It is her view that the CBA having increased the retirement age for academic staff to 74 years, the Respondent can only validly retire her at this age.
7. The Claimant avers that in contravention of the foresaid reality, the Respondent forced her to retire at the age of 70 years. She avers that the Respondent issued her with a notice for retirement on 3rd January 2024 informing her that she was to leave employment on 31st December 2024.
8. The Claimant avers that when the CBA was signed on 23rd November 2024, she expected that the Respondent was going to rescind the retirement notice it had issued to her. However and to her astonishment, this did not happen.
9. The Claimant avers that this forced her to write to the Respondent to ask it to recall the notice but to no avail. Consequently, she contends that she was forced to exit employment on the expiry of the notice.
10. The Claimant contends that since the CBA was signed on 23rd November 2024 before her retirement notice had taken effect and since the CBA's effective date was backdated to July 2024, she ought not to have been retired at the age of 70 years. As such, she contends that the decision to retire her at that age was in contravention of the CBA, the law and *the Constitution*.
11. Accompanying the Memorandum of Claim is the application dated 28th March 2025 in which the Claimant seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That the court issues an order of interim injunction to restrain the Respondent from advertising her position or undertaking recruitment to fill the position pending the hearing and determination of the suit.
 - d. That the court orders the Respondent to reinstate or re-engage her in the position of lecturer in the School of Surveying and Spatial Science pending the hearing and determination of the suit.
 - e. That the court admits the suit to hearing on priority basis.
 - f. That the court awards her costs of the application.
 - g. That the court issues any other orders that it may deem fit to grant.
12. The application is anchored on the grounds on the face thereof and the affidavits filed by the Claimant. The grounds and affidavits reiterate the averments alluded to earlier in this ruling.
13. The Respondent has opposed the application. It has filed a replying affidavit dated 5th June 2025.
14. Among the several issues that the Respondent raises, it contends that it hired the Claimant as a lecturer as from 22nd December 2009. It further avers that the Claimant's appointment was subject to its terms and conditions of service which provide that members of the academic staff were to retire at the age of 70 years.
15. The Respondent contends that clause 13.1.2 of the terms and conditions of service provides that the date on which an employee attains his retirement age is deemed as his last day of work. As such, it



contends that the Claimant effectively retired on 23rd September 2024 when she attained the age of 70 years.

16. The Respondent avers that when the CBA in contention was signed on 23rd November 2024, the Claimant had already retired as per the terms and conditions of service. As such, she is not entitled to invoke the CBA to plead her case.

Analysis

17. The conditions that an applicant for interim injunction must meet before the orders can issue were laid down in the celebrated case of *Giella v Cassman Brown* (1973) EA 358. The applicant must:-
 - a. Demonstrate that he has a prima facie case with a probability of success.
 - b. Demonstrate that he will suffer irreparable damage that is unlikely to be adequately compensated by damages if the court does not issue the interim injunctive relief sought.
 - c. If the court is in doubt about the first two conditions, it should decide the application on a balance of convenience.
18. The controversy between the parties revolves around whether the retirement age in the CBA that was signed on 23rd November 2024 applies to the Claimant. Whilst the Claimant claims that it does, the Respondent contests this fact.
19. According to the Respondent, the terms and conditions of service between the parties stipulated that a retiring employee's last day at work is the date on which he attains the retirement age. The Respondent argues that since the Claimant attained the age of 70 years on 23rd September 2024 before the CBA was signed on 23rd November 2024, she effectively retired before the CBA came into force. As such, it cannot be applied retrospectively to adjust her retirement age.
20. On the other hand, the Claimant avers that since the retirement notice which the Respondent issued her required her to retire on 31st December 2024, her retirement date fell after the CBA was signed. As such, she contends that she was covered by the CBA more so having regard to the fact that the effective date for the instrument was backdated to 1st July 2024.
21. The contrasting positions expressed by the parties on the subject will only be properly evaluated after considering the evidence which will be tendered on the matter during full trial. Absent a full trial, the court cannot determine which position is the correct one. As such, the court cannot, on the basis of the preliminary material before it, determine whether the Claimant has a prima facie case with a probability of success.
22. The Claimant asserts that when she was retired on 31st December 2024, she was still entitled to work for another five (5) years. In effect, the court understands her to be saying that if the Respondent's decision stands, she will lose income from her salary as the Respondent's employment for five years.
23. In the court's view, the fact that the salary which the Claimant is likely to lose if the injunction does not issue can be projected renders her potential loss quantifiable and capable of compensation in damages. As such, she cannot contend that she will suffer irreparable loss if the injunction order does not issue.
24. The preliminary material before the court shows that the Claimant was retired on 31st December 2024 and filed this action on 1st April 2025, approximately four (4) months thereafter. She has not presented evidence to demonstrate that the Respondent did not fill the impugned position in the interceding period. Absent this evidence, it is not possible for the court to determine whether her position remains vacant in order for it (the court) to issue an order for her reinstatement or to bar the Respondent from



filling it (the position). In effect, the balance of convenience tilts in favour of not issuing the orders sought.

25. The Claimant approached the court after her retirement had taken effect. In effect, she is seeking an order of mandatory injunction to restore her back into employment pending trial. This raises the question whether it is appropriate to issue a mandatory injunction or an order for reinstatement at the interlocutory stage of a trial.
26. The general position in law is that an order for mandatory injunction will seldom issue at the interlocutory stage of a trial. Similarly, courts will seldom issue an order to reinstate an employee into employment before full trial. Such orders may only issue at the interlocutory stage of a case if there are exceptional circumstances to justify their grant (see *Kiragu v Murimi* (Civil Appeal 408 of 2019) [2022] KEHC 15910 (KLR) (Civ) (2 December 2022) (Judgment), *Alfred Nyungu Kimungii vs Bomas of Kenya* [2013] eKLR & *Kenya Tea Growers Association & another v Kenya Plantation and Agricultural Workers Union* [2018] KECA 32 (KLR)). In the court's view, the Claimant has not provided exceptional reasons why the orders should issue at the interlocutory stage of the dispute.

Determination

27. The upshot is that the court declines the prayers sought by the Claimant in the application dated 28th March 2025.
28. As such, the application is dismissed.
29. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 15TH SEPTEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

