



**Ogada v Multimedia University of Kenya (Cause E1036 of 2023)
[2025] KEELRC 3400 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3400 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1036 OF 2023
AK NZEI, J
NOVEMBER 28, 2025**

BETWEEN

PETER OGERO OGADA CLAIMANT

AND

MULTIMEDIA UNIVERSITY OF KENYA RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 15th December, 2023 and sought the following reliefs:-
 - a. A declaration that the Claimant's rightful age is communicated by the State Department of Interior and Citizen Services in its letter dated 21/3/2022.
 - b. An order quashing any subsisting Retirement Notice before the Claimant reaches the rightful retirement age as per his Identification Card No. XXXXXX, and in particular [the] notice by the Respondent dated 31/1/2023.
 - c. Costs of the suit.
 - d. Any other relief that the Court may deem appropriate in the circumstances.
2. The Claimant pleaded:-
 - a. that the Claimant was, at the material time, employed by the Respondent as a driver, and that at the time of seeking employment, he used an identification card which indicated his year of birth as 1964, which date had been erroneously produced as it had been exaggerated, and contradicted the Claimant's original Birth Certificate.
 - b. that the Claimant brought the contradiction to the [attention of] the State Department of Interior and Citizen Services, and was acted upon and necessary changes made.



- c. that the Claimant was issued with a new identification card that indicated his actual date of birth as 1st January, 1970.
 - d. that the Claimant brought the new development to the attention of the Respondent Institution and expected the necessary adjustment and rectifications to be made to the details at the employment entry point.
 - e. that to the Claimant's shock, the Respondent went ahead and issued him with a Retirement Notice indicating that the Claimant would retire on 1st January, 2024, and not 1st January, 2030 as per his current Identification Card which confirms his date of birth as 1st January, 1970.
 - f. that the Claimant made several attempts to request the Respondent to effect the necessary adjustments, but it did not withdraw the said Retirement Notice.
 - g. that the Claimant's right to fair labour practice was breached as he was being robbed of almost seven (7) years of gainful employment before he officially attains the retirement age of sixty (60) years.
3. Documents filed alongside the Memorandum of Claim included the Claimant's affidavit in verification of the claim, the Claimant's written witness statement dated 15th December, 2023 and a list of documents dated 8th October, 2024, listing some 22 documents. The listed documents included copies of the Claimant's letter of appointment dated 25th November, 2008, a letter by the Department of Interior and Citizen Services dated 21st March, 2022 confirming that the Claimant is the legal holder of Identity Card No. XXXXXX and annexing copies of the Claimant's fingerprints and the said Identity Card. Also listed is the Claimant's Birth Certificate indicating that he was born on 1st January, 1970, an affidavit sworn by the Claimant on 2nd May, 2019, a Retirement Notice dated 31st January, 2023, the Claimant's letter to the Respondent dated 25th August, 2023 requesting for withdrawal of the Retirement Notice and a reminder dated 14th January, 2024.
 4. Also listed on the Claimant's list of documents is a letter by the Kenya Universities Staff Union to the Respondent dated 19th January, 2024 pleading the Claimant's retirement issue, the Claimant's letter to the Respondent dated 22nd March, 2022 (duly received by the Respondent), a letter by the Respondent dated 15th March, 2017, among others.
 5. The Respondent filed Response to the Claimant's claim dated 11th March, 2024, denying the claim. The Respondent further stated:-
 - a. that the Claimant never issued any amended Identification Card immediately after employment, but did so a few years to his retirement in a cheeky move to have his retirement age miscalculated.
 - b. that the Claimant's move to change his Identification Card was a mere afterthought meant to avert his retirement as his Curriculum Vitae, authored by him, stated the date of birth as 1968.
 - c. that the Claimant has already retired from the Respondent's service as required by the Respondent's Human Resource Policy Manual; and that the Retirement Notice was issued lawfully.
 6. Documents filed alongside the Response to Claim included a written witness statement of Wilson Kagwe dated 11th March, 2024 and an evenly dated list of documents, listing 4 documents. The listed documents are an offer of appointment dated 25th November, 2008, the Claimant's personal particulars, Claimant's Curriculum Vitae, and the Claimant's Identification Card No. XXXXXX.



7. Trial opened before me on 12th November, 2024. The Claimant adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraphs 3 and 4 of this Judgment; and asked the Court to grant him the reliefs sought in his statement of claim.
8. Cross-examined, the Claimant testified:-
- a. that he did not proceed on full retirement on 1st January, 2024 as he did not sign any documents with his employer. That his employer has not been assigning him duties, and that he was not receiving any pay.
 - b. that it was on the basis of his Birth Certificate, issued on 26th July, 2023, that the Claimant realised that his age in the Identification Card had been exaggerated.
 - c. that the Retirement Notice is dated 31st January, 2023. That by the time the Birth Certificate was issued, the Claimant had given the Respondent his new/corrected Identity Card.
 - d. that the information of him (the Claimant) having been born in 1970 and not in 1964 had been given to him by his mother. That the Director for State Department cannot lie.
 - e. that the Claimant notified the Respondent of the discrepancy in his documents in 2011, and that in 2017, the employer (the Respondent) gave him a letter dated 15th March, 2017 to go and have any errors on his identity card rectified.
 - f. that the Claimant's letter of appointment required him to submit original copies of his identity card and educational certificates, and that he informed the employer that there was an error in his documents. That he did not use fraud to secure employment.
 - g. that the Claimant did not have a Birth Certificate by the time he was issued with a correct Identity Card (indicating his actual date of birth) on 16th March, 2022. That he had sworn an affidavit on 2nd May, 2019.
9. The Respondent called one witness, Wilson Kagwe (RW-1), who adopted his filed witness statement as his testimony and produced in evidence the Respondent's documents referred to at paragraph 6 of this Judgment. The witness further testified that:-
- a. the Public Service Human Resource Manual (Part-2) was categorical that a Birth Certificate or an Identity Card shall not be accepted by an employer unless the date of birth thereon matches with the date declared and presented by the officer at the time of employment.
10. Cross-examined, RW-1 testified:-
- a. that he did not object to the authenticity of the Claimant's letter to the Respondent dated 22nd March, 2022.
 - b. that upon the Respondent receiving documents presenting the Claimant's new Identity Card, it had no business verifying the authenticity of the same, as it already had documents presented at the time of employment.
 - c. that on 25th April, 2023, the Respondent wrote a letter to the Claimant seeking clarification on his new Identity Card, to which the Claimant responded vide a letter dated 11th May, 2023.
 - d. that only the Ministry of Interior could clarify on the Claimant's date of birth.
 - e. that the name KEN that appeared in the Curriculum Vitae produced in evidence by the Respondent did not appear in any other document of the Claimant at the Human Resource



Department. That the date of birth indicated on the Curriculum Vitae was 1968; and that the date on the Claimant's school leaving certificate was 1968.

- f. that the witness (RW-1) could not confirm whether the Claimant was paid his retirement benefits.
 - g. that the Identity Card presented by the Claimant at the time of employment did not have on it the date and month of birth, but only had the year of birth, 1964.
11. Having considered the pleadings and evidence adduced, issues that fall for determination, in my view, are as follows:-
- a. Whether the Claimant had attained the retirement age of 60 years when the Respondent purported to retire him on 1st January, 2024.
 - b. Whether the reliefs sought by the Claimant are merited.
12. On the first issue, and from the evidence presented by both parties, it is evident that the Claimant's actual date of birth was clouded in doubt, right from the date of his employment by the Respondent in November 2008. This is because, whereas the Claimant's National Identity Card No. XXXXXX presented to the Respondent at the point of employment indicated that the Claimant was born in the year 1964, the Claimant's school leaving certificate, also presented to the Respondent by the Claimant at the time of employment in November 2008, indicated the Claimant's year of birth as 1968. The Respondent accepted the said two documents, and went ahead to employ the Claimant. Copies of the said two documents were produced in evidence by the Respondent.
13. According to the evidence adduced, the Respondent issued the Claimant with a letter dated 15th March, 2022, which states in part:-

“to Whom It May Concern

Dear Sir/Madam,

RE: Mr. Peter Ogada Ogero ID: XXXXXX

This is to confirm that Mr. Peter Ogada Ogero who is a holder of National ID Number XXXXXX is an employee of Multimedia University of Kenya as a Driver.

Any assistance accorded to him will be appreciated.

Yours faithfully,

Prof. R. O. Maranga, Phd, Mbs

Deputy Vice-Chancellor (AF&P).”

14. The Claimant swore an affidavit on 2nd May, 2019 regarding his age as follows:-

- “ 1. . . .
2. That I know of my own knowledge that in my said Kenyan Identity Card, my year of birth has been indicated as 1964.
 3. That I also know of my own knowledge that my actual year of birth is 1970 and not 1964 as shown in my current identity card.
 4. That I now swear this affidavit to all and sundry that my actual year of birth should read 1970.



5. That what is hereto deponed is true to the best of my knowledge and belief . . .”

15. The foregoing affidavit was produced in evidence by the Claimant; who further testified that the contradiction regarding his date of birth was taken up with the State Department of Interior and Citizen Services where the same was acted upon and necessary changes made. That the Claimant was issued with a new identity card indicating his actual birth date as 1st January, 1970 (paragraph 4 of the Claimant’s witness statement).
16. The Claimant produced in evidence a copy of his new/corrected National Identity Card No. XXXXXX, shown to have been issued on 16th March, 2022.
17. The Claimant also produced in evidence his letter dated 23rd July, 2021 and shown to have been received by the Respondent on 23rd July, 2021. The letter reads in part:-

“RE: Appreciation

This is to sincerely thank the Administration for assistance with the issue of correction of my particulars.

The matter is now resolved and accurate. . . .”

18. Further, the Claimant produced in evidence his letter to the Respondent dated 22nd March, 2022 and shown to have been received by the Respondent on the same date, forwarding to the Respondent a letter by the Director of National Registration dated 21st March, 2022. Attached to the said letter are copies of the Claimant’s said new/corrected identity card and fingerprints. The letter states in part:-

“RE: Peter Ogada Ogero ID/NO XXXXXX

This is to confirm that the above is the legal holder of the quoted Identity Card holder.

This letter is only valid when the fingerprints of the above named is attached showing his civil status on the fingerprint form. . . .”

19. Despite all the foregoing, the Respondent issued the Claimant with a Retirement Notice dated 31st January, 2023, indicating that the Claimant would retire from the Respondent’s service as a Driver effective 1st January, 2024. Evidence on record shows that the Claimant was on 26th July, 2023 issued with Birth Certificate No. AXXXXXX, which he subsequently forwarded to the Respondent. The Birth Certificate indicates the Claimant’s date of birth as 1st January, 1970.

20. In his letter to the Respondent dated 25th August, 2023 and shown to have been received by the Respondent on 28th August, 2023, the Claimant addressed the Respondent as follows:-

“ . . . The retirement notice was ill-advised and contrary to my actual date of birth as confirmed by the attached documents annexed herewith for your reference.

My date of birth is 1st January, 1970 as indicated in ID Number XXXXXX that was confirmed by DVC AFP letter ref no. MMU/DVC/AFP/PF:2509/VOL.1 dated 15th March, 2017, affidavit sworn on 2nd May, 2019, letter from Director of National Registration . . . dated 21st March, 2022 and birth certificate entry number 05000277/23 Serial AXXXXXX. All these records are with the University and are again annexed herewith for case of reference.



This is to request that the retirement notice be withdrawn and my retirement date be corrected in all systems of the University to reflect 1st January, 1970 as my date of birth and retirement date as 2030 as per current regulations of age 60 years.”

21. The Respondent did not withdraw the retirement notice. The Claimant testified that he had not retired as he had not signed documents with the Respondent. On its part, the Respondent (RW-1) testified that the Respondent stuck to 1964 as the Claimant’s date of birth because that was the date on the Claimant’s Identity Card at the point of employment. He did not, however, challenge the validity or authenticity of the documents produced in evidence by the Claimant. RW-1 did not, also, deny the apparent fact that the Respondent had assisted the Claimant (its employee) in getting the contradiction regarding his date of birth corrected. He did not, also, deny the fact that the Respondent was furnished with a copy of the Claimant’s corrected identity card in March 2022, and with a copy of his Birth Certificate several months before the notified retirement date.
22. Further, the Respondent did not demonstrate that the Claimant had been cleared from the Respondent University and had been paid his retirement dues.
23. It was stated as follows in the case of Republic – vs – Judicial Service Commission & 2 Others; Githinji (Ex-parte) (Judicial Review Application 8 of 2019) [2019] KEELRC 1268 (KLR):-
 - “ 22. Section 26(4) of the Act provides that a certified copy of any entry in any register or return purporting to be sealed or stamped with the seal of the Principal Registrar shall be received as evidence of the date and facts therein contained without any other proof of such entry. Further, Section 83(1) of the *Evidence Act* provides that the Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is:-
 - a. declared by law to be admissible as evidence of any particular.
 - b. ...
 - c. ...
 23. Section 83(2) of the *Evidence Act* further provides that the Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such documents.”
24. The Claimant’s Identity Card as re-issued/corrected on 16th March, 2022 and his Birth Certificate No. AXXXXXXX are legal proof that the Claimant’s date of birth is the date indicated on those documents. The information contained on each is corroborated by that contained on the other. The process followed in re-issuing the Claimant’s Identity Card, and that followed in the issuance of his Birth Certificate, were not faulted.
25. The Respondent, being a public institution, should have respected the binding legality of the aforesaid two documents and rectified the Claimant’s employment particulars, and in particular his date of birth and retirement date.



26. What I find interesting is the fact that even after issuing the impugned Retirement Notice dated 31st January, 2023, the Respondent wrote to the Claimant on 25th April, 2023 as follows:-

“Reference is made to your undated application for the position of Senior Driver grade MNT8 and addressed to the DVC AF&P.

In your application you attached an identification card indicating that your date of birth is 1970 contrary to the records in Human Resource Department which indicate your date of birth as 1964. For us to process your application, kindly furnish the undersigned with the correct identification card as per the ID Copy you provided at the time of your employment . . .”

27. The Claimant responded to the said letter on 11th May, 2023 and stated in part:-

“ . . . The requirement by the Registrar of Persons is that once somebody is issued with a new ID Card with corrected details, the previous ID is surrendered for proper disposal as it lacks purpose beyond its replacement. As a result, I am neither in possession of the previous ID Card nor its copies . . .”

28. The Respondent’s witness (RW-1) testified that the Claimant was subsequently promoted. This promotion was evidently effected based on the Claimant’s corrected Identity Card. The Claimant’s Counsel submitted, and I agree, that the Respondent is estopped from relying on the outdated 1964 date of birth to retire the Claimant as notified vide the retirement notice dated 31st January, 2023.

29. Counsel for the Claimant cited the case of Sera Njeri Mwobi – vs – John Kimani Njoroge [2013] eKLR where the Court stated:-

“The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person.”

30. Counsel for the Respondent cited the case of Hafithi Muhsin – vs – Teachers Service Commission (2019) eKLR where the Court, in relying on the Court’s decision in Judicial Review No. 82 of 2019 – Republic – vs – Judicial Service Commission & 2 Others (Ex-Parte Erastus Githinji) stated as follows:-

“The Court held that in determining the age of public servants, the employing authority should be guided by the date of birth appearing on the employee’s birth certificate rather than national identity, thus, in the event of discrepancy between the two identification documents, the entries of the birth certificate should prevail.”

31. In the present case, and as already stated in this Judgment, both the Claimant’s National Identity Card and his Birth Certificate contain similar entries regarding the Claimant’s date of birth; 1st January, 1970.

32. The Claimant testified, under cross-examination, that the information on his actual date of birth had been given to him by his mother.

33. Based on the evidence on record, both documentary and oral, and in particular the Claimant’s Identity Card No. XXXXXX lawfully re-issued/corrected on 16th March, 2022 and the Birth Certificate No. AXXXXXX, also lawfully issued and sealed by the authorised officer, I return a finding that the Claimant has established, on a balance of probabilities, that he was born on 1st January, 1970 and I so



declare. I also find and hold that the Claimant had not attained the retirement age of sixty (60) years by 1st January, 2024 when the Respondent purported to retire him.

34. Consequently, and having considered written submissions filed on behalf of both parties, Judgment is hereby entered for the Claimant against the Respondent as follows:-
- a. The Retirement Notice dated 31st January, 2023 is hereby quashed, and the Claimant is deemed to have been in uninterrupted employment; fully entitled to the salary, allowances and benefits attached to his employment.
 - b. The Respondent shall forthwith rectify the Claimant's employment records to accord with his corrected/re-issued Identity Card No. XXXXXXXX and Birth Certificate No. AXXXXXXX.
35. Costs of the suit are awarded to the Claimant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2025

AGNES KITIKU NZEI

JUDGE

Order

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Babu holding brief for Mr. Owalla for the Claimant

Mr. Owina holding brief for Mr. Okiro for the Respondent

