

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO. E1161 OF 2025

CALEB OKELLO OMIYAH.....
.....CLAIMANT

VERSUS

KENYA ELECTRICITY GENERATING COMPANY
PLC.....
.....RESPONDENT

RULING

1. The Claimant has instituted these proceedings to challenge the Respondent’s decision to retire him from employment at the age of sixty (60) years on account of attainment of the statutory retirement age. He contends that being a person living with disabilities, he is entitled to retire at the age of sixty five (65) years. As such, it is his case that the Respondent’s attempts to retire him at the age of sixty (60) years is illegal.
2. The Claimant’s case is anchored on the provisions of *the Persons with Disabilities Act No.4 of 2025*, Laws of Kenya and *the Constitution of Kenya 2010*. He contends that these enactments entitle persons living with disabilities to work for an additional five (5) years beyond the statutory retirement age of sixty (60) years.
3. The Claimant contends that he incurred disability associated with arthritis whilst in the Respondent’s employment. He

avers that he was issued with a medical report evidencing this fact. He further avers that the National Council for Persons with Disabilities issued him with the requisite certificate on 17th January 2025 as per the copy of certificate attached to his pleadings.

4. The Claimant contends that despite this reality, the Respondent issued him with a retirement notice dated 5th August 2024 requiring him to retire with effect from 31st December 2025. He contends that he has tried to have the dispute resolved amicably but to no avail thus necessitating institution of this suit.
5. Contemporaneous with the Memorandum of Claim, the Claimant filed the application dated 24th November 2025. In the application, he seeks the following orders:-
 - a) Spent.
 - b) That pending the hearing and determination of the application, an order for injunction do issue restraining the Respondent, its servants and or agents from causing any disruptions to or stopping him from performing his duties.
 - c) That the court accords the case an early hearing date due to his disability.
 - d) That the court issues timelines for filing and service of documents by the parties.
 - e) That costs of the application to be in the cause.
6. The application is anchored on the grounds on the face thereof and on the affidavit of the Claimant. The grounds

and affidavit reiterate the averments set out earlier in the ruling.

7. The Respondent has objected to the application. It has filed a replying affidavit dated 10th December 2025 to anchor its objection.
8. The Respondent states that being a public body, it is bound by provisions of various pieces of legislation that govern state corporations and other public bodies. These include *the State Corporations Act, the Public Service Commission Act* and the regulations made thereunder.
9. The Respondent avers that the Claimant serves as a driver at its Olkaria Geothermal Power Plant. It contends that he is due to retire on 1st January 2026 on account of having attained the mandatory retirement age of sixty (60) years.
10. The Respondent avers that it issued the Claimant with a retirement notice dated 5th August 2024. It contends that it advised him of his retirement age and asked him to utilize his leave days from 1st December 2025.
11. The Respondent contends that under regulation 70(2)(b) of *the Public Service Commission Regulations*, an employee who wishes to be considered for retirement as a person with disability must be registered as a person living with disability in the public body's human resource database at least three (3) years before the date of his retirement. It contends that it is bound by this legal requirement.

12. The Respondent avers that the Claimant did not seek registration in its database within the set timelines in line with the aforesaid law. It contends that the Claimant only disclosed his disability after he was issued with the retirement notice of 5th August 2024. As such, it contends that he cannot seek to benefit from the extended retirement age of sixty five (65) years.
13. The Respondent contends that having regard to the foregoing, the Claimant has not satisfied the conditions for grant of an order for interim injunction. It avers that the Claimant has no *prima facie* case to warrant the grant of the order. It further avers that the Claimant has not demonstrated that failure to grant the order sought will occasion him irreparable injury.

Analysis

14. The conditions for grant of orders of interim injunction were developed in the celebrated case of ***Giella v Cassman Brown 1973 EA***. Before a court can venture to grant the orders, it must satisfy itself that the applicant has:-
 - a) Demonstrated that he has a *prima facie* case with a probability for success.
 - b) Demonstrated that he will suffer irreparable harm which cannot be compensated by damages if the orders sought are not granted.

- c) If the court is in doubt about the above two conditions, it should decide the application on a balance of convenience.
15. Section 80 of *the Public Service Commission Act* provides that an officer who has attained the mandatory retirement age prescribed by the regulations under the Act should retire on the date he attains the retirement age. The Public Service Commission is not entitled to extend the retirement date except for special reasons as provided in the Act.
 16. To operationalize this provision, the Public Service Commission published *the Public Service Commission Regulations, 2020*. Regulation 70 of the regulations fixes the mandatory retirement age for public officers at the age of sixty (60) years. However, it extends the retirement age for persons living with disabilities to sixty five (65) years.
 17. In respect of persons living with disabilities, the regulation provides as follows:-
 - “A public officer shall be considered for retirement as a person with disability if the officer:-*
 - a) has a disability of a permanent nature that can be perceived by significant sectors of the community and the disability has a substantial impact on the ability of the officer to carry out ordinary day to day activities;*

b) has been registered in the public body's human resource database as a person with disability for at least three years before the date of retirement."

18. In effect, the fact of disability is not the sole determinant for one to benefit from the retirement age of sixty five (65) years. In addition, the individual must have been registered in the public body's human resource database as a person with disability at least three (3) years before attaining the mandatory retirement age of sixty (60) years.
19. The consequence of this is that the Claimant needed to have been entered in the Respondent's human resource database as a person living with disability at least three (3) years before 31st December 2025 for him to benefit from the extended retirement age. The Respondent contends that the Claimant did not comply with this requirement. On the other hand, the Claimant whilst not denying this fact, appears to suggest that it was up to the Respondent to ensure that the notification was done.
20. The preliminary material which the Claimant has presented to court suggest that the National Council for Persons with Disabilities registered him as a person living with disability in January 2025. This registration was necessary for the Claimant to be entered in the Respondent's database as a person living with disability.
21. The above registration was done approximately one (1) year before the Claimant attained the age of sixty (60) years if

the retirement notice that was issued to him by the Respondent is anything to go by. If this is correct, then the Claimant could not have met the requirements of regulation 70 (2) (b) of *the Public Service Commission Regulations, 2020* which required him to have been registered and entered in the Respondent's database at least three (3) years before 31st December 2025.

22. A number of judicial pronouncements appear to fortify the position that if one does not have his/her name entered in the public body's database within the three (3) year timeline that is set by the above regulations, he/she loses the entitlement to retire at the age of sixty five (65) years. This was the position that was expressed in the case of ***Muthamia & another v Inspector General of National Police Service & 3 others [2023] KEELRC 851 (KLR)***. The Court of Appeal expressed a similar view in the case of ***Njaggah v Board of Directors of Water Services Regulatory Authority & 2 others [2025] KECA 1258 (KLR)*** when the Judges of the court stated as follows on the matter:-

"....as we have already found, the appellant did not satisfy the threshold set in Regulation 70(4) as read with the proviso to Regulation 70(2)(b) of the Public Service Commission Regulations and was therefore not qualified to retire at 65 years under the law."

23. The foresaid casts doubts on whether the Claimant has a *prima facie* case with probability of success. In the court's view and having regard to the foretasted, the Claimant has not presented a *prima facie* case. The failure to enter his condition in the Respondent's human resource database at least three (3) years before he attained the retirement age of sixty (60) years may have, if the above case law is anything to go by, deprived him of the right to retire at the age of sixty five (65) years.
24. The second condition for grant of interim injunction requires the applicant to demonstrate that he will suffer irreparable harm if the order sought is not granted. A perusal of the affidavit in support of the application does not demonstrate that the Claimant spoke to this requirement. Absent this, the court is not entitled to grant the orders sought.
25. That notwithstanding, the court is not convinced that failure to grant the orders sought in the circumstances of this case will occasion the Claimant irreparable injury. This position is informed by the following reasons:-
 - a) The loss which the Claimant will suffer if the order sought is not granted is the equivalent of the emoluments he would have earned for the extended period of five (5) years. This is quantifiable. As such, it is unlikely that the loss cannot be compensated by an award of damages (see paragraph 16 of ***Oyaro v Kenya Electricity Generating Company PLC (KENGEN); National Council for***

Persons with Disability (Interested Party)
[2023] KECA 1352 (KLR)).

- b) The law entitles the Claimant to seek reinstatement or re-engagement in the event that he succeeds in the suit. This again militates against any argument that the failure to grant the orders sought will occasion him irreparable loss.
26. Finally, the balance of convenience tilts in favour of not granting the interim injunction at the moment. As pointed out earlier, no material was placed before the court to demonstrate that the Claimant has satisfied the requirements of regulation 70 (2) (b) of *the Public Service Commission Regulations*. In the premises, it is only sensible not to issue the orders sought until it is demonstrated that he complied with these requirements. To do otherwise will be tantamount to compelling the Respondent to retain the Claimant on its payroll even when it is, *prima facie*, apparent that this may be contrary to the prevailing law. As such, the convenience of the case tilts in favour of not issuing the interim reliefs sought.

Determination

27. The upshot is that the court declines to issue the orders of interim injunction prayed for in the application dated 24th November 2025.
28. However, in view of the Claimant's disability, the court grants his request for the case to be heard on priority basis.

29. Costs of the application will abide the results of the case.

**Dated, signed and delivered on the 17th day of December,
2025**

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Applicant

.....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.

B. O. M MANANI