

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

**CAUSE NO. E628 OF 2022**

*(Before Hon. Lady Justice Agnes Kitiku Nzei)*

**SAMUEL LERIONKA TIAMPATI .....CLAIMANT**

*VERSUS*

**KENYA TEA DEVELOPMENT**

**HOLDINGS AGENCY LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 26<sup>th</sup> July, 2022 and pleaded:-

- (a) that the Claimant commenced work with the Respondent on 21<sup>st</sup> February, 2001 when he joined Kenya Tea Packers Limited (KETEPA), a subsidiary of the Respondent, as a General Manager, whereat he worked until **30<sup>th</sup> November, 2004** (for three years and nine months); and then joined the Respondent on **1<sup>st</sup> December, 2004** as the*

*Managing Director & Chief Executive Officer, where he diligently worked until 9<sup>th</sup> September, 2021 (for sixteen years and ten months) when he voluntarily retired under the Voluntary Early Retirement (VER) Scheme.*

*(b) that the Claimant's employment was subject to the Employment Act 2007 and the Respondent's Group Human Resource Policy and Procedures.*

*(c) that the nature of the Claimant's employment entailed **three (3) year contracts, renewable subject to satisfactory performance**, and that the Claimant's contracts were renewed each time on expiry, having achieved the performance targets set by the Respondent company, and having no disciplinary matters.*

*(d) that the Claimant's last contract of employment **(dated 3<sup>rd</sup> September, 2019) commenced on 1<sup>st</sup> December, 2019 and was due to terminate on 20<sup>th</sup> October, 2023;** but being desirous of an early voluntary retirement, the Claimant wrote to the Respondent on **1<sup>st</sup> February, 2021** and applied for Voluntary Early*

*Retirement pursuant to the Respondent's Board's Circular No. 42/2020 **dated 1<sup>st</sup> December, 2020 and subsequent variation of the terms thereof of 12<sup>th</sup> January, 2021** vide a circular signed by the Respondent's Group General Manager HRA.*

*(e) that the circular stated that the VER Program would close on 28<sup>th</sup> February, 2021, and would not be extended.*

*(f) that the Claimant's application for VER was responded to in the affirmative vide the Respondent Board Chairman's letter **dated 19<sup>th</sup> February, 2021**, and that the Claimant's last day in office was to be 30<sup>th</sup> June, 2021.*

*(g) that subsequently, the Claimant applied (through the Respondent's Board Chairman) for his accrued leave until his retirement on 30<sup>th</sup> June, 2021, which application was approved vide the said Chairman's letter dated **16<sup>th</sup> June, 2021**.*

*(h) that the Claimant embarked on his terminal leave pending retirement on 30<sup>th</sup> June, 2021, and that while on leave, he received communication on 21<sup>st</sup>*

June, 2021 **“directing him to proceed on compulsory leave for a period of ninety (90) days from the date of the letter”**, and to surrender all passwords in his possession to his deputy who would be acting during the period. That no explanation was given for that action.

(i) that on 22<sup>nd</sup> June, 2021, the Respondent appointed the Claimant’s deputy as its Acting Chief Executive Officer, and vide a letter **dated 28<sup>th</sup> June, 2021 notified the Claimant that the Respondent’s Board of Directors had on 24<sup>th</sup> June, 2021 resolved to revoke the Group’s Voluntary Early Retirement (VER) Scheme for all KTDA Holdings and KTDA Ms Staff.**

(j) that from its reading, it seemed that the Claimant’s earlier **approved VER dated 19<sup>th</sup> February, 2021 had been irregularly cancelled without explanation.**

(k) that on **7<sup>th</sup> September, 2021**, the Claimant received another letter from the Respondent informing him that the Respondent’s Board **had accepted his request for retirement (dated**

**1<sup>st</sup> February, 2021), with effect from 9<sup>th</sup> September, 2021.**

(l) that the said letter dated 7<sup>th</sup> September, 2021 made reference to **“Normal Retirement”**, which under the Respondent’s Human Resource Policy and Procedures **is mandatorily stated at 60 years of age; yet this was not what the Claimant had applied for.**

(m) that the said letter (dated 7<sup>th</sup> September, 2021) further stated that the Claimant would be **paid his dues in accordance with the terms of his contract upto**, and including 9<sup>th</sup> September, 2021 (which was **not** in line with the earlier approved **VER**).

(n) that the Claimant had **not applied for normal retirement as stated in the Respondent’s letter dated 7<sup>th</sup> September, 2021, and had not tendered a 3 months’ notice of resignation as provided in the Respondent’s HR Policies and Procedures 2017.**

(o) that on 10<sup>th</sup> September, 2021, the Respondent issued a press release to the effect that the

Claimant had **“opted for early exit upon applying for early exit before expiry of his contract . . .”**, and on **20<sup>th</sup> September, 2021** released a Circular (**No. 37/2021**) communicating a **new VER package for KTDA Group Staff, approved by the Respondent’s Board of Directors on 15<sup>th</sup> September, 2021.**

(p) that the Respondent’s Board announced the appointment of the Claimant’s deputy as its Chief Executive Officer with effect from 8<sup>th</sup> October, 2021, and on the same date (8<sup>th</sup> October, 2021), the Claimant received a certificate of service.

(q) that the Claimant is yet to received payment of his dues; having **only received his gratuity and compensation for accrued leave days upto 9<sup>th</sup> September, 2021.**

(r) that the procedure and circumstances surrounding the Claimant’s retirement were **illegal, unprocedural, discriminatory, and were marred with bad faith.**

(s) that the Claimant’s retirement as per the Respondent’s Group HR Policies and Procedures

*Manual was due on 20<sup>th</sup> October, 2023 on attaining the age of 60 years; hence his termination through forced normal retirement was unlawful and unfair.*

2. The Claimant sought the following reliefs against the Respondent:-

*(a) A declaration that the supposed action by the Respondent to abolish the VER Package on 24<sup>th</sup> June, 2021 to exclude the Claimant despite having previously approved the Claimant's VER application was discriminatory, illegal, unlawful and unfair.*

*(b) A declaration that the supposed action by the Respondent **to send the Claimant on forced normal retirement in a bid to deprive him of his dues under the VER Package was illegal, unlawful and unfair.***

*(c) A declaration that failure by the Respondent to issue an explanation to the Claimant to date for any of the actions taken in unfairly terminating the*

*Claimant's employment by shoving him into normal retirement was illegal, unlawful and unfair.*

- (d) *A declaration that the supposed action by the Respondent to direct the Claimant to proceed on compulsory leave for a period of ninety (90) days despite there being **no** provision for compulsory leave under the company's existing Human Resources Policies & Procedures was illegal, unlawful and unfair.*
- (e) *A declaration that the supposed action by the Respondent to effect the approved VER Package to other members who were eligible under the same package but failing to compensate the Claimant for the same was discriminatory, illegal, unlawful and unfair.*
- (f) *An order for the payment of the Claimant's VER dues by the Respondent, calculated in accordance with the VER terms approved by the Respondent vide Circular No. 42/2020 dated 1<sup>st</sup> December, 2020 and the subsequent variation of the terms of the VER approved by the Respondent vide Circular*

No. 01/2021, **totalling Kshs.77,411,019.02,**  
computed as follows:-

(i) Pay in lieu of 3 months' notice (@  
3,359,174.74)

.....  
10,077,524.27.

(ii) Severance pay (one and half months'  
salary for each year of completed service)  
..... 67,183,494.

(iii) Gratuity for period served ..... **paid.**

(iv) Accrued leave ..... **paid.**

(v) Golden handshake .....  
100,000.

(vi) One way travelling allowance .....  
50,000.

**Total (before tax) .....  
77,411,019.02.**

(g) In the **alternative**, an order for payment by the Respondent to the Claimant **of compensation for the expected earnings for remainder of the Claimant's contract from 9<sup>th</sup> September, 2021 upto 20<sup>th</sup> October, 2023, to the tune of**

**Kshs.106,513,832.00** being the gross salary, allowances and gratuity for that period.

(h) Interest on (f) and (g) above at Court rates until payment in full.

**(i) General damages for breach of the Claimant's fundamental rights to fair labour practices; and**

(j) Costs of the suit.

3. Documents filed alongside the Claimant's statement of Claim were an affidavit in verification of the claim, the Claimant's written witness statement dated 26<sup>th</sup> July, 2022, and an evenly dated written witness statements of two witnesses **(Peter Tiras Kanyago and Dr. John Kennedy Omanga)**; and a list of documents dated 26<sup>th</sup> July, 2022 listing twenty-two (22) documents. The listed documents included the Claimant's employment contract **dated 3<sup>rd</sup> September, 2019 (ending on 20<sup>th</sup> October, 2023)**, the Respondent's Group Human Resource Policies and Procedures Manual, KTDA Circular No. 42/2020 dated 1<sup>st</sup> December, 2020 setting out Voluntary Early Retirement (VER) Scheme dated 1<sup>st</sup> December, 2020.

4. Also listed on the Claimant's said list of documents is KTDA (the Respondent's) Inter-office Memorandum regarding implementation of the VER (dated 2<sup>nd</sup> December, 2020), KTDA Circular No. 01/2021 setting out a **revised VER** and dated 14<sup>th</sup> January, 2021, the Claimant's application **for VER dated 1<sup>st</sup> February, 2021**, the Respondent's letter dated **19<sup>th</sup> February, 2021 accepting the Claimant's application**, KTDA Interoffice Memorandum dated 3<sup>rd</sup> May, 2021 on implementation of the VER, the Respondent's letter dated **21<sup>st</sup> June, 2021 directing the Claimant to proceed on 90 days' compulsory leave**, the Respondent's letter dated **28<sup>th</sup> June, 2021 informing the Claimant of revocation of the VER Scheme**, and cancellation of his approved application for VER, the Respondent's letter dated **7<sup>th</sup> September, 2021** informing the Claimant that **he was being retired under normal retirement and not VER**, and the Respondent's Circular No. 37/2021 setting out an approved VER Scheme, among other documents.

5. The Respondent filed Response to the Claimant's claim and admitted having entered into employment contracts with the Claimant, which were subject to the Employment Act, the Respondent's Group Human Resource Policies and Procedures, general principles of contract law and equity.

6. The Respondent denied the Claimant's claim and pleaded:-

*(a) that the Respondent's decision to send the Claimant on compulsory leave was informed by, and was based on a resolution of the Respondent's current Board of Directors which was lawfully passed on 21<sup>st</sup> June, 2021; and that the purpose of sending various senior managers of the Respondent on compulsory leave, including the Claimant, was to allow for necessary investigations and determination of culpability for any malpractices and possible abuse of office, similar to administrative suspension pending investigations.*

*(b) that on 1<sup>st</sup> December, 2020, the Respondent communicated to its staff about the Voluntary Early Retirement Scheme vide **CIRCULAR NO.***

**42/2020; and that the Circular expressly indicated that employees on contract terms would not be eligible for the scheme - meaning that the Claimant and other senior staff on contract would be excluded.**

(c) that the Claimant received **generous gratuity** from the Respondent, among other entitlements, **at the end of each fixed term contract.**

(d) that before the **VER** Scheme was closed, the scheme was **revised**, and the revised VER scheme was communicated to the Respondent's staff on **14<sup>th</sup> January, 2021 vide CIRCULAR NO. 01/2024.**

(e) that the revised VER Scheme **omitted a clause that had originally excluded employees on contract terms from applying for VER.** That instead, the **revised** VER Scheme contained **an additional clause on a VER Package for contract staff.** That both the **1<sup>st</sup> December, 2021 and 14<sup>th</sup> January, 2021 Schemes** were **both passed by Respondent's previous Board of Directors; which was subsequently**

**replaced following elections conducted on 18<sup>th</sup> June, 2021 in a meeting of the Respondent's shareholders.**

(f) that upon taking over governance of the Respondent's affairs, the Respondent's **new Board noted the anomaly in the revised Scheme of 14<sup>th</sup> January, 2021; the anomaly being the insertion of a new clause making the staff on contract, most of them in senior management, eligible for the scheme in the same manner as permanent staff; this despite the contract staff having received generous gratuity payments at the end of each fixed term contract.**

(g) that the Claimant had been employed by the Respondent **on fixed term contract basis; each contract having a particular effective date and being distinct and independent.**

(h) that it was for the foregoing reasons that the Claimant's approved Voluntary Early Retirement (VER) Scheme was revoked in its entirety; and the Claimant was duly informed.

- (i) that the Claimant voluntarily accepted the decision and proceeded to complete his section of the Respondent's clearance certificate and specified his date of leaving as **9<sup>th</sup> September, 2021 and the mode of leaving as retirement.**
- (j) that subsequently, the Claimant swore several affidavits relinquishing his position as a director of the Respondent and its subsidiaries.
- (k) that the Claimant thus waived his right to claim any rights or benefits under the revoked VER Scheme.
- (l) that the Claimant **was duly paid his gratuity and terminal dues as admitted in the memorandum of claim.**
- (m) that the Claimant **had an opportunity to reject the letter by the Respondent dated 7<sup>th</sup> September, 2021** informing him that he would be retiring under normal retirement effective 9<sup>th</sup> September, 2021, and that **no evidence** has been supplied by the Respondent to show that he challenged the said letter, including the mode of retirement.

7. Documents filed alongside the Respondent's Response to Claim include a written witness statement of **Mathews Odero** (the Respondent's Group Company Secretary) dated 2<sup>nd</sup> February, 2023, and an evenly dated list of documents listing 21 documents. The listed documents include the Claimant's various employment contracts (**including the one dated 3/9/2019**), the Claimant's payslips, the Respondent's Circular Nos. 42/2020 & 21/2021, a letter to the Claimant dated 28<sup>th</sup> June, 2021, a Circular dated 28<sup>th</sup> June, 2021, and a letter to the Claimant dated 7<sup>th</sup> September, 2021, among other documents.
8. Trial opened before **Jacob Gakeri, J** on 30<sup>th</sup> May, 2023. According to the Court's record, the Claimant testified and called two (2) witnesses (**CW-II** and **CWIII**). The Respondent's witness (**RW-I**) also testified and was partly cross-examined, but the trial Judge was transferred before the said witness (**RW-I**) could be fully cross-examined and re-examined.

9. When the matter first came up for (further) hearing before me on 19<sup>th</sup> November, 2024, and upon hearing Counsel for both parties, I issued the following orders:-

**“ (1) Having heard Counsel for both parties, and having taken note of the proceedings so far taken, I hereby direct that this matter be placed before the Hon. (Dr.) Gakeri, J. for finalization of the trial and writing of a Judgment.**

**(2) Mention before the Hon. Judge at Employment and Labour Relations Court Kisumu on 10/12/2024 for appropriate directions on fixing of a date for further hearing before the Hon. Judge.**

**(3) This Court’s Deputy Registrar to ensure speedy forwarding of the Court file herein to the Employment and Labour Relations Court Kisumu.”**

10. Surprisingly, the matter came up **before me again on 10<sup>th</sup> February, 2025** and Counsel for the parties informed the Court that the Court (at Kisumu) did not sit on 10<sup>th</sup>

December, 2024, and that parties had been given a date before this Court. I directed that the Court's proceedings be typed and certified; which is shown to have been done.

11. Cross-examination of the Respondent's witness **(RW-I)** was completed before me on 14<sup>th</sup> July, 2025, and the witness was re-examined.

12. According to the Court's typed and certified proceedings, when the Claimant took the witness box on 30<sup>th</sup> May, 2023, he adopted his filed witness statement as his testimony in chief, and produced his filed documents in evidence. To a great extent, the Claimant's filed witness statement replicates his statement of claim, which I have preceded to substantially reproduce at paragraphs 1 and 2 of this Judgment.

13. Cross-examined, the Claimant testified, **inter-alia**:-

(a) *that the Board of Directors **can change its mind on an issue relating to the Company, depending on the matter. That Boards do review their decisions from time to time, and that any***

employee affected may accept or reject the decision.

- (b) that according to **Circular [no] 42/2000 dated 1<sup>st</sup> December 2020 approving the VER scheme, staff on contract terms, including the Claimant, were not eligible.** That no management staff was eligible for Voluntary Early Retirement (VER). **That Clause 1.20 of the HR Manual provided for fixed term contracts.**
- (c) that the Respondent had a Kshs.200,000,000/= budget for the exercise, which was set to close on 28<sup>th</sup> February 2021.
- (d) that Circular No. 001/2021, dated 14<sup>th</sup> January, 2021 and issued 1½ months after the first one, **refers to a revised VER scheme; and included a VER scheme for staff on contract.**
- (e) that **staff on contract could enter into a series of contracts with the Respondent.**
- (f) that **the Claimant entered into a series of 6 contracts with the Respondent, each for a specified term; each with an end date, and that none mentioned continuation. That at**

**the end of each contract, gratuity was payable as the contracts had gratuity clauses.**

(g) that **payslips showed payment of gratuity paid to the Claimant, Kshs.71.2 million. That in September 2021, the Claimant received a net gratuity of Kshs.12.2 million.**

(h) that the letter dated 21<sup>st</sup> June, 2021 sending the Claimant on compulsory leave **came after the Claimant had already left for terminal leave pending retirement and VER payment.** That the HR Manual has **no** [provision for] compulsory leave.

(i) that the Claimant had already left the Respondent organization as on 28<sup>th</sup> June, 2021, the date of Circular No. 21/2021 on revocation of the VER and an evenly dated letter to the Claimant. **That the Claimant had a VER contract with the Board which had accepted the Claimant's request for retirement and that there was no need to respond to the letter (dated 28<sup>th</sup> June, 2021).**

- (j) that the Claimant had **not attained the retirement age of 60 years** provided for in the Group HR Policy and Procedures Manual and was therefore **not eligible for mandatory retirement. That he would have retired on 23<sup>rd</sup> October 2023 on attaining 60 years.**
- (k) that the Claimant applied for early retirement (VER) under **Circular No. 1 dated 14<sup>th</sup> January, 2021 which allowed him to apply for VER;** and upon approval of the VER, the Claimant proceeded on leave.
- (l) that upon approval, VER is binding, once accepted; and the Board of Directors cannot rescind its decisions without consultations. That the Claimant was not recalled from leave.
- (m) that the Claimant's **last contract was dated 3<sup>rd</sup> September, 2019, and was due to lapse on 23<sup>rd</sup> October, 2023. That the Claimant was entitled to gratuity under the contract; as gratuity was paid to him per contract.**
- (n) that while on leave pending retirement, the Claimant was notified of a B.O.D meeting on 21<sup>st</sup>

June, 2021, and that Min.11/2021 **send all Senior Managers on compulsory leave. That by then, a new CEO had been appointed.**

(o) that the Claimant was **never** subjected to any disciplinary proceedings, and **never** received any show cause letter.

(p) that **the Claimant was still an employee on leave pending retirement when the letter sending him on compulsory leave was taken to his home by a driver from the company.** That he did not respond to the letter, and never received any communication on any investigation. **That this was a decision of the new Board.**

(q) that the Claimant's last working day (under VER) was **30<sup>th</sup> June, 2021, but the compulsory leave extended it by 90 days.**

(r) that the Claimant was **not paid for the remainder of the contract under VER.**

14. The Claimant's 2 witnesses (**CW-II and CW-III**) adopted their respective filed witness statements as their respective

testimonies in chief, and are shown to have been cross-examined and re-examined.

15. The Respondent's witness (**Mathew Odera - RW-I**) adopted his filed witness statement as his testimony in-chief and produced in evidence the documents filed by him (the Respondent).

16. Cross-examined, **RW-I** testified; **inter alia**:-

(a) that **the Respondent's Board changed its decisions when an anomaly giving VER to contract staff was noticed by the new Board.**

(b) that the Claimant's application for VER was made and accepted within the timelines of Circular No. 1 of 2021. That the Claimant was granted VER.

(c) that the retirement age for all employees was 60 years, and that the Claimant had **not** attained that age. That the Claimant could not qualify for early retirement either. **That the Claimant did not apply for retirement under the HR Manual.**

(d) that the VER scheme in force was revoked (cancelled) vide the resolution of **24<sup>th</sup> June, 2021**

**(letter to the Claimant dated 28<sup>th</sup> June, 2021).**

- (e) that the Respondent **did not invoke a formal disciplinary process as the Claimant resigned from employment.**
- (f) that the Voluntary Early Retirement (VER) **was a programme initiated by the Respondent to encourage its employees to take early retirement;** a Board's offer to its employees. That an employee could choose whether or not to accept/take the offer.
- (g) that **once an employee accepted the offer, the Board could accept, decline or even review the employees acceptance, even after accepting the same, and that the VER general terms indicated as much.**
- (h) that the Claimant signed a clearance certificate in accordance with the HR Manual, and that the clearance certificate **does not refer to any dues, as dues are paid prior;** but does not state that the Claimant had received his full dues, and no claim against the Respondent.

- (i) that **the Board has discretion on what terms to give in case of VER.** That there had been previous beneficiaries of VER.
- (j) that the Claimant had worked for the Respondent for a total 16 years and 10 months as stated in the certificate of service; **and that his last contract was set to expire on 20<sup>th</sup> October, 2023.** That the Claimant was paid his dues until the date of exit, and not until the end of the contract.

17. Re-examined, **RW-I** testified:-

- (a) that **the Respondent's Board could, depending on prevailing circumstances, recall a particular VER application that had already been approved.**
- (b) that according to the Respondent's Board's letter to the Claimant dated 21<sup>st</sup> June, 2021, **the Claimant was to continue receiving his current salary and all applicable benefits.**
- (c) that vide a letter dated **7<sup>th</sup> September, 2021,** the Claimant was informed **that he would retire**

**normally, not by VER, and that his last working day would be 9<sup>th</sup> September, 2021.**

(d) that the Claimant **did not object to the said letter.**

(e) that **the duration of each contract signed by the Claimant was 3 years, and that none of the contract referred to the previous one, save for the expiry of the previous contract.**

(f) that each contract **stated the amount of gratuity payable upon its expiry (25% of basic salary).** That the **cumulative** period of time covered by the **fixed term contracts** is stated in the Claimant's certificate of service. That each of these contracts kicked in following the expiry of the previous one.

18. Having considered the pleadings filed herein by both parties and the evidence adduced thereon, which I have substantially summarised herein, issues that fall for determination, in my view, are as follows:-

**(a) Whether the Respondent acted within its managerial prerogative in cancelling the**

**Early Retirement Program issued vide Circular No. 42/2020 of 1<sup>st</sup> December, 2020 and subsequently varied vide Circular No. 01/2021.**

**(b) Whether retirement of the Claimant by the Respondent vide a letter dated 7<sup>th</sup> September, 2021 amounted to unlawful and unfair termination of employment.**

**(c) Whether the Claimant is entitled to the reliefs sought.**

19. On the first issue, the Respondent's Board of Directors, in exercise of its managerial prerogative and **after an SRC Board Meeting shown by the evidence adduced to have been held on 5<sup>th</sup> November, 2020**, issued its Circular No. 42/2020 to its staff announcing a Voluntary Early Retirement (**VER**) Scheme for staff willing to retire before attainment of the normal retirement age of 60 years. According to the said Circular, the VER Scheme was to run from the date of the Circular until 28<sup>th</sup> February, 2021, **and expressly excluded staff on contract**. On 14<sup>th</sup> January, 2021, however, the Respondent issued Circular No. 01/2021

**varying** the earlier Circular (No. 42/2020) **to include its staff on contract** in the VER Scheme.

20. Vide a letter dated 1<sup>st</sup> February, 2021 and addressed to the Respondent's Board Chairman, the Claimant **requested** for early retirement under the Voluntary Early Retirement Scheme (VER); which the Respondent granted vide its Board Chairman's letter dated 19<sup>th</sup> February, 2021.

21. In its said letter (dated 19<sup>th</sup> February, 2021), the Respondent stated in part:-

**“ . . . I am pleased to advise you that your request has been discussed and accepted by the Board of Directors at its meeting on 15<sup>th</sup> February, 2021.**

**Accordingly, you will be released as per the terms of the VER Scheme approved by the Board on 12<sup>th</sup> January, 2021. Your last day in the office as per your request will be 30<sup>th</sup> April, 2021. . . .”**

22. Minutes of a Special Agenda of the Claimant's Board of Directors, **dated 7<sup>th</sup> May, 2021** and produced in evidence by the Claimant, shows that the Board set the Claimant's last day in office as **30<sup>th</sup> June, 2021**. Vide a letter dated **10<sup>th</sup> June, 2021** and addressed to the Respondent's Board Chairman, the Claimant requested to take his **18 accrued and pending leave days** pending his retirement on 30<sup>th</sup> June, 2021. According to the evidence adduced by the Claimant herein, the Claimant proceeded on leave as requested by him.

23. Vide a letter dated **21<sup>st</sup> June, 2021** and signed by the Chairman of the Board of Directors, the Respondent directed the Claimant to proceed on **compulsory leave for 90 days**. The letter stated in part:-

**“Following a board meeting of Kenya Tea Development Agency Holdings Limited on 21<sup>st</sup> June, 2021, you are hereby directed to proceed for compulsory leave for a period of ninety (90) days from the date of the letter i.e 21<sup>st</sup> June, 2021.**

**During the period in which you will be in the compulsory leave, you will continue to receive your current salary and all applicable benefits. You are also required to surrender all passwords in your possession to your deputy who will be acting during the period. The Board will make further communication in regard to your employment before the expiry of the 90 days.”**

24. Vide a letter dated **28<sup>th</sup> June, 2021**, the Respondent notified the Claimant that **his Voluntary Early Retirement approved earlier on 19<sup>th</sup> February, 2021 had been cancelled, and that the letter dated 21<sup>st</sup> June, 2021 (sending the Claimant on compulsory leave) prevailed.** The letter stated in part:-

**“By a resolution of the Board of Directors made on 24<sup>th</sup> June, 2021, you are hereby notified that the Board resolved to revoke the Group’s Voluntary Early Retirement (VER) Scheme for all KTDA (H) and KTDA MS Staff.**

**As a consequence, therefore, your earlier approved Voluntary Retirement dated 19<sup>th</sup> February, 2021 has been cancelled and therefore the letter dated 21<sup>st</sup> June, 2021 prevails.”**

25. By a letter dated **7<sup>th</sup> September, 2021**, the Respondent retired the Claimant **“on normal retirement”**. The letter stated in part:-

**“We refer to your request for retirement from the services of the Agency dated 1<sup>st</sup> February, 2021. The Board has reviewed your request and the same has been accepted with effect from 9<sup>th</sup> September, 2021. Please note that you are retiring on normal retirement and not the Voluntary Early Retirement package; as VER was abolished by the Board on 24<sup>th</sup> June, 2021.**

**You will be paid your dues in accordance with the terms of your contract upto and including 9<sup>th</sup> September, 2021, your last working day . . .”**

26. It is clear from the forgoing correspondence that the Respondent's Board of Directors declared the Voluntary Early Retirement (VER) Scheme on 1<sup>st</sup> December, 2020 **in exercise of its managerial prerogative, and subsequently varied the terms of the Scheme vide Circular No. 01/2021 in exercise of the same prerogative. Approval of the Claimant's request for Voluntary Early Retirement by the Respondent's Board, and subsequent cancellation/revocation of both the Scheme and the approval, were done in exercise of the said managerial prerogative/function.** Cancellation of both the VER Scheme and approval of the Claimant's request were done **before** the date set for the Claimant's early retirement (**30<sup>th</sup> June, 2021**). In my view, **no cause of action arose** from this cancellation/revocation, as the Claimant did not demonstrate that he suffered any damage and/or prejudice as a result of the cancellation and/or revocation.

27. Approval of the Claimant's request for VER by the Respondent did **not** create any form of a separate contract

between the parties, and the subsequent cancellation did not impose any liability on the Respondent.

28. Citing with approval the Industrial Court's decision in **Cause No. 1200 of 2012 (Professor Gitile Naituli - vs - University Council of Multimedia University College and Another**, the Court in **Theresa Wanjiru Mwaniki - vs - Registered Trustees of the Sisters of Mercy (Kenya) T/A Mater Misericordiae Hospital & 2 Others [2023] KEELRC 917 (KLR) Judgment, (James Rika, J)** stated as follows:-

**“13. . . . The Employment Act does not intend that Courts take away managerial prerogatives from employers. To give the interim order would have the effect of stifling the management prerogative in staff administration. It would mean the employer does not have any more say in the contract of employment it has authored. This would be contrary to the intention of the Employment Act, which seeks to merely protect the weaker of the bargaining**

**partners, not deprive the employer the power to run its business altogether.**

**14. The Industrial Court should be cautious in exercising its jurisdiction, so as not to appear to take over and exercise managerial prerogatives of the workplace. . . . Termination of employment, and initiation of disciplinary processes at the workplace, are presumed to be management prerogatives. The Court should be slow in intervening, particularly at interlocutory stage, otherwise the Court would be deemed to be directing the employers in regulation of their employees.”**

29. I return a finding that the Respondent acted within its managerial prerogative in cancelling and revoking the Voluntary Early Retirement Scheme issued vide its Circular No. 42/2020 dated 1<sup>st</sup> December, 2020 and subsequently varied/revised vide Circular No. 1/2021, and the Claimant’s scheduled early retirement as approved on 19<sup>th</sup> February, 2021. The claims based on the cancelled VER Scheme must

all fail. The Court has noted that the Claimant had, over the years, **received contractual gratuities flowing from his fixed term contracts**. Fixed term contracts do not carry any benefit beyond their end date.

30. It ought to be noted, however, that where it is shown that an employer is in the process of exercising his managerial prerogative and functions **unlawfully and unfairly** against an employee, the Court will intervene, and will give appropriate remedies or reprieve to the aggrieved employee or employees.

31. Further, where it is demonstrated by an employee or former employee that an employer has exercised his managerial prerogatives or functions **unlawfully or unfairly**, the Court will intervene and will give appropriate remedies to the aggrieved employee. **Sections 43 and 45 of the Employment Act, 2007** basically address unfairness committed by employers against employees during employment. In the present case, this Court has noted the manner in which the Respondent **repeatedly changed its managerial decisions, and ended up sending an**

**apparently innocent employee on irregular compulsory leave. This was an unfair labour practice.**

32. On the second issue, it was a common ground that as at the time of his **“retirement”** on 9<sup>th</sup> September, 2021, the Claimant had a valid/running fixed term contract of employment with the Respondent, which had taken effect on 1<sup>st</sup> December, 2019 and was set to lapse on 20<sup>th</sup> October, 2023. The Claimant is **not** shown to have resigned from his job as alleged by the Respondent (**RW-I**) in evidence, and is not shown to have applied for **“normal retirement”** as alluded to in the Respondent’s letter to the Claimant dated **7<sup>th</sup> September, 2021**, which is partly reproduced in this Judgment. What the Respondent referred to as **“normal retirement”**, in the context of the evidence adduced herein, is the retirement provided for in **Clause 9.5** of the Respondent’s Group Human Resource Policies & Procedures as follows:-

**“9.5. Retirement**

**The mandatory retirement age for all employees shall be sixty (60) years. An employee may opt to retire earlier than the mandatory age and**

**access their pension as per the written laws (RBA Act).**

**Early retirement age shall be fifty (50) years as provided in the KTDA Retirement Scheme Trust deed and rules.”**

33. The Claimant is not shown **to** have applied for early retirement pursuant to the foregoing provision. He (the Claimant) applied for early retirement under **Voluntary Early Retirement (VER) Scheme** vide a letter dated 1<sup>st</sup> February, 2021 which states in part:-

**“RE: VOLUNTARY EARLY RETIREMENT**

**I refer to the Voluntary Early Retirement Scheme approved by the Board in December 2020 and the subsequent enhancement approved on 12<sup>th</sup> January, 2021 . . .**

**It is my humble request to the Board therefore that my application for Voluntary Early Retirement is accepted . . .”**

34. As already stated elsewhere in this Judgment, the Claimant's foregoing application for Voluntary Early Retirement was accepted and approved by the Respondent vide a letter dated **19<sup>th</sup> February, 2021**, but was subsequently **cancelled** by the Respondent vide a letter dated **28<sup>th</sup> June, 2021** pursuant to earlier revocation by the Respondent's Board (**on 24<sup>th</sup> June, 2021**) of the Group's Voluntary Early Retirement (VER) Scheme, on the basis of which the Claimant's voluntary early retirement had been approved.
35. With the revocation of the Respondent's said Group Voluntary Early Retirement (VER) Scheme, the Claimant's application for Voluntary Early Retirement (VER) based on the said revoked Scheme lost validity, and went down with the revoked/abolished scheme. It was, therefore, both wrongful, unlawful, unfair and dishonest on the part of the Respondent to purport to **"accept the request for retirement dated 1<sup>st</sup> February, 2021"** and to send the Claimant on **"normal retirement with effect from 9<sup>th</sup> September, 2021"**. This amounted to **unlawful and unfair termination of the Claimant's employment without notice as provided in the contract.**

36. It was a common ground that the Claimant had not attained the retirement age of 60 years, and was not shown to have been consulted and/or given an opportunity to be heard before termination of his contract of employment by the Respondent.
37. Further, no reason was given by the Respondent for terminating the Claimant's contract of employment pursuant to Sections 43 and 45 of the Employment Act. The Claimant was not shown to have contravened either the law, the terms of his contract of employment, the Respondent's HR Policies and Procedures/Regulations or to have been the subject of any form of investigations. The Claimant was not subjected to any form of disciplinary proceedings, and is not shown to have been accused by the Respondent of any wrong doing.
38. The Respondent's letter dated 21<sup>st</sup> June, 2021 sending the Claimant on compulsory leave did not accuse the Claimant of any wrong doing, and the Respondent did not demonstrate that "**compulsory leave**" was a disciplinary

measure under its HR Policies and Procedures Manual, and the basis of such measure against the Claimant.

39. Section 43(1) of the Employment Act 2007 provides as follows:-

***“(1) In any claim arising out of a termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.”***

40. I find and hold that retirement of the Claimant by the Respondent on 9<sup>th</sup> September, 2021 was wrongful and unlawful, **and amounted to unfair termination of employment and a breach of the Claimant’s contract of employment.**

41. On the third issue, the Claim for **Kshs.77,411,019.02**, which is based on the revoked Voluntary Early Retirement

(VER) Scheme approved by the Respondent vide Circular No. 42/2020 dated 1<sup>st</sup> December, 2020 and subsequently varied vide Circular No. 01/2021, **cannot be allowed**, in view of the revocation of the said Voluntary Early Retirement Scheme by the Respondent and cancellation of the Respondent's approval of the Claimant's request for voluntary early retirement under the revoked scheme; and this Court's finding herein on the same. The said claim and related prayers for declaratory orders are declined.

42. In the **alternative** prayer **(g)** in the Memorandum of Claim, the Claimant claims **anticipatory earnings of Kshs.106,513,832.00, being earnings for the remainder of his contract from 9<sup>th</sup> September, 2021 to 20<sup>th</sup> October, 2023.** This claim cannot be allowed as it is not one of the remedies set out in Section 49(1) of the Employment Act. The Court of Appeal stated as much in the case of **D.K. Njagi Marete - vs - Teachers Service Commission [2020] KECA 840 (KLR):-**

**“27. It is clear to us that the claim for anticipatory benefits was not anchored in law, and we therefore decline to review the**

**Judgment of the trial court on these terms.**

**This ground of appeal therefore fails.”**

43. As already stated elsewhere in this Judgment, the Respondent, due to changing/shifting decisions of its Board Directors, subjected the Claimant to **unfair labour practices** by approving his request for voluntary early retirement and setting the retirement date, allowing the Claimant to proceed on leave pending retirement, only to subsequently revoke and cancel the Voluntary Early Retirement Scheme (VER) and the Claimant's already approved early retirement, and to communicate that decision to the Claimant a day to the retirement date; and sending the Claimant on **an irregular and unlawful compulsory leave without cause**, for 90 days. The Respondent subsequently terminated the Claimant's employment without reason, **and without the 3 months' termination notice provided for in the Claimant's contract of employment. All these amounted to unfair labour practice, and to a breach of the Claimant's right to fair labour practice.** There is no

breach without remedy. The claim for damages for breach of right to fair labour practice is merited.

44. In my view, an award of the equivalent of the Claimant's three months' salary will adequately compensate the Claimant for the breach. The Claimant's monthly salary under his last fixed term contract was **Kshs.3,185,190.5**. The Equivalent of three (3) months' salary is **Kshs.9,555,570.45, which I award to the Claimant.**
45. I have noted that the Claimant **did not** include in his Statement of Claim prayers/claims for either **compensation for unfair termination of employment, payment in lieu of notice, and damages for breach of his contract of employment.** Parties will forever be bound by their pleadings.
46. Having said that, and having considered written submissions filed on behalf of both parties herein, Judgment is hereby entered for the Claimant against the Respondent for **Kshs.9,555,570.45**. The awarded sum shall be subjected to **PAYE (Pay as You Earn).**

47. The Claimant is awarded interest on the awarded sum at Court rates, to be calculated at Court rates from the date of this Judgment.

48. The Claimant is awarded costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS  
16<sup>TH</sup> DAY OF JANUARY 2026**

**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.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Miss Atukuda for the Claimant

Miss Ogunyio for the Respondent

ORIGINAL