



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
NAIROBI**

**CAUSE NO. E175 OF 2023**

**ROSE KOSGEY.....**  
**.....CLAIMANT**

**-VERSUS-**

**B. M SECURITY.....**  
**RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant brought this suit vide a Memorandum of Claim dated 27<sup>th</sup> February 2023 seeking the following reliefs:-

***a) Declaration that her employment was unfairly terminated by the Respondent.***

***b) Kshs. 1,607,832 being 12 months salary compensation for the unfair termination.***

***c) Kshs. 133986 being one month salary in lieu of notice.***

***d) Kshs. 1,607,832 being gratuity/service pay for 18 years worked.***

***e) Costs and interest.***

***f) Any other reliefs the court may deem necessary to grant.***

2. The Respondent filed Statement of Defence dated 20<sup>th</sup> September 2024 and later amended it. In brief it denied liability to pay the sums of money sought by the Claimant. It further denied the alleged termination and averred that the Claimant exited through a voluntary early retirement. Finally it averred that the Claimant was paid all her terminal dues upon the retirement and she executed a settlement agreement acknowledging that the sum paid was full and final payment and waived and discharged her rights to any further claim against the Respondent.

### **Background**

3. The Claimant was employed by the Respondent on 5<sup>th</sup> December 2003 as a Assistant Zonal Manager earning a monthly salary of Kshs. 25,000. The salary was subsequently increased to a maximum Kshs. 133,986.61.

4. On 13<sup>th</sup> September 2013, she was transferred to Eldoret as a Relations Manager in July 2018, the management posted Erwin Oduor as Officer Administrator in Eldoret Branch where the Claimant was the Branch Manager. The new officer involved

himself in numerous acts of misconduct prompting the Claimant to report the same to the Head Office.

5. The Head quarter did not address the issue to the Claimant's expectation and at some point she was served with a show cause letter dated 26<sup>th</sup> April 2022 for defying instructions to process leave for Erwin Oduor. On 30<sup>th</sup> May 2022 she tendered a resignation but upon advice from the Respondent's Chief of Staff, she abandoned the resignation and applied for an early retirement vide a letter dated 3<sup>rd</sup> June 2022.
6. The Respondent accepted the Claimants request for early retirement by a letter dated 28<sup>th</sup> July 2022 backdating the effective date to 26<sup>th</sup> July 2022. There after she executed a clearance certificate on 8<sup>th</sup> August 2022 confirming that the sum of Kshs. 666,383, net of the gross terminal dues of Kshs. 943,358 was her full and final amount of all the money due to her and that she shall have no further claim against the Respondent. Despite the said money being paid, the Claimant brought this suit.

### **Evidence**

7. The Claimant testified as CW1, and adopted her written statement dated 27<sup>th</sup> February 2023 as her evidence in chief. She then produced 16 documents as exhibits 1-16 respectively. She confirmed that she resigned by letter dated 30<sup>th</sup> May 2022 due to frustration but Mr. Michieka Chief of Staff

advised her to request for early retirement instead in order to get gratuity. Accordingly she wrote the request for early on 3<sup>rd</sup> June 2022 and it was granted vide the letter dated 28<sup>th</sup> July 2022.

8. On cross examination she admitted that she requested for retirement after discussing the matter with the Human Resource Manager. She further admitted that, she had problem returning to the company under new terms.
9. She further admitted that she was paid gratuity plus accrued leave and signed clearance on 8<sup>th</sup> August 2022. She confirmed that she read and understood the contents before signing and she never disputed the figures tabulated. Finally she confirmed that car allowance used to facilitate her while in office.
10. The Respondent called her Head of Employee Relations Ms. Grace Macharia who testified as RW1. She also adopted her written statement dated 8<sup>th</sup> October 2025 as evidence in chief and produced 27 documents as exhibits D. 1-27.
11. In brief she stated that after a mutual discussion, the Claimants requested for an early retirement and was granted. Thereafter her terminal dues were tabulated and she accepted it on 8<sup>th</sup> August 2022 without disputing anything. Finally she clarified that car maintenance allowance is only applicable when an employee is actively on duty.

12. On cross examination, she stated that the request for early retirement was dated 3<sup>rd</sup> June 2022, to take effect on 1<sup>st</sup> July 2022. She confirmed that as at the time of the said request the company had initiated disciplinary process against Erwin and the Claimant was fully aware of the same.
13. She contended that both the Claimant and Erwin had made complaint against each other. That the Claimant complained that she had suffered frustrations working with Erwin while the latter confirmed that the Claimant had failed to process his leave application. She testified that the matter was resolved at the Head Office where both parties admitted their wrong doing and they accepted to work together. Thereafter, she contended that the work environment was no longer toxic as the two admitted their mistakes and agree to work together.
14. After the hearing, both sides filed written submissions. I have considered the pleadings, evidence and the submissions filed by both sides. The following issues fall for determination:-
- a) Whether the Claimant's employment was unfairly terminated by the Respondent.
  - b) Whether the Claimant is entitled to the reliefs sought.

### **Unfair termination**

15. Section 47 (5) of the Employment Act provides that:-

***“ For any complaint of unfair termination of employment or wrongful dismissal the***

***burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”***

16. In the instant case the Claimant served a resignation letter dated 30<sup>th</sup> May 2022 but she abandoned that process after being advised by the Chief of Staff that would lose her gratuity unless she chose the path of early retirement. The Claimant admitted that she took the advice and requested for an early retirement vide a letter dated 3<sup>rd</sup> June 2022 which was granted vide a letter dated 28<sup>th</sup> July 2022. Consequently, I find that the alleged unfair termination does not arise since the separation was through a consensual early retirement.

### **Relief sought**

17. The Claimant has set out several prayers but the Respondent averred that the Claimant is not entitled to make any claim against it because she was paid all her dues and executed a settlement agreement waiving her rights to make any further claims against the company. The agreement in the clearance certificate stated that:-

***“ I hereby confirm that the sum of Kshs. 666,383 (words) Six Hundred Sixty Six Thousand Three Hundred Eighty Three only is the full and final***

***amount of all money due to me that I shall have no further claim against the company.”***

18. The Claimant admitted that she read and understood the contents of the clearance certificate before signing it. She also admitted that she never raised any dispute on the computation. She further admitted that she received the said sum as agreed in the Clearance Certificate.
19. In the case of **Coastal Bottlers Limited v. Kimathi Mithika [2018]KECA 523 (KLR)**, the Court of Appeal held that:-

***“ 21. In our mind, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondents termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of said agreement or incapacity on the respondent’s part at the time he executed the same. It did not matter that the amount thereunder would be deemed as inadequate. As***

***it stood, the agreement was a contract between the parties.”***

20. Again in **Trinity Prime Investment Limited v. Lion of Kenya Insurance Company Limited [2015]eKLR**, The Court of Appeal held that:-

***“ The execution of the discharge voucher, we agree with the Learned judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”***

21. In the same manner, I find that the execution of the clearance certificate between the Claimant and the managers of the Respondent constituted a binding contract as it was executed voluntarily. Consequently, I have a duty to give effect to the will of the parties herein who had the freedom to enter into contract including agreement to waive their rights and obligations under their contract of employment.

22. In the circumstances, I now hold that by executing the clearance certificate waiving further claims and discharging the employer from such, gave rise to an estoppel against this filing suit. Consequently, the Claimant is not entitled to the reliefs sought since the suit is a non-starter.

### **Conclusion**

23. I have found that the Claimant's employment was not unfairly terminated by the Respondent but through voluntary retirement at her own request. I have further found that the Claimant is not entitled to the reliefs sought by dint of the settlement agreement signed on 8<sup>th</sup> August 2022, vide which she waived her right to make further claims against the employer. Consequently, the suit stands dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**ONESMUS MAKAU  
JUDGE**

### **Appearance:**

Njuguna for the Claimant

No appearance for the Respondent