

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAKURU**

**ELRC CAUSE NO. E030 OF 2025**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**CATHERINE GRACE MUGERA.....**

**.....CLAIMANT**

**VERSUS**

**BARINGO COUNTY GOVERNMENT.....**

**RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed a Memorandum of Claim dated 12<sup>th</sup> May 2025 seeking the following orders that:

***a.A declaration that the Claimant's transfer to the position of County Director Youth Training while being remunerated as a Chief Youth Polytechnic Instructor was an unfair labour practice.***

***b.A declaration that the Respondent's failure to respond and act to the Claimant's application for early retirement on medical grounds was unfair and unlawful.***

- c. An order that the Respondent pays the Claimant Unpaid salary arrears and any salary increment accruing since August 2019- February 2025 Kshs.103,050/= X 55 months = Kshs.5,667,750/=together with interest at court rates.***
- d. An order for specific performance compelling the Respondent to process and approve the Claimant's early retirement application within thirty days.***
- e. General damages for pain, suffering, and mental distress caused by the Respondent's unfair labour practices and unlawful actions.***
- f. Costs of this suit.***
- g. Interest on the amounts claimed at court rates until full payment.***
- h. Any other or further relief that this Honourable Court may deem just and equitable.***

**Claimant's case**

2. The Claimant avers that she was first employed by the Ministry of Youth Affairs on 5<sup>th</sup> April 2007 and later transferred to the Respondent on 27<sup>th</sup> March 2013 as County Director Youth Training, though she was remunerated at the lower level of Chief Youth Polytechnic Instructor.
3. On 20<sup>th</sup> March 2017, the Claimant avers that she formally requested a transfer on medical grounds, but the Respondent failed to respond, causing distress and worsening her health.
4. In 2019, the Claimant avers that she sought early retirement due to her medical condition, but instead of addressing her request, the Respondent summoned her to a disciplinary meeting on 24<sup>th</sup> May 2020
5. Despite a directive dated 29<sup>th</sup> July 2021 requiring payment of her salary arrears, the Claimant avers that the Respondent withheld her salary from August 2019 for about six years.
6. Later, on 14<sup>th</sup> August 2023, the Claimant avers that the Director of Human Resource Management purported to approve her early retirement but

illogically demanded recent payslips, which she could not provide since she had not been paid since 2019.

7. As a result, the Claimant avers that she has suffered immense hardship, with unpaid salary arrears amounting to Kshs. 5,667,750/=, in violation of her constitutional rights to fair labour practices and fair administrative action.
8. Despite the Claimant serving the Respondent with pleadings, the Respondent did not enter appearance and the matter proceeded for formal proof.

### **Claimant's evidence in court**

9. The Claimant, CW1, adopted her written statement dated 12<sup>th</sup> May 2025, together with the bundle of documents dated even date marked as exhibits 1 to 20 respectively as her evidence-in-chief.
10. CW1 testified that in 2017, she requested a transfer on medical grounds, which was ignored, and in 2019 she applied for early retirement due to her health condition, but the Respondent failed to respond and instead summoned her to a disciplinary meeting on 24<sup>th</sup> May 2020. Despite a directive dated 29<sup>th</sup> July 2021 requiring payment of her salary arrears, the

Respondent withheld her salary from August 2019 for six years.

11. On 14<sup>th</sup> August 2023, CW1 stated that the Director of Human Resource Management purported to allow her early retirement but demanded recent payslips, which she could not provide since she had not been paid since 2019.
12. CW1 stated that the Respondent has refused to resolve her retirement and salary arrears issues, causing her significant hardship and detriment, with unpaid arrears amounting to Kshs.5,667,750/=, in violation of her constitutional rights to fair labour practices and fair administrative action.
13. The court directed that written submissions to be filed.

### **Claimant's submissions**

14. The Claimant identified four issues for determination which include: whether her salary was unlawfully withheld, whether her right to fair labour practices was violated, whether she is entitled to early medical

retirement and terminal dues, and what remedies should issue.

15. The Claimant submitted that her salary stoppage from August 2019 was arbitrary and unlawful, citing the cases of ***Banking, Insurance & Finance Union (Kenya) v Barclays Bank of Kenya Ltd [2014] KEELRC 1145 (KLR)*** and ***Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] KEELRC 905 (KLR)***, which held that withholding salary without lawful cause amounts to unfair labour practice.
16. On violation of fair labour practices, the Claimant relied on the cases of ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya, Minister For Transport, Minister For Labour & Human Resource Development & Attorney General [2014] KECA 403 (KLR)*** and ***Gichanga v Co-operative Bank of Kenya Ltd [2012] eKLR***, which emphasize substantive justification and procedural fairness and the duty to treat employees with dignity.

17. On entitlement to medical retirement, the Claimant invoked the case of ***Joseph Kiplagat Korir v Kenya Civil Aviation Authority [2019] eKLR***, where the court held that employers must facilitate early retirement where health conditions prevent continued service, and failure amounts to discrimination. The Claimant submitted that the Respondent ignored medical evidence, official directives, and her appeals, thereby breaching **Articles 41 and 47 of the Constitution** and **sections 5, 10, 18, 45, and 49 of the Employment Act**.

18. The Claimant submitted that she is entitled to the relief sought and urged the court to allow the memorandum of claim as prayed with costs.

### **Analysis and determination**

19. The court considered the pleadings on record; the issues for determination are as follows:

*i) Whether the Claimant was unfairly terminated on medical grounds despite communicating for early retirement on medical grounds;*

*ii) If (i) above is in the affirmative, whether the Claimant is entitled to relief sought; and*

*iii) Who should bear the costs of the suit.*

20. For termination of employment, there are two elements which go hand in hand that is substantive justification and procedural fairness as set out in **sections 41 and 43 of the Employment Act**. In **Mary Chemweno Kiptui v Kenya Pipeline Company Limited (supra)**, where the court held for termination to be fair the elements of substantive justification and procedural fairness needs to be present.
21. Section 47(5) of the Employment Act provides as follows:
- “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.”***
22. In **Kennedy Nyanguncha Omanga v Bob Morgan Services Limited [2013] KEELRC 810 (KLR)** the court stated as follows:

***“While employers are entitled to terminate employment on the ground that an employee is too ill to work, they must exercise due care and sensitivity. First, the employer must show support to the employee to recover and resume duty. Second, once the employer begins to consider termination, they must subject the employee to a specific medical examination aimed at establishing the employee’s ability to resume work in the foreseeable future. Treatment notes and sick off sheets do not qualify as medical reports for purposes of termination of employment on medical grounds. Third, the employer must give the employee specific notice of the impending termination. Failure to follow this procedure even where there is overwhelming evidence of an employee’s inability to work amounts to unfair termination for want of procedural fairness.”***

23. In this instance case, the Claimant asserts that her employment was marred by repeated neglect of her medical and financial needs: she requested a transfer

on medical grounds in 2017 without response, sought early retirement in 2019 but was instead summoned to a disciplinary meeting in 2020, and despite a directive in 2021 requiring payment of arrears as per the letter from County Secretary dated 29<sup>th</sup> July 2021, her salary was withheld from August 2019 for nearly six years. Finally, in August 2023, the Director of Human Resource Management purported to approve her retirement but demanded payslips she could not produce, having not been paid since 2019. She was informed her retirement was effective from 8<sup>th</sup> November 2019. The Respondent did not say what happens to the years between November 2019 to August 2023.

24. The evidence produced in court during the *viva voce* hearing by the Claimant and her documents show an employer who was not fair in the way they treated the Claimant. She requested for an early retirement on 27<sup>th</sup> August 2019 due to her medical condition after a lot of back and forth communication including a letter ordering her salary be reinstated on 29<sup>th</sup> July 2021 she was finally granted her request for retirement by the

letter dated 14<sup>th</sup> August 2023. This was effective 8<sup>th</sup> November 2019.

25. Indeed, the Respondent did not write a termination letter to the Claimant and the only separation letter is the one of retirement.
26. The court finds the Respondent treated the Claimant unfairly. **Article 41(1) of the Constitution** provides that every person has a right to fair labour practice. The failure by the Respondent to respond to the Claimant's request to take an early retirement and further withholding her salary was unfair if not inhuman behaviour.
27. The court agrees with the statement of the court in the case of **GICHANGA -VS- CO-OPERATIVE BANK OF KENYA LTD(2012)eKLR** that employers must treat employees with dignity, fairness and respect and failure to do so amounts to unfair labour practice as envisaged in Article 4 of the Constitution.
28. The Respondent had a duty to facilitate early retirement of the Claimant on medical grounds instead of keeping her in limbo for a long period of time and worse still, without a salary.

29. Claimant even wrote to the Respondent on 11<sup>th</sup> october 2022 confirming she was ready to resume her duties. There is no response produced in court to that letter. As well stated in the case of **MARY CHEMWENO KIPTUI -VS- KENYA PIPELINE COMPANY LIMITED (2014) eKLR** an employee who offers services and remains ready and willing to perform duties cannot be lawfully denied her salary unless through a lawful process sanctioned by the law.
30. The Respondent did not file a response despite evidence of affidavit of service dated 2<sup>nd</sup> June 2025 deponed by MICHAEL BUSOLO, a process server. The evidence given in court and through documentation by the Claimant therefore remains uncontroverted. The court also considered the submissions by the Claimant and finds all the above support a case of unlawful and unfair treatment of the Claimant in total disregard of expected fair labour practice of an employer.
31. In view of the foregoing, the court finds the Claimant has proved her case in accordance to her claim dated 12<sup>th</sup> May 2025.

32. The underlisted will be reliefs this court will grant the Claimant-

- (1) Unpaid salary arrears from August 2019 to 14<sup>th</sup> August 2023 being 48 months X Kshs.103,050/= being the approved date of retirement -Kshs.4,946,400/=.**
- (2)The Claimant is awarded damages for pain and suffering equivalent to 10 months salary Kshs.1,030,500/=.**
- (3)The Claimant is awarded costs of the suit.**
- (4)Interest will accrue at 14% per annum from date of judgment till full payment.**

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru this 3<sup>rd</sup> Day of March, 2026.**

**ANNA NGIBUINI MWAURE  
JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April

2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**