



**Kimengi v Moi University & 2 others (Cause E050 of 2025)
[2026] KEELRC 1095 (KLR) (23 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1095 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E050 OF 2025
MA ONYANGO, J
APRIL 23, 2026**

BETWEEN

PROF ISSAC NJUGUNA KIMENGI CLAIMANT

AND

MOI UNIVERSITY 1ST RESPONDENT

THE COUNCIL, MOI UNIVERSITY 2ND RESPONDENT

VICE CHANCELLOR, MOI UNIVERSITY 3RD RESPONDENT

JUDGMENT

1. Vide a Statement of Claim dated 27th August 2025, the Claimant seeks a declaration that his retirement age is 74 years and his retirement date ought to be 30th June, 2029; that the notices of retirement issued to him on 1st July 2024 and 25th April, 2025 are illegal, null and void ab initio; a declaration that the refusal to include the Claimant in the 1st Respondent’s payroll is unfair, illegal and amounts to unfair labour practices and in breach of the Claimant’s constitutional right to fair labour practices as envisaged under Article 41 of *the Constitution*. The Claimant further seeks an order directing the 1st Respondent and its payroll manager to immediately include the Claimant in its payroll and to pay him all the salary arrears, an order in the nature of a permanent injunction restraining the Respondents whether by themselves or their agents, servants, employees and anybody whatsoever from terminating the Claimant’s employment on account of retirement, an award of general damages for breach of the Claimant’s constitutional rights and unfair labour practices, costs and any other relief the court may deem fit in the interest of justice.
2. The Respondent filed a Response to the Memorandum of Claim in which it denies that the Claimant is entitled to the prayers sought in his Statement of Claim.
3. The facts of this claim are not in contest. The Claimant was employed by the Respondent as an Assistant Lecturer in 1987. He was appointed as Deputy Vice Chancellor, Academics, Research and



Extension in September, 2016 for a period of 5 years which was extended in September, 2021 for a further term of 5 years.

4. By letter dated 31st July, 2023 the Claimant was issued with a one-year notice of retirement on grounds that according to the Moi University Statutes 2013 (Revised 2021) Statute XXIX 9(a), he was due to attain the mandatory retirement age of 70 years on 29th October, 2024.
5. It is the Claimant's case that before the date of his retirement upon attaining 70 years, the Collective Bargaining Agreement (CBA) applicable to Academic Staff, Senior Library and Administrative Grades reviewed the retirement age to 74 years and therefore he was not due to retire until he attained the age of 74 years.
6. It is further the Claimant's case that the Moi University Pension Scheme Trust Deed and Rules provide for retirement on 30th June following attainment of retirement age. That he was consequently supposed to retire on 30th June, 2025 by which date the retirement age had been moved to 74 years.
7. The Respondent on the other hand argues that the Claimant having attained the age of 70 years before the signing of the CBA, that amended the retirement age to 74 years, the change in the retirement age in the CBA did not apply to him.

Determination

8. From the pleadings, the rival submissions and the authorities cited by the parties, the determination of this case revolves around the date on which the CBA became effective and whether the Claimant was still in employment on that date.
9. From the evidence on record, the Claimant attained the age of 70 years on 29th October, 2024. As at that date the Moi University Terms of Service for Academic Staff, Senior Library and Administrative Grades provided as follows:

“Normal Retirement Date means the 30th June next following the date a member attains his Normal Retirement age.”

10. Further, the CBA applicable to the Claimant provided that “Normal Retirement Date” means the thirtieth day of June next following the date a member attains his Normal Retirement Age.
11. The Claimant having attained the age of 70 years on 29th October, 2024 and the date on which he was to leave service, being “the thirtieth day of June next following the date a member attains his Normal Retirement Age” he was thus expected to retire 30th June, 2025.
12. The retirement age for academic staff was however changed to 74 years by the CBA for the period 2021-2025 signed on 23rd November, 2024, when the Claimant was still in service as he was supposed to retire on 30th June, 2025.
13. Section 59 of the *Labour Relations Act* provides:

59. Effect of collective agreements.

(1) A collective agreement binds for the period of the agreement

(a) the parties to the agreement;

(b) all unionisable employees employed by the employer, group of employers or members of the employers' organisation party to the agreement; or



- (c) the employers who are or become members of an employers' organisation party to the agreement, to the extent that the agreement relates to their employees.
- (2) A collective agreement shall continue to be binding on an employer or employees who were parties to the agreement at the time of its commencement and includes members who have resigned from that trade union or employer association.
- (3) The terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.
- (4) A collective agreement shall be in writing and shall be signed by
 - (a) the chief executive officer of any employer, the chief executive or national secretary of an employers' organisation that is a party to the agreement or are presentative designated by that person; and
 - (b) the general secretary of any trade union that is a party to the agreement or a representative designated by the general secretary.
- (5) A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court and shall be effective from the date agreed upon by the parties.

[Emphasis added]

14. It is clear from section 59 that on the date of registration of a CBA, it becomes binding from the date agreed by the parties, in this case, the effective date of the CBA in 2021.
15. The effect of the signing of the CBA was that the retirement date for any academic staff of the Respondent still in service on the date of registration of the CBA was amended by the CBA to 74 years.
16. The registration of the CBA rendered mute and void any notices of retirement issued to the Claimant on the basis that he was to retire at 70 years as the notices had been overtaken by the change of retirement age in the CBA.
17. The Respondents position as communicated in its letter dated 25th April, 2025 was thus in direct conflict with section 59 of the [Labour Relations Act](#). The letter states the complete opposite of what section 59 of the Act provides.
18. The retirement date for the Claimant is therefore the date on which he will attain the age of 74 years in line with the parties CBA and other terms of service as shall be in force then.

What orders should issue?

19. Having found as above, I make the following orders:
 - a. A declaration be and is hereby made that the Claimant's retirement age is 74 years in accordance with the Collective Bargaining Agreement between The Inter-Public Universities Councils Consultative Forum (IPUCCF) of the Federation of Kenya Employers and the Universities Academic Staff Union (UASU) dated 23rd November, 2024 and covering the period 2021-2025.



- b. An order is hereby made that the Respondent reinstates the Claimant to the Payroll with immediate effect without loss of salary and benefits for the period he was unlawfully removed from the payroll.
- c. The Respondent shall pay the Claimant's costs of this suit.
- d. Interest shall accrue at court rates from date of judgment.

20. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 23RD DAY OF APRIL, 2026

MAUREEN ONYANGO

JUDGE

