



REPUBLIC OF KENYA



KENYA LAW
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**Musili v Attorney General (Cause 266 of 2018)
[2025] KEELRC 779 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 779 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 266 OF 2018
L NDOLO, J
MARCH 13, 2025**

BETWEEN

HELLEN KITTONY MUSILI CLAIMANT

AND

THE ATTORNEY GENERAL RESPONDENT

JUDGMENT

1. By his Memorandum of Claim dated 5th March 2018, the Claimant seeks an order for tabulation of her retirement benefits for the period running from 1976 to 1990.
2. The Respondent denies the Claimant's claim by a Response dated 30th April 2018 to which the Claimant responded on 24th July 2018.
3. The matter went to full trial where the Claimant testified on her own behalf. The Director of Pensions, Michael Alfred Kagika testified on behalf of the Respondent. The parties also filed written submissions.

The Claimant's Case

4. The Claimant states that she was employed as a copy typist, in the Ministry of Health from 3rd June 1976. She was based at Better Living Institute, Kitui. She claims to have worked continuously at the Institute up to 21st November 1990, when she was issued with another letter of appointment, with almost similar terms.
5. The Claimant worked until 12th September 2016, when she retired. Upon the Claimant's retirement, her retirement benefits were calculated from 1990 to 2016. She complains that the period from 1976 to 1990 was left out.



6. The Claimant therefore pursues a declaration that her period of service ran from 3rd June 1976 until 20th November 1990 and an order for calculation of her retirement benefits for the said period.
7. The Claimant also asks for costs of the case.

The Respondent's Case

8. In the Response dated 30th April 2018, the denies the Claimant's claim and states that the documents on record support 1st September 1990 as the date of appointment.
9. The Respondent asserts that the Pensions Department, which is mandated to process and pay pension benefits to government retirees, received documents with respect to the Claimant, from the Ministry of Agriculture, Livestock and Fisheries on 22nd Many 2017.
10. The Respondent avers that the appointment documents, submitted to the Pensions Department, indicated that the Claimant was first appointed on 1st September 1990, on probationary terms of service. She was later confirmed on permanent and pensionable terms and retired on 11th September 2016.
11. The Respondent denies the Claimant's claim and asks the Court to dismiss it with costs.

Findings and Determination

12. This is a single issue dispute being, the Claimant's pensionable period of employment in the public service. According to the Claimant, she worked continuously from 3rd June 1976 until 12th September 2016, when she retired.
13. The Respondent on the other hand, maintains that the Claimant's pensionable period of service ran from 1st September 1990 until her retirement on 11th September 2016.
14. In support of her case, the Claimant filed certificate of medical examination dated 3rd June 1976, declaration under the *Official Secrets Act* dated 3rd December 1976, payment vouchers, leave records and National Social Security Fund documents, all predating the appointment date of 1st September 1990, acknowledged by the Respondent.
15. While these documents point to the fact that the Claimant may have been engaged within the public service, they cannot override the appointment letter dated 13th November 1991. According to this letter, the Claimant's pensionable employment period began on 1st September 1990.
16. In light of the foregoing, the Claimant's claim for pension for period before 1st September 1990 is not supported by any evidence and is therefore dismissed.
17. Each party will bear their own costs.
18. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY MARCH 2025

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JUDGE

Appearance:

Mr. Kiboi for the Claimant

Ms. Mochoge for the Respondent

