



**Njogo v Kenya Institute of Management (Cause E236 of 2024)
[2025] KEELRC 688 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 688 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E236 OF 2024
S RADIDO, J
MARCH 6, 2025**

BETWEEN

CATHERINE KABURA NJOGO CLAIMANT

AND

KENYA INSTITUTE OF MANAGEMENT RESPONDENT

JUDGMENT

1. Catherine Kabura Njogo (the Claimant) sued the Kenya Institute of Management (the Respondent) on 27 March 2024, and she stated the Issues in Dispute as:
 - i. Whether the Claimant is entitled to terminal dues in the sum of Kshs 3,113,862/70 from the Respondent?
 - ii. Whether the Claimant is entitled to the amount deducted from her salary on account of pension which was not remitted to Jubilee Insurance Company Limited?
 - iii. Whether the Claimant is entitled to the costs of the suit.
2. The Respondent filed a Response on 29 October 2024, and the Cause was heard on 27 January 2025.
3. The Claimant and a Head of Shared Services with the Respondent testified.
4. The Claimant filed her submissions on 18 February 2025 (should have been filed and served before 7 February 2025), and the Respondent on 3 March 2025.
5. The thrust of the Respondent's submissions was that the Claimant had not proved her case to the required standard.
6. The Court has considered the pleadings, evidence and submissions.



Resignation or Premature retirement?

7. On 22 August 2023, the Claimant wrote to the Respondent stating:

Premature Retirement

....

This is to thank you for the opportunity to serve the (I)nstitute for the last 14 years. I appreciate for the fact that I have grown and developed in my career. However, I tender my resignation and give my notice of service with effect from 31st August 2023. Thereafter, I will proceed on leave for 21 days until 20th September 2023.

However, I will provide a handover and I'm also ready to train my replacement within those days so that work can continue uninterrupted.

Please prepare my dues as follows;

Salary arrears from July – Aug 2023

Salary arrears 50% from Aug 2020 – December 2020

Leave allowance for 2022 & 2023

Severance pay for maximum 10 years service; separation Chap 12 HRP Manual

Loan deducted from salary and not submitted to the bank

Unremitted pension.

8. Upon receipt of the notice, the Respondent replied through an Internal Memo dated 5 September 2023 as follows:

We are in receipt of your letter dated 22nd August 2023 on the above subject in which you expressed your interest to proceed on pre-mature retirement effective 20th September 2023. Your request has been accepted as per the Institute Human Resources Policies and Procedures Manual, clause 12.6 on Pre-Mature Retirement.

With this acceptance, we therefore request you to comply with the Institute rules regarding separation particularly handing over arrangement. Subject to the provision of a duly filled Clearance Certificate, the Finance Department is advised to pay you your dues as follows:

Salary up to and including 20th September 2023.

One (1) month annual leave day earned but not utilized.

Severance pay at the rate of two (2) weeks pay for each completed year of service up to a maximum of 10 years pay calculated on the basic pay. Your pension contributions will be paid to you in accordance with the rules of the Scheme.

9. The Respondent did not abide by its commitment hence the Cause.
10. Before the Court, the Claimant asserted that she resigned by terminating the employment on the ground of pre-mature retirement in line with clause 12.6 of the Respondent's Human Resources Policies and Procedures Manual, 2013 and consequently she was entitled to severance pay.
11. The Respondent took a contrary view of the decision by the Claimant, and contended that it was a resignation and not pre-mature retirement as contemplated by clause 12.6 of the Human Resources Policies and Procedures Manual.



12. Resignation in employment law is a general term denoting that an employee intends to relinquish an office or employment. In Kenya, the general law of employment, the [Employment Act](#) has not defined nor contemplated resignation.
13. Therefore, to determine the context of a resignation, the Court can turn to the material contract or common law.
14. The parties herein had a contract which incorporated the Human Resources Policies and Procedures Manual.
15. The Manual anticipated separation at the request of an employee through Early Retirement (clause 12.5) and Pre-Mature Retirement (clause 12.6).
16. The Claimant's notification to the Respondent was clearly referenced Premature Retirement, and it made specific mention of chapter 12 of the Human Resources Policies and Procedures Manual.
17. The Court has keenly perused chapter 12 of the Manual and there is no doubt that the two modes of resignation recognised therein are Early Retirement and Pre-Mature Retirement and not a general resignation.
18. The Executive Director of the Respondent acknowledged the Claimant's notification of Pre-Mature Retirement and accepted the notification under clause 12.6 of the Human Resources Policies and Procedures Manual.
19. The Executive Director succinctly set out the benefits the Claimant was entitled to and would be paid and this included severance pay.
20. The Executive Director was making a written promise to the Claimant on what benefits to expect. The Director was not called to testify and the failure to call him was not explained.
21. The witness called by the Respondent did not hold the position of Executive Director or equivalent. He attempted to vary the clear terms of the Internal Memo from the Executive Director through oral testimony.
22. The attempt cannot pass legal muster or alter the terms of contract or promise by the Respondent to pay certain benefits to the Claimant.
23. The Court can conclude that the resignation of the Claimant was a Pre-Mature Retirement in terms of clause 12.6 of the Human Resources Policies and Procedures Manual.

Appropriate remedies

Severance pay

24. The Claimant pitched for Kshs 650,000/- on account of severance pay.
25. The Respondent did not interrogate the computation and the Court will allow the head of the claim as prayed.

August – December 2022 salary

26. The Claimant prayed for Kshs 200,000/- under this head of the claim.
27. However, she did not lay an evidential foundation for this head of the claim either in the filed witness statement adopted as part of the evidence or during oral testimony.



July 2022 – August 2023 salary

28. The Claimant pleaded Kshs 1,820,000/- as unpaid salary for the July 2022 to August 2023, a period on nearly 13 months.
29. A copy of an Internal Memo produced in Court by the Respondent indicated that the Claimant's monthly salary from 1 March 2022 was Kshs 130,000/-.
30. The Claimant did not disclose either in the witness statement or during oral testimony whether she was not paid any salary during the period or whether payment was being made in instalments leading to salary arrears.
31. The Court also notes that under the previous head of claim, the Claimant had asserted a claim for salary from August 2022 to December 2022. Under of this head of claim now under consideration, the Claimant sought salary for July 2022 to August 2023. Part of this is definitely a duplication of what she claimed for the period August 2022 to December 2022.
32. This head of the claim was in the nature of special damages but the Claimant did not lay an evidential basis for the grant of relief.

September 2023 salary

33. The Claimant separated with the Respondent effective 20 September 2023. For the 20 days, the Claimant made a pitch for a salary of Kshs 86,667/-.
34. The Respondent's witness admitted in re-examination that the Respondent owed the Claimant part of September 2023 salary. The Court will allow this head of the claim.

1-day unutilised leave

35. Despite claiming accrued leave of Kshs 65,000/-, the Claimant testified that by the time of separation she had a 1-day accrued leave equivalent to Kshs 4,333/-.
36. The Respondent, as the custodian of employment records did not produce the Claimant's leave records as demanded by section 10(3) of the *Employment Act*, 2007.
37. This claim is allowed.

Leave allowance

38. Clause 7.4 of the Human Resources Policies and Procedures Manual vested a leave allowance of 50% of the basic salary.
39. The Respondent did not produce any leave records as contemplated by section 10(3)(a)(i) of the *Employment Act*, 2007 to demonstrate whether the Claimant was paid her leave allowance for 2022/2023, and the Court will allow this head of the claim.

Loan deduction

40. Despite claiming that the Respondent made deductions from her salary towards a loan repayment but did not remit the deductions, the Claimant did not prove the existence of any loan or deductions from her salary and relief is declined.



Conclusion and Orders

41. The Court finds and declares that the Claimant resigned through Pre-Mature Retirement in terms of clause 12.6 of the Human Resources Policies and Procedures Manual and is entitled to and is awarded:
- i. Severance pay Kshs 650,000/-
 - ii. September 2023 salary Kshs 86,667/-
 - iii. Accrued leave Kshs 4,333/-
 - iv. Leave allowance Kshs 65,000/-
- Total Kshs 806,000/-.
42. The awards to attract interest at court rates from the date of filing suit until payment in full.
43. The Claimant did not file submissions within agreed timelines without explanation and is denied costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 6TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Havi & Co. Advocates

For Respondent Kiarie Kariuki & Githii Advocates

Court Assistant Wangu

