



Ndurumo v University of Nairobi; Kenya National Commission on Human Rights (Interested Party) (Employment and Labour Relations Petition 88 of 2023) [2025] KEELRC 1477 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1477 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION 88 OF 2023**

MN NDUMA, J

MAY 15, 2025

BETWEEN

MICHAL NDURUMO PETITIONER

AND

UNIVERSITY OF NAIROBI RESPONDENT

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS INTERESTED PARTY

JUDGMENT

1. The amended petition dated 24/2/2025 is by the Petitioner seeking the following reliefs: -
 - A. A declaration that the conduct of the Respondent violated the Petitioner's constitutional right to equality, freedom from discrimination and dignity.
 - B. A declaration that the Respondent violated the Petitioner's right to fair labour practices enshrined in Article 41A of the Constitution of Kenya (2010)
 - C. An order of mandamus directing the Respondent to review the Petitioner's years of service by 5 years from the date he was retired in accordance with direction of the Public Service Commission in the letter dated the 28th of July 2022.
 - D. General damages for the violation of the Petitioner's constitutional rights
 - E. Costs of the petition
 - F. Any other relief the court may deem just.



2. The nub of the petition is that the Petitioner was employed by the Respondent on 25th February 2009 as a Senior Lecturer in the Department of Psychology, Faculty of Arts, College of Humanities and Social Sciences.
3. That the Petitioner is registered as a person with a disability under the National Council for Persons with Disability, being a deaf person.
4. That by a letter dated 20th November 2019 the Respondent notified the Petitioner that he was due to retire on 10th April 2021 having reached the age of 70.
5. That Clause 4.6 (vii) of the University of Nairobi Disability Policy of October 2020 provides that the University shall extend the retirement age of persons with disability by five years. That the normal retirement age of lecturers is 70 years and so the Petitioner ought to retire at 75 years.
6. That on 20th January 2021 the Petitioner appealed against the Respondent's decision and sought an additional five-year extension of his years of service on the basis that he was a person with disability.
7. The Respondent dismissed the Petitioner's appeal vide a letter dated 10th February 2021. The Petitioner through his Advocate wrote a demand letter dated 19th July 2021 and 15th October 2021 to have the Respondent abide by its policy. The Respondent responded by a letter dated 20th December 2021 in response to the demand letter of 15th October 2021 stating that the Petitioner's retirement was either wrongful or early. The Respondent relied on a Government Circular dated 19th May 2012, MSPS/HRM/2/2/Vol. II which states that the retirement age of public servants with disability is 65 years and those without disability is 60 years. The Petitioner states that the policy does not apply to him as a University Professor.
8. The Petitioner followed up the matter, with the Public Service Commission, (PSC). The Public Service Commission (PSC) wrote a letter dated 28th February 2023 to the Respondent acknowledging receipt of Respondent's letter dated 11th November 2022 and the PSC noted that while referring to the Pension Schemes 2007 the Respondent made no reference to their Disability Policy 2020. PSC informed the Respondent that it was in breach of its own Disability Policy whose provisions regarding retirement age for staff with disabilities override the Pension Scheme Rules. PSC further stated that the Respondent did not adhere to the Government Policy where persons with disability retirement age was given an extension of five (5) years and so ought to have extended the Petitioner's retirement age to 75 years.

Legal Foundation

9. The Petitioner relies on Article 2, 3, 20(1) 21(1) 22(1) 22(2), 23(3), 27(4), 28, 41(1), 47(1), 54(1) and 258(1) of the Constitution of Kenya 2010 to found the petition.
10. The Petitioner further relies on section 12(1) and 15(1) of Persons with Disability Act, 2007, and the Employment Act, 2007 section 5(3) regarding provision of equal opportunities and non-discrimination.
11. The Petitioner further relied on Public Service Commission Act, 2017 and Regulations 2020 Section 75 of which provide that a retirement decision may be reviewed by the Public Service Commission in accordance with the provisions of section 84 of the Act. The Petitioner states that the Respondent violated Articles 27, 28, 41(1),47(1), 54(1) and 258(1) of the Constitution and the named statutes and International Conventions including Article 26 of the International Convention on Civil and Political Rights (the ICCPR) which stipulates that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. The Petitioner prays to be awarded as prayed.



Replying Affidavit

12. The Senior Assistant Registrar of the Respondent deposed to a replying affidavit in which it admits all particulars of employment of the Petitioner as a Senior Lecturer with the Respondent on 21st February 2007. That the Petitioner was subsequently promoted as a Professor in the Department of Psychology. The deponent admits that the Petitioner is duly registered with National Council for Persons with Disability in Registration No. NCPUB/P/6510 under section 7(c) of the [Persons with Disabilities Act, 2012](#). That section 15 of the Act provides that persons with disabilities shall retire at 65 years. That the Petitioner was retired at 70 years of age as per the notice dated 20/11/2019. That notice provided that the Petitioner would retire on 10th April 2022 upon attainment of 70 years as per his terms of service and his pension paid in accordance with the rules of the University Pension Scheme 2007. That the Petitioner exited employment upon retirement accordingly.
13. That the University of Nairobi Disability Policy 2020 which the Petitioner relied upon to the effect that the University shall extend retirement age for persons with disabilities by 5 years was in conflict with the [Persons with Disability Act, No. 14 of 2012](#). That the policy could not override the law.
14. That the allegation of non-facilitation and discrimination by the Petitioner are unfounded and without basis. That the petition lacks merit and it be dismissed without costs.

Determination

15. The Petitioner, the Respondent and Interested Party filed submissions which the court has carefully considered together with the deposition by the parties. The issues for determination are: -
 - i. Whether the retirement age of a professor at the University of Nairobi as a person with disability is 65 years or 75 years.
 - ii. Whether the Petitioner has proved violation of his rights to retire at 75 years and is entitled to the reliefs sought.
16. In answer to issues (i), the court relies heavily on the manual of University of Nairobi, Terms of Service for Academic, Senior Library and Administrative Staff Manual 2006 placed before court, which document is not in dispute as the guiding policy document on the terms and conditions for University Academic Staff, which cadre the Petitioner belonged.
17. Clause 20 of the said policy document on retirement provides: -
 - a. Retirement age shall be 70 years for all teaching/research staff. For all other staff the retirement age shall be 60 years.
18. The Interested Party, weighed in on this matter vide its letter to the University dated 27th September 2024 in which it stated that the Commission is mandated with the protection and promotion of human rights in Kenya. The Commission advised the Respondent that:

The crux of the petition is that as Professor with a disability (deaf) he is entitled to an extension of service by five years beyond the retirement age of 70 years applicable to persons without a disability.”
19. The Commission stated further “This is the position clearly enunciated in clause 4.6 of the University of Nairobi Disability Policy (2020) and also in the Public Service Act 2017. The policy referred to was placed before court by the Petitioner and clause 4.6 thereof on Employment Welfare and support to staff with Disabilities provide:



The University shall

4.6 (viii) provide tax exemption, personal guide, allowance and extend the retirement age by five years for PWDs.”

20. Furthermore, PSC in exercise of its mandate in its letter dated 28/2/2023 clearly provided guidance to the Respondent on the dispute at hand and advised the Respondent to have regard to the University of Nairobi Disability Policy which was issued after the University Pension Scheme 2007 Trust Deed and Rules which the Respondent had relied on to retire the Petitioner at 70 years as provided in the disability policy.
21. The policy document promulgated by an employer constitute part and parcel of the employment contract of each and every employee to which the Human Resource Policy document apply and failure to implement the terms of the petition in respect of retirement age, as a person with disability not only constituted a breach of his contract of employment but also was a violation of his right to be treated equally before the law and protection from discrimination in violation of the Constitution which provides:
 - 27(1) Every person is equal before the law and has the right to equal protection and equal benefits of the law”Article 41(1) of the Constitution also provides that “Every person has the right to fair labour practices.”
While Article 47(1) provided:
 - Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”.
22. The court finds that the Petitioner has the right to equal benefit as provided in the Respondent’s policy documents which constitute terms and conditions of service of every employee to which the policy document applies. It is also unfair labour practice for the Respondent to fail to honour, respect and implement its human resource policy document in place. The conduct constitutes unfair and unreasonable administrative action. The Respondent was misguided in its interpretation as stated in the replying affidavit that a general public service document or statute not specifically applicable to University of Nairobi Academic Staff held sway over specific human resource policy document developed by the Respondent and incorporated by law in their specific contracts of service as their terms and conditions of service.
23. Accordingly, the petition has merit. The Petitioner has proved that his rights set out in the petition and in particular under Articles 27, 41 and 47 were violated by the Respondent. The decision to deny the Petitioner extension of 5 years as mandated by the Respondent’s own policy document violated the Petitioner’s right to fair administrative action protected under Article 47(1) of the Constitution and elaborated under Fair Administrative Action Act 2015.
24. Accordingly, the court issues the following orders in favour of the petitioner against the Respondent: -
 - a. The Respondent violated the Petitioner’s right under Article 27(1) 41(1) and 47(1) of the Constitution of Kenya 2010.
 - b. An order of mandamus is issued directing the Respondent to review the Petitioner’s years of service by 5 years from the date he was retired in accordance with the direction of the Public



Service Commission in their letter dated the 28th of July 2022 so as to retire upon attaining 75 years of age.

c. General damages

General damages are awarded to the Petitioner for the violation of his constitutional rights aforesaid in the sum of Kshs. 3,000,000.00 to vindicate the violation meted on the Petitioner by the Respondent. The court has been guided by awards made by courts in similar decisions including the case of *George Otiemo Awiti vs National Police Commission & 3 others* (2024) KEELRC 2653 KLR where the court held that;

The Petitioner submitted that his rights under Article 27, 28, 29, 30, 35 and 47 were infringed upon...it is indeed true that he was treated in cruel and inhumane and undignified manner and in breach of Article 28 of the *Constitution*. The manner in which the disciplinary process was conducted also offends the requirements of Article 41 on a fair hearing and Article 47 on fair administrative action and was therefore a breach of the constitutional rights as submitted by the Petitioner'. The Court awarded the Petitioner ksh 5 million.

The court considers the lesser award of Ksh. 3,000,000.00 appropriate in the circumstances of this case.

d. The Respondent to pay the costs of the petition

DATED AT NAIROBI THIS 15TH DAY OF MAY 2025

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Kamau for Petitioner

Mr. Omondi for Respondent

Mr. Kemboi – Court Assistant

