



Mathew v County Government of Meru & 3 others (Cause E033 of 2024) [2025] KEELRC 1840 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1840 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E033 OF 2024
ON MAKAU, J
JUNE 25, 2025**

BETWEEN

EARNEST KARAGANIA MATHEW CLAIMANT

AND

COUNTY GOVERNMENT OF MERU 1ST RESPONDENT

**COUNTY SECRETARY COUNTY GOVERNMENT OF MERU 2ND
RESPONDENT**

PUBLIC SERVICE BOARD, MERU COUNTY 3RD RESPONDENT

MERU YOUTH SERVICE BOARD 4TH RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 17th September 2024, the claimant sought the following reliefs: -
 - a. A declaration that the revocation of the employment contract by the respondents is illegal and null and void.
 - b. Payment of Kshs.2,441,890/- to the claimant in accordance with the contract of employment plus interest at court rates AND any other relief the court may deem necessary.
 - c. Costs of this suit and interest at court rates.
2. The respondent denied liability and averred that the termination of the claimant's contract of service was for a valid reason and in conformity with the Human Resource Policies and Procedures Manual for the Public Service, 2016. As such, they averred that the claim for Kshs.2,442,890 was unmerited.



3. They further averred that the court lacks jurisdiction to hear and determine the suit under section 77 of the County Government Act and therefore the suit offends the doctrine of exhaustion. Consequently, the court was urged to dismiss the suit.

Facts of the case

4. The claimant was employed by the 1st respondent as Manager Igoji Youth Training Centre JG CPSB 05 Vide Appointment letter dated 26th August 2021. The appointment was on a non-renewable contract of 3 years from 6th September 2021 to 5th September 2024 terminable by either party by giving one month notice in writing. The appointment was done by the Meru Youth Services Board and the starting salary was Kshs.87,360 plus house allowance of Kshs.21,000 and commuter allowance of Kshs.12,000. He was also entitled to gratuity upon successful completion of the contract term.
5. The claimant served until his contract was prematurely revoked by the County Secretary vide letter dated 30th May 2023 on grounds that he entered into the employment contract of employment after attaining his mandatory retirement age of 60 years under the HR Policies and Procedures Manual for Public Service, 2016. The termination was made without prior notice or hearing.
6. According to the claimant, his appointment was done through a competitive process including public advertisement, in April 2021 shortlisting, interviews and then appointment on 26th August 2021. However, the respondents averred that the contract was illegal and void ab initio as he had attained the mandatory retirement of 60 years in 2019 and duly retired as a teacher. It further averred that the subsequent employment in the public service was fraudulent and as per clause 13(c) of his contract, he did not warrant prior notice of termination or payment of salary in lieu of notice.
7. During the hearing, the claimant testified as CW1 and called no witness and the 2nd respondent testified on behalf of all the respondents. Both sides adopted written statements and produced their respective bundles of documents.
8. In brief, the claimant's case was that his employment contract of three (3) years was terminated midway without prior notice and payment of terminal dues. He prayed for compensation and gratuity as per his statement of claim.
9. On cross examination, he admitted that he was born on 9th December 1959 and as at August 2021 when he was employed by the Respondents he was 62 years old. He further admitted that he had retired from the National Government and he is still receiving pension. He further admitted that clause 13(c) of his contract provided for termination without notice or payment of salary in lieu on certain instances.
10. He contended that he had a Bachelor's degree in Education Agriculture, Geography and Counselling. He further stated that he had some Managerial course but he did not produce any certificate even during the application for the job. He also admitted that he was not licensed for curriculum development and he was not registered as a member of any University. He was also not a lecturer of any University.
11. In re-examination, he contended that he presented all his professional certificates and CV when he applied for the job. He further contended that there was no requirement for membership to commission for Higher Education or requirement of training by Kenya Institute or Curriculum Development. He contended that he qualified for the job since he was a High School Principal for 13 years which was about Management of the learning institution.



12. He stated that the employer knew about his age before appointing him for three years. He further stated that clause 12 of the contract provided for payment of gratuity unless the appointment was terminated for gross misconduct.
13. RW1, Dr.Kiambi Atheru, the County Secretary Meru County stated that the Report by the Auditor General (Exh.D1) highlighted two employees who were employed while above the age of 60 years contrary to section D21 of the Human Resource Policies and Procedures Manual, 2016. He testified that a circular by the CPSB dated 19th November 2020 stated that the retirement age was 60 years as per the Government circular of 20th March 2009. He contended that the circular barred appointment on contract beyond the mandatory retirement.
14. He further testified that, he personally terminated the claimant’s contract on the basis of the said circular because there was no Board for the Meru Youth Centre to make any decision. He clarified that the Board was semi-autonomous and it was answerable to the County Executive.
15. He contended that the claimant was not paid salary in lieu of notice because his appointment was a fraud and void from the beginning. He was also not paid gratuity because he was receiving pension from the government.
16. On cross examination, he stated that he became aware of the claimant’s age in May 2023 and then he terminated the contract. He blamed those who appointed the claimant and failed to stop the illegality.
17. In re-examination, he contended that the illegal appointment was done by the previous County Government. He admitted that the contract was signed by the claimant and the Chief Executive Officer of the Youth Centre but there was no stamp by a lawyer although it was drawn by the County Attorney. He maintained that there was an illegality during recruitment which rendered the contract void ab initio.
18. After the hearing, both sides filed written submissions. I have carefully considered the pleadings, evidence and submissions. The respondents purported to raise the issue of exhaustion doctrine in the submissions which is too late since they subjected themselves to the court’s jurisdiction. The following issue fell for determination: -
 - a. Whether the termination of the claimant’s contract was unfair and unlawful.
 - b. Whether the claimant is entitled to the reliefs sought.

Unfair and unlawful termination

19. Section 45 (1) and (2) of the *Employment Act* provides that: -
 - “(1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - i. related to the employee’s conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and



(c) that the employment was terminated in accordance with fair procedure.”

20. It follows that for the termination of the claimant’s contract to pass muster, the respondents must prove that there was a valid reason and that a fair procedure was followed. The reason cited for the revocation of the contract was that the contract was contrary to law because it was entered into when the claimant was beyond the mandatory retirement age in public service.
21. The claimant admitted that he was employed while 62 years old. However, the claimant’s case is that his appointment was done after a competitive process and the employer was aware about his age as at the time of entering into the contract. He denied any wrong doing in the formation of the contract and maintained that he held the required qualifications.
22. I have carefully considered the above contentions. It is clear that the claimant’s contract was entered into when he was beyond the mandatory retirement age in the Public Service. The recruitment process was open and competitive. The employer was fully aware of the claimant’s age when it appointed him.
23. The matter of employing staff who were beyond the retirement age by the respondents was highlighted by the Auditor General. There is also a circular dated 19th November 2020 by the CPSB advising on the mandatory retirement age as 60 years in line with the Government circular dated 20th March 2009. Finally, section D21 of the HR policies and Procedures Manual, 2016 provides that 60 years is the mandatory retirement age in the Public Service.
24. Having considered the evidence by the respondents and the admission by the claimant that he was 62 years when he was appointed by the respondents, I am satisfied that the respondents have proved that the termination of the claimant’s contract of employment was grounded on a valid reason.

Procedure followed

25. The respondents admitted that no prior notice or salary in lieu of notice was paid to the claimant. He was not even accorded any hearing before the termination as required under section 41 of the [Employment Act](#). RW1 testified that the claimant was not entitled to procedural fairness before termination because the appointment was void ab initio.
26. In *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, where the court held that:

“ 14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers’ human resource manual or as set out in the [Employment Act](#) or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee’s guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”



27. In *Donald Odeke v Fidelity Security Limited* (2012) eKLR Ndolo J held that

“In the case of *Isaac Matongo Mogoi v Municipal Council of Nakuru & Another* (HC Misc case No.810 of 2005) Koome J (as she then was) held that an employee facing disciplinary action must be given adequate opportunity to respond to any charges before taking actions against them.

I agree with the learned Judge and add that it does not matter what offence the employee is accused of. If the employee is not heard the termination is *Ipsa facto* unfair.”

28. In *Kenfreight (EA) Ltd v Benson K Nguti* [2016] eKLR, the Court of Appeal held that: -

“It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair, that reason related to the employee’s conduct, capacity and compatibility or is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance with fair procedure...

Apart from issuing proper Notice according to the contract (or payment in lieu of Notice as provided), an employer is duty-bound to explain to an employee in the presence of another employee or union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service.”

29. In this case, the claimant’s contract of service was terminated without giving him prior notice and without according him a hearing. The procedure followed was not in accordance with equity and justice as it violated the right to fair administrative action contrary to Article 47 and 236 of the *Constitution* and section 41 and 45 (2) (c) of the *Employment Act*. Consequently, I find and hold that the termination/ revocation of the contract of employment was unfair and unlawful within the meaning of section 45 of the *Employment Act*, 2007.

Reliefs

30. In view of the foregoing conclusion, the claimant is entitled to declaration that the revocation of his contract by the respondents was unfair.

31. The claimant further prayed for Kshs.2,441,890 being salary for June 2022 to September 2024. No evidence was adduced to support that claim which refers to a period after revocation of his contract. Consequently, I decline to grant the salary for a period he did not serve.

32. The last prayer sought was for costs of the suit which I have to allow because the claimant has succeeded in proving that the revocation of his contract was unfair within the meaning of section 45 of the *Employment Act*, 2007.

DATED, SIGNED AND DELIVERED AT NYERI THIS 25TH DAY OF JUNE, 2025.

ONESMUS N MAKAU

JUDGE

Order



This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

