



**Dahiye v Kenya Accreditation Service & another (Employment and Labour Relations Cause E377 of 2024) [2025] KEELRC 1668 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1668 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E377 OF 2024**

**BOM MANANI, J**

**JUNE 5, 2025**

**BETWEEN**

**ABDIKHER MOHAMUD DAHIYE ..... CLAIMANT**

**AND**

**KENYA ACCREDITATION SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**THE BOARD OF DIRECTORS KENYA ACCREDITATION SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The dispute between the parties relates to whether the Respondents’ decision to retire the Claimant from employment at the age of sixty (60) years violated his right as a person living with disability to work until the age of sixty five (65) years. It also relates to whether the Respondents’ failure to promote the Claimant to the position of Principal Accreditation Officer, Medical Laboratories was actuated by bias and discrimination against him.
2. Whilst the Claimant contends that the Respondents illegally retired him before he had attained the age of sixty five (65) years, the Respondents aver that the decision to retire him at the mandatory retirement age of sixty (60) years was because he had not registered his disability within the timelines which the law provides. Further, whilst the Claimant asserts that the Respondents discriminated against him whilst filling the position of Principal Accreditation Officer, Medical Laboratories, the Respondents contend the position was filled competitively and therefore fairly.

**Claimant’s Case**

3. The Claimant avers that he is currently an employee of the 1<sup>st</sup> Respondent serving in the position of Senior Accreditation Officer. He contends that in the course of his service to the 1<sup>st</sup> Respondent, he developed a medical condition which resulted in disability to him. As a result, he contends that he was registered by the National Council for Persons Living with Disabilities as a person living with disability.



He further avers that this development meant that his retirement age was thereby elevated from the mandatory retirement age of sixty (60) years to the retirement age of persons living with disabilities, that is to say, the age of sixty five (65) years.

4. The Claimant contends that despite this reality, the 1<sup>st</sup> Respondent's Chief Officer wrote to him on 17<sup>th</sup> October 2022 informing him that he was to retire at the age of sixty (60) years. He contends that the 1<sup>st</sup> Respondent's Chief Officer wrote this letter despite being aware that he (the Claimant) was living with disability and was thus entitled to retire at age sixty five (65) and not sixty (60).
5. The Claimant avers that he wrote to the 1<sup>st</sup> Respondent on 21<sup>st</sup> October 2022 informing it that he was entitled to retire at the age of sixty five (65) years. However, he contends that the Respondents did not respond to his letter. As such, he contends that he was forced to escalate the matter to the Public Service Commission (hereafter referred to as the Commission) for resolution.
6. The Claimant avers that the 1<sup>st</sup> Respondent exerted pressure on him to proceed on terminal leave as he awaited the retirement date. He avers that due to this pressure, he proceeded on terminal leave as from 1<sup>st</sup> April 2023 as he awaited the decision of the Commission on his grievance.
7. The Claimant contends that it took the Commission four (4) months to address his matter. He avers that during this period, the 1<sup>st</sup> Respondent stopped his salary.
8. The Claimant avers that by the Commission's letter dated 2<sup>nd</sup> August 2023, it informed the 1<sup>st</sup> Respondent that it (the Commission) had approved his request to retire at the age of sixty five (65) years. He contends that upon the 1<sup>st</sup> Respondent receiving the aforesaid letter, it (the 1<sup>st</sup> Respondent) wrote to him on 14<sup>th</sup> December 2023 reinstating him into service to be retired at age sixty five (65).
9. The Claimant avers that the impugned retirement was illegal since it contravened the provisions of the Public Service Commission Regulations, 2020 on retirement of persons living with disabilities. As such, he contends that he is entitled to be paid salary for the four months that he was not paid (April 2023 to July 2023) as he sought to resolve the matter with the assistance of the Commission.
10. The Claimant further avers that during the time he was on what he describes as the illegal terminal leave, the 1<sup>st</sup> Respondent advertised the position of Principal Accreditation Officer, Medical Laboratories. He contends that he applied for the position since he was qualified for it.
11. The Claimant avers that despite the fact that he was qualified for the position, the Respondents did not consider his application. In his view, the Respondents' conduct demonstrated bias and discrimination against him.
12. The Claimant thus contends that the Respondents acted illegally, unfairly and unconstitutionally in failing to consider him for the position of Principal Accreditation Officer, Medical Laboratories and trying to retire him at the age of sixty (60) years. As such, he claims damages of Ksh. 2,924,609.60 being equivalent to twelve (12) months' salary for the new position, had his application have been considered favorably.
13. On the basis of the foregoing, the Claimant seeks the following orders:-
  - a. A declaration that the 1<sup>st</sup> Respondent's letter purporting to retire him at the age of sixty (60) years was illegal, unfair and amounted to constructive discrimination of a person living with disability.
  - b. That the Respondents be ordered to pay him damages equivalent to twelve (12) months' salary for discrimination.



- c. That the Respondents be ordered to pay him salary for the months of April 2023 to July 2023 totaling Ksh. 974,869.90.
- d. An order of injunction barring the Respondents from interfering with his employment unless otherwise terminated.
- e. Interest.
- f. Costs of the case.

### **Respondents' Case**

- 14. The Respondents do not admit the claim. They have filed a response disputing all of the Claimant's averments.
- 15. The Respondents deny that they discriminated against the Claimant as he alleges or at all. They contend that the reason why the Claimant was asked to proceed on retirement at the mandatory retirement age of sixty (60) years is that he had not complied with the legal requirements that would have entitled him to retire at the extended age of sixty five (65) years.
- 16. The Respondents contend that they issued the Claimant with a letter dated 17<sup>th</sup> October 2022 informing him that he was due to retire on 1<sup>st</sup> April 2023 when he was to have attained the mandatory retirement age of sixty (60) years. They contend that the letter was in conformity with clause 13.7 of the 1<sup>st</sup> Respondent's Human Resource Policy and Procedures Manual.
- 17. The Respondents contend that the Claimant did not register his disability at least three years before he attained the mandatory retirement age as required by law in order to qualify to retire at the age sixty five (65) years. As such, they contend that the 1<sup>st</sup> Respondent had no power to extend his retirement to sixty five (65) years notwithstanding that he was a person living with disabilities.
- 18. The Respondents aver that they wrote to the National Council for Persons Living with Disabilities on 24<sup>th</sup> August 2022 seeking guidance on the Claimant's case but the council wrote back on 31<sup>st</sup> August 2022 intimating that it only grants extension of the retirement age in cases where the applicants have complied with regulation 70 (2) (b) and (4) of the Public Service Commission Regulations.
- 19. The Respondents contend that in view of the position expressed on the matter by the National Council for Persons Living with Disabilities, they could not extend the Claimant's retirement age to sixty five (65) years since he had registered his disability on 21<sup>st</sup> January 2021, less than three (3) years before he attained the mandatory retirement age of sixty (60) years.
- 20. The Respondents contend that when the Claimant was informed about his retirement, he appealed the decision to the 1<sup>st</sup> Respondent's Chief Executive Officer (CEO). They contend that in response, the 1<sup>st</sup> Respondent's CEO convened a meeting involving him, the Claimant and the 1<sup>st</sup> Respondent's Human Resource Manager to discuss the matter. They contend that during the meeting, the Claimant was notified that because he had not complied with the registration timelines under regulation no. 70 (1) of the Public Service Commission Regulations, he was not eligible to have his retirement age extended to sixty five (65) years.
- 21. The Respondents contend that the Claimant was advised that if he was dissatisfied with the information which he was given at the aforesaid meeting, he should appeal the decision in writing to the 1<sup>st</sup> Respondent's CEO to enable the CEO to escalate the matter to the Commission. However, they contend that he did not appeal the decision as advised.



22. The Respondents contend that the Claimant stopped reporting to the workplace from the beginning of April 2023 despite having not cleared with the 1<sup>st</sup> Respondent. They contend that the Claimant did not respond to the 1<sup>st</sup> Respondent's officers' inquiries seeking to establish his whereabouts.
23. The Respondents aver that it later transpired that the Claimant had decided to write directly to the Commission on the matter without involving them and in disregard of the procedure set out under clause 12.2 of the 1<sup>st</sup> Respondent's Human Resource Manual. As such, they posit that they were unaware of the fact that the Commission was considering the matter at the instance of the Claimant.
24. The Respondents aver that they only came to learn that the Claimant had approached the Commission over the case when the Commission wrote to the 1<sup>st</sup> Respondent's CEO on 2<sup>nd</sup> August 2023 informing him that it had approved the Claimant's request to retire at sixty five (65) years. They contend that it is upon this advisory that they reinstated the Claimant with effect from 2<sup>nd</sup> August 2023.
25. The Respondents contend that between 1<sup>st</sup> April 2023 when the Claimant stopped reporting to his workstation and 2<sup>nd</sup> August 2023 when he was reinstated on the strength of the Commission's advisory, he had not been at work. Further, they contend that his whereabouts were unknown to them.
26. The Respondents deny the Claimant's assertion that he was retired in order to deny him the opportunity to be promoted to the position of Principal Accreditation Officer. They contend that the aforesaid position was filled competitively as required by law and the 1<sup>st</sup> Respondent's Human Resource Manual. They further contend that although the Claimant applied, was shortlisted and interviewed for the position, he was not successful and was duly notified of this development.
27. The Respondents contend that the Claimant invoked the court's jurisdiction prematurely. As such, they contest the court's jurisdiction.

### **Issues for Determination**

28. After evaluating the pleadings and evidence by the parties, the court considers the following to be the issues for determination:-
  - a. Whether the court is seized of the requisite jurisdiction to determine the dispute.
  - b. Whether the Claimant met the requirements of the law which would have entitled him to retire at the age of sixty five (65) years as opposed to the mandatory retirement age of sixty (60) years.
  - c. Whether the Claimant was unfairly denied the opportunity to be appointed as the 1<sup>st</sup> Respondent's Principal Accreditation Officer, Medical Laboratories.
  - d. Whether the Claimant was a victim of discrimination.
  - e. Whether the Claimant is entitled to the reliefs which he seeks in the amended Memorandum of Claim.

### **Analysis**

29. In their response to the claim and final submissions, the Respondents have contested the court's jurisdiction to entertain the dispute between the parties. Jurisdiction is a pivotal matter in any legal contest and cannot be wished away. As such, once an objection is raised to the court's jurisdiction, it (the court) must determine the objection before it can delve into the merits of the case.
30. The Respondents contend that the 1<sup>st</sup> Respondent's Human Resource Manual provides for internal dispute resolution procedures which the Claimant ought to have invoked before he approached the



court with the case. In this context, they contend that the suit was presented to court prematurely. As such, they posit that the court lacks the requisite jurisdiction to entertain the matter.

31. The fact that parties to a dispute have alternative dispute resolution mechanisms which they can invoke before approaching a court of law does not, ipso facto, mean that the court's jurisdiction to entertain the dispute between them is thereby ousted. The presence of such mechanisms only postpones but does not obliterate a court's jurisdiction to entertain the dispute (see *Laban v Machakos County Assembly Service Board & 2 others* [2025] KEELRC 1160 (KLR)).
32. The foregoing being the case, it is up to the parties to invoke the available alternative dispute resolution procedures in lieu of court action. They ought to do so by moving the court to stay the case before it in order for the matter to be referred to the available alternative dispute resolution processes (see *Laban v Machakos County Assembly Service Board & 2 others* (supra)).
33. Ordinarily, a court of law does not move suo moto. As such, it will not descend into the arena of the controversy by insisting that the parties submit to the alternative dispute resolution mechanisms before they can approach it. However, if the parties (or one of them) raise the matter, the court must decide whether to refer the matter to the available alternative dispute resolution mechanisms in line with the requirements of article 159 of *the Constitution*. Once the parties move the court to refer the dispute to the existing alternative dispute resolution forum, it (the court) should normally defer to the constitutional dictate which requires that the existing alternative dispute resolution forum considers the dispute in the first instance (*Laban v Machakos County Assembly Service Board & 2 others* (supra)).
34. The fact that the presence of alternative dispute resolution mechanisms does not obliterate the court's jurisdiction is self-evident in this court's rules. Rule 56 of the Employment and Labour Relations Court (Procedure) Rules, 2024 permits a litigant whose dispute is required to be processed through alternative dispute resolution mechanisms to nevertheless approach the court for interim reliefs if he cannot get such reliefs from the alternative dispute resolution forum. The rule further provides that the court may refer the matter to the alternative dispute resolution forum after it has attended to the request for interim reliefs. However, it should not strike out the matter.
35. Essentially, from the above provision, is clear that the mere fact that parties to a dispute have alternative procedures for resolving it does not oust the jurisdiction of the court over the matter. If the court did not have jurisdiction over the matter, it will not be required to stay it. Rather, it will be expected to strike it out.
36. The foregoing being the case, I arrive at the conclusion that the mere fact that the 1<sup>st</sup> Respondent's Human Resource Manual provides for internal dispute resolution mechanisms did not obliterate this court's jurisdiction to entertain this matter. If the Respondents desired to pursue the aforesaid internal dispute resolution procedures, they should have applied for stay of these proceedings. However, they did not do so. As such, the court is duty bound and has jurisdiction to resolve the matter.
37. The Claimant contends and the Respondents do not dispute the fact that the Claimant is a person living with disability. As a matter of fact, the Claimant is registered with the National Council for Persons with Disabilities as a person living with disabilities. According to the evidence on record, this registration was done on 21<sup>st</sup> January 2021 when the Claimant was issued with a registration card.
38. A person living with disabilities in Kenya is entitled to retire from employment at the age of sixty five (65) years. This entitlement is donated by regulation 70 (1) of the Public Service Commission Regulations, 2020 which, inter alia, provides as follows:-



“Subject to *the Constitution*, section 80 of the Act, any other relevant written law or a specific government policy, the mandatory retirement age in the public service shall be:-

- a. Sixty years;
- b. Sixty-five years for persons with disability.....”

39. However, in order to benefit from this provision, one must have registered as a person living with disability at least three (3) years before attaining the mandatory retirement age of sixty (60) years. This requirement is anchored on regulation 70 (2) of the aforesaid regulations which, inter alia, provides as follows:-

“A public officer shall be considered for retirement as a person with disability if the officer:-

- a. Has a disability of a permanent nature that can be perceived by significant sectors of the community and the disability has a substantial impact on the ability of the officer to carry out ordinary day to day activities;
- b. Has been registered in the public body’s human resource database as a person with disability for at least three years before the date of retirement:”

40. In recognition of the fact that one may suffer disability less than three years to the mandatory retirement age of sixty (60) years thus making it impossible for him to register as a person living with disabilities at least three years before the mandatory retirement age in order to benefit from the aforesaid extended retirement period, the law empowers the Commission to exempt such person from the three year requirement. It provides as follows:-

“Provided that the Commission may consider cases of disability that occur less than three years before the date of retirement and (the person) is registered by the National Council for Persons with Disabilities and has a tax exemption certificate from the Kenya Revenue Authority as a person with disability.”

41. It appears that the above provision only empowers the Commission to exempt persons who suffer disability less than three years to the mandatory retirement age from being excluded from benefiting from the extended retirement age of sixty five (65) years so long as they have registered with the National Council for Persons Living with Disabilities. The rule does not entitle the Commission to exempt persons who have had disability for more than three years before attaining the mandatory retirement age but who did not register the disability at least three years before the mandatory retirement age from being disqualified from benefiting from the extended retirement age of sixty five (65) years.

42. The court is aware that regulation 70 (4) of the aforesaid regulations provides that a person is not entitled to be retained in the public service on account of disability beyond the mandatory retirement age of sixty (60) years without the approval of the Commission. On the face of it, this provision may be construed as empowering the Commission to grant exemptions to the timelines for registration of disability under regulation 70 (2) for persons who suffered disability more than three years before attaining the mandatory retirement age but omitted to register the disability within the aforesaid timelines. However, such interpretation will be misleading. In my view, the power that the Commission enjoys under regulation 70 (4) of the regulations to allow a person with disability to serve beyond the mandatory retirement age of sixty (60) years is limited to the power to exempt individuals who incur the disability less than three (3) years before they attain the mandatory retirement age.

43. The position that I express above has found favour in a number of judicial pronouncements. In *Kinyua Felix v Ministry of Education & 2 others* [2021] KEELRC 2069 (KLR), the court declined the



Petitioner's plea to retire at the age of sixty five (65) years because he, inter alia, had not registered his disability with the relevant bodies at least three (3) years before he attained the mandatory retirement age of sixty (60) years. Similar sentiments were expressed in *Aminga v Cabinet Secretary Ministry of Education, Science and Technology & 2 others* [2023] KEELRC 32 (KLR) and *Njaggah v Board of Directors, Water Services Regulatory Board & 2 others* [2023] KEELRC 1340 (KLR).

44. From the pleadings and evidence on record, it is apparent that the Claimant does not contend that he suffered the disability in question less than three years before he attained the mandatory retirement age of sixty (60) years and that he is therefore entitled to exemption from the requirement of registration of the disability at least three years to the mandatory retirement age in order to benefit from the extended retirement age of sixty five (65) years. Rather, his case is that since he is a person living with disability, he is entitled to retire at the age of sixty five (65) years irrespective of when he registered his disability. With respect, I do not understand the law to be postulating this position.
45. The evidence on record shows that the Claimant registered his disability on 21<sup>st</sup> January 2021. According to the 1<sup>st</sup> Respondent, the Claimant was to attain the mandatory retirement age of sixty (60) years on 1<sup>st</sup> April 2023 (see the 1<sup>st</sup> Respondent's letter to the Claimant dated 17<sup>th</sup> October 2022).
46. From 21<sup>st</sup> January 2021 when the Claimant registered his disability to 1<sup>st</sup> April 2023 when he attained the mandatory retirement age is a period of approximately two (2) years and (3) three months. As such, he registered his disability less than three (3) years before he attained the mandatory retirement age.
47. Having registered his disability less than three (3) years to the mandatory retirement age of sixty (60) years, the Claimant failed to meet the threshold under regulation 70 (2) of the Public Service Commission Regulations, 2020 in order to benefit from the extended retirement age of sixty five (65) years. As such and in my respectful view, the 1<sup>st</sup> Respondent was entitled to retire him on 1<sup>st</sup> April 2023 when he attained the mandatory retirement age of sixty (60) years.
48. The Claimant's case not being that he suffered the disability in question less than three (3) years before he attained the mandatory retirement age of sixty (60) years, I do not think that the Commission was entitled to extend his retirement age to sixty five (65) years. This is because, in my view, the exemption power granted to the Commission under the regulations relates to cases of disabilities that occurs less than three (3) years to the mandatory retirement age.
49. Nevertheless, I note that the Commission wrote to the 1<sup>st</sup> Respondent on 2<sup>nd</sup> August 2023 informing it that it had approved the Claimant's request to retire at the extended retirement age of sixty five (65) years notwithstanding that he had registered his disability less than three (3) years to the mandatory retirement age. In reaction to this advisory, the 1<sup>st</sup> Respondent reinstated the Claimant back into its employment through its letter dated 14<sup>th</sup> December 2023 and permitted him to work until he attains the extended retirement age of sixty five (65) years.
50. The evidence on record further shows that the Claimant resumed duty on the basis of the foregoing interaction between the 1<sup>st</sup> Respondent and the Commission. As such, notwithstanding the irregularities which I have alluded to earlier, the Claimant has since acquired an accrued right to work until he attains the age of sixty five (65) years. Consequently, the 1<sup>st</sup> Respondent may not terminate his contract of service on account of attainment of the mandatory retirement age of sixty (60) years. As matters stand now, the Claimant is entitled to continue working for the 1<sup>st</sup> Respondent until he attains sixty five (65) years unless his contract of service is otherwise terminated.
51. I do not agree with the Claimant's contention that the Respondents acted maliciously when they informed him that he was to retire on 1<sup>st</sup> April 2023. The Respondents did so because the Claimant was going to be sixty (60) years, the mandatory retirement age, by this date and he had not registered



- as a person living with disabilities within the timelines set by regulation 70 of the Public Service Commission Regulations, 2020 in order to benefit from the extended retirement age of sixty five (65) years. As such, the Respondents' communication was based on the law as it is.
52. Were it not for the fact that the Respondents acted on the impugned advisory by the Commission thereby giving the Claimant's employment a new lease of life, the court would not have upheld the Claimant's contention that he was entitled, under the circumstances, to remain in employment until age sixty five (65). However, that is now water under the bridge. In any event, the court has not been invited to nullify the subsisting contract between the parties.
53. The Claimant prays that the Respondents be ordered to pay him salary for the period between April 2023 and July 2023. However, I do not think that he is entitled to this claim.
54. In my view, when the Claimant attained the mandatory retirement age on 1<sup>st</sup> April 2023, he was lawfully retired by the Respondents. Although he is a person living with disabilities, he did not register his disability at least three (3) years before he attained the mandatory retirement age in order for him to benefit from the extended retirement age of sixty five (65) years. As such, the Respondents were entitled to retire him once he attained the mandatory retirement age on 1<sup>st</sup> April 2023.
55. I am of the firm view that when the Claimant was retired on 1<sup>st</sup> April 2023 on account of attainment of the mandatory retirement age, his contract of service was effectively and validly extinguished. The contract was only revived in August 2023 when the Commission gave its advisory to extend his retirement age to sixty five (65) years. As such, he cannot claim salary for April 2023 to July 2023 when his contract had been validly closed.
56. The Claimant contends that the Respondents unlawfully purported to convert the period he was away from work into leave of absence without pay in order to avoid paying him. Yet, his contract of service and the 1<sup>st</sup> Respondent's Human Resource Manual do not provide for such leave. As such, he asserts that the purported leave was illegitimate and he ought to be paid back pay to cover the aforesaid duration.
57. I agree that clause 6.9.1 in the Respondent's Human Resource Manual on unpaid leave cannot be interpreted to cover the circumstances under which the Claimant was away from work between 1<sup>st</sup> April 2023 and 1<sup>st</sup> August 2023. As such, the Respondents cannot validly invoke it to contend that the Claimant was on unpaid leave.
58. However, in my previous analysis in the decision, I have stated that the Claimant's employment with the 1<sup>st</sup> Respondent validly ceased from 1<sup>st</sup> April 2023 when he attained the mandatory retirement age of sixty (60) years. This is because registration of his disability had happened less than three years before that time. As such, it was not compliant with the timelines that are set in regulation 70 of the Public Service Commission Regulations, 2020. Consequently, the Respondents could not have validly extended his retirement age to sixty five (65) years. As such, he legitimately remained out of employment for reason of having attained the mandatory retirement age until the 1<sup>st</sup> Respondent revived his contract in August 2023 on the basis of the advisory by the Commission.
59. In effect, the Claimant was validly out of the 1<sup>st</sup> Respondent's employment between 1<sup>st</sup> April 2023 and 1<sup>st</sup> August 2023. As such, irrespective of how the Respondents justified their refusal to remunerate him for this period, the fact of the matter is that he was not in the 1<sup>st</sup> Respondent's employment over that time and is therefore not entitled to draw remuneration in respect of the impugned period.



60. The Claimant has alleged discrimination by the Respondents against him. He contends that the Respondents unfairly denied him the opportunity to be appointed as the 1<sup>st</sup> Respondent's Principal Accreditation Officer, Medical Laboratories.
61. During the trial and in his final submissions, the Claimant asserted that the individual who was promoted to the impugned position was his junior in service and that she was related to one of the interview panelists. He further asserted that the successful candidate had not benefited from internal career progression since she was an outsider. He also claimed that the candidate did not meet the minimum academic qualifications for the position. However, when he was cross-examined on these allegations, he was not able to provide cogent evidence to back them.
62. The Respondents deny the allegations. They contend that the position of Principal Accreditation Officer, Medical Laboratories was filled competitively. They also contend that the person who was recruited into the position had the requisite academic qualifications. As such, they contend that the Claimant's assertions are unfounded.
63. I have looked at the available evidence on the matter. It is apparent that when the aforesaid position was advertised, the Claimant applied for it. It is also evident, as the Respondents contend, that the Claimant was interviewed for the position. These facts are self-evident from the email dated 22<sup>nd</sup> August 2022 from the 1<sup>st</sup> Respondent to the Claimant and the 1<sup>st</sup> Respondent's letter to the Claimant dated 18<sup>th</sup> August 2022.
64. The two documents allude to an interactive recruitment process in respect of the impugned position. They also speak to the fact that although the Claimant sought to be considered for the position, he was unsuccessful in this endeavor.
65. These two documents confirm that the impugned position was filled competitively after the shortlisted candidates, including the Claimant were interviewed for it. The foregoing being the position, I do not see the basis for the Claimant's assertion that he was discriminated in the process that led to selection of the individual to occupy the position. In the premises, I arrive at the conclusion that the assertion regarding discrimination is without basis and is rejected.
66. Although the Claimant asserted that the successful candidate was related to one of the interview panelists, he did not provide cogent evidence to back this claim. Further, although he claimed that the successful candidate did not have the requisite academic qualifications for the position, he did not provide cogent evidence to back the claim. As such, the court rejects these assertions.
67. According to the evidence on record, the Claimant's position of Senior Accreditation Officer, Medical Laboratories falls under Job Grade KENAS 5. This is evident from the 1<sup>ST</sup> Respondent's letter to the Claimant dated 30<sup>th</sup> June 2020 (see document number 2 in the Claimant's bundle of documents dated 20<sup>th</sup> May 2024). As such, the position of Principal Accreditation Officer, Medical Laboratories which he applied for around the time he was retired was a higher position. The Claimant confirms this fact by stating that he viewed the new position as a promotion.
68. According to the career development guidelines in the 1<sup>st</sup> Respondent's Human Resource Manual, the 1<sup>st</sup> Respondent is required to give priority to its employees when filling vacancies in Job Grades KENAS 5 to KENAS 9. However, vacancies in Job Grades KENAS 1 to KENAS 4 are supposed to be externally advertised and competitively filled (see clauses 2.15.3 and 2.15.4 of the Manual).
69. As seen earlier, the Claimant was seeking to move from Job Group KENAS 5 to a new position which he considered would have been a promotion. In effect, the new position must have been from Job Group KENAS 4 upwards to Job Group KENAS 1 all of which can only be filled through external



advertisement and competitive recruitment. As such, the Claimant's contention that the successful candidate for the impugned position was irregularly sourced from outside the corporation and lacked internal experience is misplaced.

70. On the basis of the foregoing findings on the various issues that have been discussed, the court finds that the Claimant is not entitled to any of the reliefs that he seeks in these proceedings. As such, the entire claim fails.

#### **Determination**

71. After considering the pleadings, the evidence and submissions by the parties and the applicable law, the court finds that the Claimant's case is unmerited.
72. As such, it is dismissed.
73. However, since the 1<sup>st</sup> Respondent willingly reinstated the Claimant back into employment on the basis of the advisory by the Public Service Commission, the Claimant's contract of service was revived from 2<sup>nd</sup> August 2023 and he acquired an accrued right to continue in employment until he attains the retirement age of sixty five (65) years. As such and going forward, unless he is otherwise lawfully removed from employment, his services with the 1<sup>st</sup> Respondent cannot be terminated on account of attainment of the mandatory retirement age of sixty (60) years.
74. Each party to bear own costs for the suit.

**DATED, SIGNED AND DELIVERED ON THE 5<sup>TH</sup> DAY OF JUNE, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondents

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

**B. O. M. MANANI**

