



**Sigei v Kenya Pipeline Company Limited (Employment and Labour Relations
Petition E030 of 2022) [2024] KEELRC 749 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 749 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E030 OF 2022**

**MN NDUMA, J
MARCH 20, 2024**

BETWEEN

MARY WAIRIMU SIGEI PETITIONER

AND

KENYA PIPELINE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The facts of the petition filed by Mary Wairimu Sigei, the petitioner against the respondent is simple and straight forward. The petitioner was appointed by the respondent as subordinate staff on 16th July 1997 and was confirmed to the position on 1st February 1999.
2. That at the time of her appointment, the petitioner provided to the respondent her personal data that indicated that she was born in 1962.
3. That in the year 2000, the petitioner applied to the Office of the Registrar of Births and her birth date was rectified in the register to indicate 1968 as her date of birth and not 1962. The petitioner applied for and obtained a Kenyan passport No. AK013793 which indicates that her date of birth was 29/12/1968.
4. On 22/8/2018, the petitioner wrote to the respondent seeking correction of her employment details to reflect her true date of birth as 1968.
5. That the respondent subsequently issued a letter dated 10/1/2022 to the petitioner informing her that she was due to attain the mandatory retirement age of sixty years with effect from 29/3/2022 having been born as per the company records in 1962. The respondent gave the petitioner three months' notice of retirement.
6. The petitioner has produced the certificate of birth issued on 17th January, 2014, indicating that the petitioner was born on 29/12/1968.



7. The petitioner also produced a letter dated 18/10/2019 written to the respondent requesting for correction of her records in the Human Resource Department which reflected that she was born on 29th March 1962 to the new date reflected in the identification card that she was born on 29th December 1968.
8. The petitioner had earlier on 1/10/2019, provided an affidavit sworn by her indicating the correction of her date of birth to 29th December 1968. The petitioner further produced a copy of her national identification card issued on 16/6/2020 indicating her date of birth to be 29/12/1968.
9. The respondent wrote to the petitioner on 24/6/2020 advising her to apply for a new national identification card reflecting her actual year of birth as is shown in the company records.
10. The respondent duly referred the petitioner to the letter dated 10/01/2022, which indicated the petitioner had attained the age of 60 years hence the suit.
11. The petitioner seeks the following orders:-
 - a. An order of the court quashing the contents of the letter from the respondent to the petitioner dated 10th January 2022.
 - b. That the petitioner be allowed to work in the respondent's company until the mandatory retirement age of 60 as provided by law.
 - c. In the alternative, the respondent do pay to the petitioner all dues owing until she attains the mandatory retirement age of 60 as per her official government documents.
 - d. Costs of the petition
 - e. Any other relief that is deemed fit by the Honourable Court.
12. The petition is opposed vide a replying affidavit of one Caroline Wahogo the Senior Human Resource Officer of the respondent who deposes that the petitioner applied for a job at the respondent's company on 8/17/1997 stating that she was a widow with four (4) children.
13. That the respondent appointed the petitioner as a subordinate staff on 21/7/1997. The petitioner filed an employment form where she indicated her date of birth to be 12/6/1962. The petitioner also presented a national identification card reflecting the same date of birth.
14. That in the application the petitioner indicated that she attended Mungaria Primary School in the year 1969 to the year 1975.
15. That it was impractical therefore for the petitioner to have been born in the year 1968 since this would have meant that she went to primary school at the age of one (1) year.
16. That the petitioner later provided a copy of her primary school leaving certificate which indicates that she joined Kangonde Primary school in January 1974 in class one upto 1980.
17. The respondent deposes further that it was impossible for the petitioner to have attended Kangonde Primary School from 1974 to 1980 and at the same time attended Mungaria Primary School from the year 1969 to 1975.
18. That on 22/8/2018, the petitioner applied to the respondent to amend in the employment records her year of birth to 29/12/1968.
19. On 1/10/2019, the petitioner wrote another letter to the respondent for the same change to be effected. The second letter had a sworn affidavit purporting to correct her date of birth.



20. On 9/1/2020, the petitioner recorded a statement with the respondent explaining the disparity in her date of birth was because she lived with her grandmother in Nyeri and wanted to visit her mother in Nairobi and so gave an older date of birth so that she could obtain an identity card to travel to Nairobi. That this was a requirement then.
21. Earlier, the petitioner had indicated in the letter dated 1/10/2019 that the error was made at high school.
22. That the petitioner was clearly being economical with the truth. That by a letter dated 13/11/2019, the Department of Civil Registration confirmed the petitioner's date of birth was 1962 and that the replacement of national identity card showing 1968 as the year of birth did not march with her master copy record and advised the petitioner to correct her year of birth to 1962. The respondent wrote to the petitioner informing her accordingly as earlier stated in the judgment.
23. The respondent deposes that the change of year of birth by the petitioner from 1962 to 1968 was done fraudulently with the sole purpose of extending her date of retirement.
24. That by a letter dated 14/1/2022, the petitioner wrote to the respondent requesting for additional five working years after being issued with her retirement notice. The request was in acknowledgment that she was about to attain the 60 years mandatory retirement age.
25. That on 17/2/2022 the petitioner furnished the respondent with a medical report indicating that she had been diagnosed with having a herniated disc occasioning lower back pains.
26. That the petition is based on fraudulent information and it be dismissed with costs. The petitioner and the respondent filed further affidavits in which they reiterated their respective cases and the court has duly considered them.
27. The parties filed written submissions which the court has considered together with the deposition by the parties and list of authorities furnished to the court.
28. The issue for determination are:
 - i. Whether the petitioner has proved on a balance of probability that she was born in 1968 and not 1962 and therefore had not attained retirement age when she was notified of mandatory retirement by the respondent.
 - ii. Whether the petitioner is entitled to the reliefs sought.
29. From the outset the court notes that by a notice of motion dated 26/5/2023, the petitioner sought to amend the petition by introducing a further claim that the petitioner was entitled to extension of her retirement age upto the age of 65 years by virtue of her being a person living with disability.
30. The application was amended by consent of the parties and the amended petition was deemed as filed upon payment of the requisite filing fees.
31. The parties included in their respective submissions the issue of the extension for determination and these issues were canvassed in the supplementary affidavit filed by both the petitioner and the respondent. The court shall therefore also consider whether or not the petitioner was entitled to retire at 65, being a person with disability as a third issue for determination.
32. The petitioner has relied wholly on the affidavit evidence and the parties were not cross-examined to weigh the veracity of their depositions. However, the discrepancies pointed out by the respondent in



the manner the petitioner went about and provided reasons for the alleged errors in the certificate of birth of her date of birth depict a person who is wholly economical with the truth.

33. This is demonstrated by the contradictory evidence provided by the petitioner as to the period when she attended different primary schools; the contradictory reasons given to the national registration bureau and to the respondent for the alleged errors of the date of birth in the national identification card and even the manner in which she applied to be registered as a person with disability on realization that the date of retirement was imminent.
34. The petitioner does not come across from the entire facts placed before court as a person telling the truth. It is evidently clear to the court that indeed the petitioner was born in 1962 and not in 1968 as she later sought to demonstrate.
35. It is the considered finding by the court that the respondent was justified to disregard the latter documentation introduced by the petitioner to rectify her employment record in considering the mandatory retirement date of the petitioner.
36. The court wholly accepts the evidence by the respondent that even the evidence adduced by the petitioner to have her retired at the age of 65 years as a person with disability left a lot to be desired and was suspect and more likely than not devoid of any truth.
37. The court relies on the case of *Abdinoor Sheikh Takoy v Kenya National Highways Authority* [2020] eKLR in which the court held that:

“I find the petitioner has not proved any breach of his constitutional right to warrant the grant of any prayers sought with the petitioner. Specifically, the petitioner failed to prove that her date of birth as contained in her records of employment held by the respondent and which were voluntarily provided by her at the time of employment was not her actual date of birth.”

38. This applies mutatis mutandis to the present case of the petitioner.
39. With regard to the issue of extension of retirement age to 65 years the court finds that the petitioner registered as a person living with disability upon being issued with a mandatory retirement notice on 10th January 2022. Emily Thathi in the further affidavit demonstrates that the petitioner started this process on 10/1/2023 after being served with the notice of mandatory retirement.
40. That the petitioner had not earlier informed the respondent of any disability up until 17/2/2022.
41. That section 70 of the *Public Service Commission (PSC) Regulations, 2020* which provides for extension of mandatory retirement given to person with disability was not complied with by the petitioner.
42. The section provides:
 - “70(a) the mandatory retirement age in the public service shall be:
 - i. Sixty years;
 - ii. Sixty-five years for persons with disability
 - (b) A public officer shall be considered for retirement as a person with disability if the officer:-
 - (i) 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.

- (ii) Has been registered in the public body’s human resource database as a person with disability at least three years before the date of retirement.”

43. The court finds from the facts placed before court that the petitioner had not satisfied the two requirements under section 70 of *PSC Regulations, 2020* and the respondent was justified to retire the petitioner at age 60. The Court is fortified in its decision by the case of *Amiga v Cabinet Secretary Ministry of Education Science and Technology and 2 others* [petition – E020 of 2022 [2023] KEELRC 32 9KLR) (19th January 2023) where it was held:-

“In the evidence before court nothing shows that the petitioner was Captured in the Ministry of Education Science and Technology’s database where she served as having been living with a disability.”

44. This applies fully to the petitioner who worked for a long time as a normal person and nothing was captured in the record of the respondent that the petitioner was a person living with disability until after she had been served with a notice of mandatory retirement at age 60.

45. In the final analysis the court finds that the petition lacks in merit in all aspects. The petition is dismissed in its entirety.

46. In consideration of the long working relationship between the petitioner and the respondent and the amity of ability, the court holds each party to bear their own costs of the suit.

DATED AT NAIROBI THIS 20TH DAY OF MARCH 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Kinaro for petitioner

Mr. Odongo for respondent

Mr. Kemboi Court Assistant

