



**Wanyalika v Kenya Pipeline Limited (Cause 88 of 2019)
[2024] KEELRC 2823 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2823 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 88 OF 2019
B ONGAYA, J
NOVEMBER 15, 2024**

BETWEEN

ENG BRAMWEL JUMA WANYALIKA CLAIMANT

AND

KENYA PIPELINE LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the amended memorandum of claim dated 02.02.2023 through Okwach & Company Advocates seeking the following:
 - a. A declaration that the respondent unfairly and unlawfully terminated the claimant’s employment constructively and therefore illegal.
 - b. A declaration that the forced early retirement made under duress is voidable.
 - b) 3 months’ salary in lieu of notice (Kshs. 574,000/- x 3) at Kshs.1,722,000/-
 - c. The claimant be paid 40 months’ salary constituting the remainder of his employment to retirement (574,000/- x 40) at Kshs. 22,960,000/-
 - d. An order directing the respondent to pay the claimant withheld salary during suspension and salary for the month of March 2016:
 - December 2015.....Kshs. 192,500/-
 - January 2016.....Kshs. 192,500/-
 - February 2016.....Kshs. 192,500/-
 - March 2016.....Kshs. 335,323/-



- e. An order directing the respondent to pay the claimant pension contribution per the respondent's Retirement Benefits Scheme (and by consent order at the hearing this prayer was withdrawn).
 - f. An order directing the respondent to pay the claimant leave for 96 working days (574,000/- x 30days) x (96days/ 5days) x 7 = Kshs. 2,563,866.67.
 - g. Compensation for constructive unfair and unlawful termination of employment being 12 months' salary at Kshs. Kshs. 6,888,000/-
 - h. General damages for coercion, mistreatment and harassment.
 - i. Costs of the claim and any other order the Court may find fit to award.
2. The claimant averred that he was employed as an Engineer in 1993 by the respondent vide a letter dated 28.04.1993 referenced PE/RE/1016. He was thereafter posted to Nakuru from September 1993 and posted back to Nairobi in 1997. He was later promoted to the position of Senior Engineer (I&C) in October 1998 based on the respondent's promotional principles to be the Principal Assistant to the Chief Engineer I&C. In 25.09.2009, he was promoted to the position of Engineering Manager and his entitlements were spelt out in the promotional letter. He pleaded that out of confidence in him, he was on various occasions appointed acting manager in the absence of the substantive Managing Director (MD).
 3. The claimant also pleaded that his salary and benefits were increased over time and that at the time he was suspended, he was being paid: basic salary at Kshs. 385,000/-; house allowance at Kshs. 80,000/-; commuter allowance at Kshs. 10,000/-; responsibility allowance at Kshs. 20,000/-; entertainment allowance at Kshs. 25,000/-; and security allowance at Kshs. 54,000/-, all totalling to Kshs. 574,000/.
 4. It was the claimant's averment that his terms of employment were further defined and specifically provided by the respondent's Staff Rules and Regulations, which among others provided that his employment was permanent and pensionable. That he diligently discharged his duties with the respondent devoid of any complaints and disciplinary issues per his employment contract. During his employment, he received various commendations both from his peers and seniors and the respondent's performance also improved tremendously.
 5. The claimant's further case was as follows:
 - a. He began receiving attacks from the respondent's management in 2009 upon his promotion to the position of Head of Department as Engineering Manager, which attacks caused him to appear before Parliament at one point.
 - b. Some members of the respondent's management in cohorts with its board of directors created very harsh and uncondusive environment for the claimant to work in. He was not allowed to freely perform his duties and was subject to constant attacks from the respondent.
 - c. He was accused of nepotism and irregularly causing his appointment to the position of Engineering Manager but was later exonerated from the said accusations.
 - d. He is convinced that the respondents, out of malice, intimidation and cruelty, caused live bullets to be delivered to him at work in an envelope accompanied by a condolence letter. He reported the matter to the Industrial Area Police Station vide OB No. 51/18/6/2014 but investigations on the same have never been concluded. The Directorate of Criminal Investigations Officer at the said police station recommended to the respondent that the



claimant be provided with security but the respondent declined. He has therefore been living in fear because of the respondent's actions, which frustrated his employment.

- e. The respondent suspended the claimant from employment in 2015 on the basis that he had been charged in court in Nairobi ACC Case No. 19 of 2015, which charges were later withdrawn and have never been preferred to date.
 - f. The claimant's suspension was followed by irregular intimidation letters from the Chairman of the respondent's Board of directors who, under the Staff Rules and Regulations, lacked authority to send him a show cause letter. In the illegal and irregular show cause letter, the Board Chair copied the acting MD who was the one vested with authority to discipline the claimant. The Board Chair also copied the Permanent Secretary Petroleum and the Cabinet Secretary Ministry of Energy and Petroleum; to intimidate and frustrate the claimant's employment as such internal disciplinary letter had never been copied to the Ministry.
 - g. Further, some board members at one point expressly told the claimant that his only option was to take early retirement and leave the respondent's employment, as it no longer needed his services.
 - h. He consequently developed sickness attendant to stress caused by the respondent and with undue pressure from the respondent's board of directors, he opted for early retirement that effectively bundled him out of the company.
 - i. The respondent quickly accepted his application for early retirement but refused, declined and ignored paying him his dues associated with the retirement. It also took away his accrued leave days of 103 days and he was further unable to service his loan of Kshs. 5,600,000/- at KENPIPE Sacco and Barclays Bank. Additionally, the respondent refused and declined to pay him the half salary withheld during his suspension despite acknowledging the same in the Acceptance Letter dated 08.03.2016.
 - j. Because of the respondent's actions, the claimant has been unfairly forced to lose 40 months remaining to his retirement.
 - k. The respondent's aforesaid actions constituted constructive, unfair and unlawful termination of the claimant's employment and unfair labour practices. It has declined to admit liability thereby rendering this suit necessary.
6. The respondent's response to claim is dated 09.05.2019 and filed through Murugu, Rigoro & Company Advocates. The respondent urged as follows:
- i. The allegations as pleaded in the claim regarding the respondent's board are ambiguous and unsubstantiated.
 - ii. The claimant was taken through the process of natural justice based on complaint raised on his position and to which he was heard and exonerated.
 - iii. It is not the respondent's mandate to offer security to citizens as there is a body mandated in law to offer security to all Kenyan citizens depending on the nature of request.
 - iv. The claimant was placed on suspension on 20.11.2015 and the reasons of his suspension were stated in the letter of suspension. He was subsequently issued a show cause letter on 20.01.2016 requiring a response and inviting him to appear before the respondent's board for his defence. Thereafter, the claimant out of his own volition and in line with clause 8.5.2 of the Staff Rules and Regulations, applied for early retirement from his employment.



- v. The alleged malice and perceived intimidation as raised by the claimant is speculative and unsubstantiated. He has raised allegations against specific individuals not before the Court to defend themselves, and, the respondent is not privy to such allegations.
 - vi. The medical documents provided by the claimant in support of his claim are for 25.02.2013 for treatment received in 2011/2012, results dated 07.06.2014 and a sick note for 7th to 13th June 2014, which dates are completely unrelated to the claimant's suspension and eventual voluntary retirement. Furthermore, the said documents do not indicate how the said illnesses are unconnected to the acts or omissions of the respondent herein.
 - vii. Regarding the concern on the claimant's leave days, the respondent had informed him that his leave days had accrued to 72 days and not the 103 days he claims and had given him a breakdown of the calculations.
 - viii. The claimant applied for voluntary early retirement from the respondent with full knowledge that he had a pending facility with his Sacco and bank and therefore the same cannot be passed onto the company in terms of liability. As the claimant eventually voluntarily left employment, he is the author of his own misfortune in the purportedly lost 40 months remaining until his retirement.
7. The respondent further filed a reply to amended memorandum of claim dated 15.02.2021 through Murugu, Rigoro & Company Advocates. It averred that the claimant's acts or omissions led to him breaching the company's Staff Rules and Regulations, which rules and regulations he was fully aware. It asserted that on 20.11.2015, its board passed a resolution to suspend the claimant together with others following their charge in Court under the Anti-Corruption and Economics Crimes Act on 13.11.2015. The respondent thus prayed that the claimant's claim be dismissed with costs to the respondent.
 8. Parties tendered their evidence before the Court and thereafter filed their respective submissions. The Court has considered all material on record and returns as follows.
 9. To answer the 1st issue, there is no dispute that parties were in a contract of service which was terminated by claimant's resignation letter of 27.01.2016. The claimant wrote that he was voluntarily taking an early retirement from respondent's employment per clause 8.5.2 of the respondent's Staff Rules and Regulations (SRR). The clause states, "Employees on attaining the age of 50 years may opt to retire voluntarily any time thereafter or may be required to retire by the Company, with reasons. Choosing to retire or being retired under the 50 year provision will be subject to the applicable notice period for termination of employment. Authority for retirement under this provision must be obtained from the Managing Director." The respondent replied to the claimant's resignation letter by its letter dated 08.03.2016 stating that the claimant's request for early retirement had been accepted by the Board and the early retirement would take effect on 08.03.2016. It was noted that he had retired with immediate effect while he was required to give three months' notice or make payment of three months' salary in lieu of notice. In that, consideration the respondent's replying letter stated that as at 08.03.2016 the claimant had 72 leave days that would be applied towards notice and the claimant to pay remainder of 18 days' salary for the notice. In view of the early retirement he would be paid salary up to 08.03.2016; half basic salary withheld during suspension period; and payment of pension contributions in line with the KPC Retirement Benefits Scheme (Trust Deed & Rules).
 10. To answer the 2nd issue, the Court finds that the separation by way of agreement whereby the respondent accepted the claimant's request to retire per clause 8.5.2 of SRR did not amount to unfair termination. In his testimony, the claimant stated, "I sent a letter of early retirement on 27.01.2016. I



sent the letter. Clause on early retirement was cited. Those were my words.” The Court finds that the claimant must be bound accordingly. While alleging that certain Board members asked him to resign or retire early, the claimant stated that the same Board members are the same ones who had urged that he be exculpated from the alleged wrongdoing. The Court finds that while there was a pending disciplinary case, the petitioner opted to retire early and his request was granted as the contract of service terminated by parties’ mutual agreement that the claimant retires early per the provisions of SRR on early retirement. The case for unfair constructive termination and compensation in that regard is found unjustified and will collapse accordingly. While making that finding, the Court has considered the submission that the claimant’s constructive dismissal occurred when his half salary due while on suspension was withheld. However, the claimant did not urge that much at request for early retirement but simply invoked clause 8.5.2 of the SRR and thanked the respondent for the opportunity to serve. The claim for constructive termination must fail as the claimant is bound by his own express reason and circumstance of the separation and as urged for the respondent.

11. The 3rd issue is on remedies. The Court returns as follows:
 - a. The Court has found that there was no unfair constructive termination and no compensation may issue in that respects.
 - b. The claimant testified that his concerns about the leave days had been replied to in terms of the letter of acceptance for early retirement. Again, the respondent’s witness (RW), Emily Thathi, Senior Human Resource Officer, testified that exhibit C41 was the claimant’s March 2016 payslip and it showed 96 outstanding leave days. On a balance of probability, the claimant is entitled to the days as per submissions on his behalf making Kshs.2, 563,866.67 as prayed for the claimant.
 - c. The claimant retired early, he was the one required to give three months’ termination notice, and the letter of acceptance of his request clearly explained how the outstanding leave days were to be applied to recover the notice period days due from him under clause 8.5.2 of the SRR. The claim for three months’ salary in lieu of notice is found unjustified.
 - d. The terms of acceptance of the early retirement were that the half salary withheld during the suspension would be paid. RW testified that the half salary had not been paid to the claimant because he had not gone to clear. The amount is awarded as prayed for December 2015 to March 2016 making Kshs.912, 823.00.
 - e. The claim for general damages for coercion, mistreatment and harassment must fail. It is submitted that the claimant was harassed and mistreated when he allegedly received rounds of bullets in an envelope at his office. However, the claimant has not shown how the respondent was culpable, directly or vicariously, for that breach of security. The claimant testified he reported the incident to the police but he did not provide an investigation report flowing from his report to the police and showing if the respondent was implicated. While invoking the respondent’s duty of care per section 6(d) and (e) of the *Occupational Safety and Health Act* No. 15 of 2007, the claimant has not shown that by that breach of security he suffered an injury or disease and in any event, such would fall for assessment and award under the *Work Injury Benefits Act*, 2007. The prayer is found unjustified.
 - f. The claim for 40 months payment pending attainment of mandatory retirement age must fail. After the separation by agreement on early retirement, the contract of employment lapsed and the Court finds that the claimant could not validly earn under the contract. Nothing unfair has been attributed to the respondent for the separation and then impairing the claimant’s capacity to engage gainfully after retirement.



g. As the claimant has significantly succeeded, the respondent will pay costs of the suit.
In conclusion, judgment is hereby entered for the claimant against the respondent for:

1. The respondent to pay the claimant a sum of Kshs.3, 476,689.67 by 01.03.2025 failing interest at court rates to be payable thereon at court rates from the date of filing the suit until full payment.
2. The respondent to pay the claimant's costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 15TH NOVEMBER 2024.**

**BYRAM ONGAYA
PRINCIPAL JUDGE**

