



**Rotich v KCB Bank Kenya Limited (Cause E099 of 2024)
[2024] KEELRC 13366 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13366 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E099 OF 2024
J RIKA, J
DECEMBER 9, 2024**

BETWEEN

JAMES KIPKOECH ROTICH CLAIMANT

AND

KCB BANK KENYA LIMITED RESPONDENT

RULING

1. In his application dated 4th December 2024, the Claimant seeks an order restraining the Respondent, its servants and /or agents, from retiring, or threatening to retire the Claimant at the age of 60, pending the hearing of the Claim.
2. The application is presented under a certificate of urgency, and founded on the Claimant’s affidavit sworn on 4th December 2024, and on grounds listed in the face of the application.
3. He explains that he was employed by the Respondent in 1989, as support staff. He later became a driver. He suffered a road accident, resulting in permanent disability, while in the service of the Respondent, at the age of 58 years.
4. He was due to retire at the age of 60 years. He was issued a notice of retirement by the Respondent, to take effect today, 9th December 2024. He is asking the Court to restrain the Respondent from retiring him, on the date retirement is due to take effect.
5. He states that he was certified as a person living with disability, by the National Council for Persons Living with Disabilities, in a letter dated 29th November 2023.
6. He submits that his retirement age should be extended to 65 years, in accordance with Public Service Regulations, 2020.



The Court Finds: -

7. It is not clear why the Claimant, having received the notice of retirement, waited until the date retirement is due to take effect, to move the Court for restraining orders.
8. He has not clarified in his application, if the Respondent is a public service entity; and, whether he is himself a public servant, to whom the *Public Service Regulations* 2020, apply.
9. His letter of appointment dated 25th October 1989 does not suggest that he was employed in the public service. That letter does not refer to extension of retirement age. The collective agreement which is mentioned in the letter of appointment, is not exhibited. The Court does not therefore have a way of knowing, if the collective agreement, adopts the disability affirmative action, contained in the *Public Service Regulations*, 2020.
10. In the circumstances, it is imprudent for the Court to certify the application as urgent; issue ex parte orders extending the Claimant's retirement age to 65 years, on the date he is due to leave employment; and all based on a human resource instrument of doubtful application, which the Claimant has borrowed from the public service.

It is ordered: -

- a. The application and the entire pleadings shall be served upon the Respondent.
- b. The Respondent shall file and serve its response to the application and the Claim, within 14 days of service.
- c. Mention on 29th January 2025.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, THIS 9TH DAY OF DECEMBER 2024.

JAMES RIKA

JUDGE

