



Union of National Research Institutes Staff of Kenya v Kenya Industrial Research & Development Institute (Cause 577 of 2019) [2023] KEELRC 2737 (KLR) (24 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2737 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 577 OF 2019
DKN MARETE, J
OCTOBER 24, 2023**

BETWEEN
**UNION OF NATIONAL RESEARCH INSTITUTES STAFF OF
KENYA CLAIMANT**
AND
**KENYA INDUSTRIAL RESEARCH & DEVELOPMENT
INSTITUTE RESPONDENT**

JUDGMENT

1. This matter was originated vide a statement of claim dated 22nd August, 2019. The issues in dispute are herein cited as;
 1. Unprocedural and Early (premature) Retirement of Mr. Thomas Apondi Titi;
 2. Failure by KIRDI Management to formalize Mr. Titi’s retirement effective 27th November, 2015; and
 3. Failure by KIRDI Management to pay prorata leave to Mr. Titi upto the due date of retirement.”
2. The Respondent in a Respondents Memorandum of Response dated 19th September, 2023 denies the claim and prays that this be dismissed with cost.
3. The Claimant’s case is that the parties hereto have a subsisting CBA providing a resolution mechanism for their disputes.
4. The Claimant’s further case is that pursuant to Clause 2.9 (i) of the Parties CBA, the compulsory retirement age for Thomas Apondi Titi, a non researcher was fifty-five (55) years BUT, per the Authoritative Government Circular Ref: OP. CAB. 2/7A dated 20th March, 2009 annexed herewith



and marked as UNRISK-02, Mr. Thomas ApondiTiti was entitled to retired after reaching his full age of sixty (60) years as from his year of birth.

5. Again, according to the National Identity Card (ID) No. 4848414 herewith annexed and marked as UNRISK-03, it is evident that Mr. Thomas ApondiTiti was born in the Conventional Calendar year 1955, and without the exact date of birth indicated in that National Identity Card (ID), so, computation for the reckoned year starts from 1st January upto 31st December of the Calendar year. Hence, Mr. Thomas ApondiTiti conventionally became sixty (60) years old as at 12:00 midnight of 31stDecember, 2015/1st January, 2016; and as per Issue in dispute 2 by claiming birth date to be 26th November, 1955, he was to reach sixty (60) years of age at 12:00 midnight of 26th/27th November, 2016. He was therefore afflicted with one year of pre-motion and brought retirement.
6. The Claimant's other case is that by the fact of his unprocedural and wrongful early retirement, the grievant has a right to benefits at the rare of the last remuneration of 1st January, 2015 as follows;
 - a. Twelve (12) months gross pay for loss of earnings caused by the Premature, Wrongful Retirement, less Tax Payable and PAYE.
 - b. Monthly Pension Totals for the twelve (12) months of his Premature and Wrongful Retirement;
 - c. Six (6) months Pay in lieu of the parties CBA requisite Retirement Notice, less Tax Payable and PAYE;
 - d. Pending leaves prior to, and during the twelve (12) months of the Premature and Wrongful Retirement, plus the respective leave allowances due;
 - e. Cost of Travelling on termination of Appointment;
 - f. Twelve (12) months NSSF Standard monthly contributions; and,
 - g. Twelve (12) months gross Pay as Maximum Compensation for the Premature and Wrongful Retirement, less Tax Payable and PAYE.
7. There was an error in calculating his retirement age. This is expressed as follows;
 14. In the letter terminating Thomas ApondiTiti on account of "Retirement On Age Grounds" dated 10th February, 2015 appearing as annex UNRISK-04,it is evident that the Respondent "Respected" the Authoritative Government Circular dated 20th March, 2009 (annex UNRISK-02 herewith) to retire him (Thomas ApondiTiti) at the "Reviewed" age of sixty (60) years. "But, by fact of miscalculation of the years, he (thomas apondi titi) was afflicted with a twelve (12) months of wrongful and premature retirement at his full age of fifty-nine (59) years old".
8. He claims as follows;
 - a. Twelve (12) months Nett Pay for loss of earnings during the period of the Unfair, Premature and Wrongful Retirement – Kshs.373,960.00 with interest at the prevailing rate of 14% per annum from 1st January, 2015 until settlement in full.
 - b. Six (6) months Nett Pay in Lieu of the CBA Retirement Notice – Kshs. 190,980.00 with interest at the prevailing rate of 14% per annum from 1st January, 2015 until settlement in full.
 - c. Twelve (12) months Pension Totals – Kshs.86,160.00 with compound interest of 6% per annum from 1st January, 2015 until settlement in full.



- d. Pending Leaves prior to, and during the period of the Unfair and Wrongful Retirement, together with Leave Travelling Allowance = Kshs.47,210.00 with interest at the prevailing rate of 14% per annum from 1st January, 2015 until settlement in full.
 - e. Cost of Travelling on termination of appointment – Kshs.50,000.00 with interest at the prevailing rate of 14% per annum from 1st January, 2015 until settlement in full.
 - f. Twelve (12) months of the Unfair and Wrongful Retirement NSSF standard Contribution – Ksh.4,800.00 with a compound interest at the rate of 6% per annum from 1st January, 2015 until settlement in full.
 - g. Twelve (12) months Salary as a Maximum Compensation for the Unfair and Wrongful Retirement – Kshs.373,960.00 with interest at the prevailing rate of 14% per annum from the date of Judgment until settlement in full.
9. The Respondent’s case is a denial of claims;
 10. Her case is that the cause of action in this Trade Dispute suit is the Issue in dispute 1: Unprocedural and Early (Premature) Retirement of Mr. Thomas Apondi Titi in the Respondent’s letter Ref:0458/2 dated 10th February, 2015 annexed herewith and marked as UNRISK-04 wherein his employment was terminated on account of “Retirement On Age Grounds”, having served the Respondent in Job Grade 3 with a Clean Record Of Employment from 1st October, 1992.
 11. Her further case is that the Conciliator’s efforts to resolve the dispute by conciliation was not successful, hence the Certificate Of A Dispute Unresolved By Conciliation dated 16th January, 2018 annexed herewith and marked as UNRISK-07. The matter having not been resolved by conciliation, is pursuant to Section 73 of the Labour Relations Act, 2007 now before this Honourable Court for determination.
 12. Issues;
 1. Whether the grievant is entitled to reliefs sought.
 2. Who bears the costs of the cause.
 13. It is the Claimant submissions that the grievant was supposed to retire upon attaining the age of 60 on 1st January, 2016. However contrary to the law he was retired early by receiving a letter dated 10th February, 2015. The letter indicated that he was supposed to retire on 1st January, 2015, this was after working for almost 2 months from the supposed date of 1st January, 2015.
 14. The Respondent was quiet in submissions.
 15. However, the Claimant falls short of establishing a case of erroneous retirement from employment. This is not demonstrated on a balance of probabilities or preponderance of evidence. I therefore find that the Claimant is not entitled to the relief sought.
 16. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 24TH DAY OF OCTOBER 2023.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Mokaya instructed by Mokaya Omoyo & Associates Advocates for the Claimant.



Miss Okondo instructed by J.A Guserwa & Company Advocates for the Respondent.

