



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njuno v Wells Fargo Limited (Cause E6454 of 2020)  
[2023] KEELRC 3123 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3123 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6454 OF 2020  
DKN MARETE, J  
NOVEMBER 22, 2023**

**BETWEEN**

**LEONARD MUCHIRI NJUNO ..... CLAIMANT**

**AND**

**WELLS FARGO LIMITED ..... RESPONDENT**

**JUDGMENT**

**\*\*\*ARGUMENTS**

1. This matter was originated by way of a Memorandum of Claim dated 13th November, 2020. The issues in dispute are herein;
  1. Compensation for unlawful termination
  2. Terminal benefits
  3. 18 days pay for each of the 7 years worked
  4. Severance pay
  5. Overtime dues
  6. Leave days not taken
  7. 1 month pay in lieu of notice
2. The respondent in a statement of Response dated 10th August, 2021 denies the claim and prays that the same be dismissed with costs.

The Claimant's case is that on May 26, 2010 he was employed by the Respondent as a Cash Officer at a basic salary of Kshs.35,000.00 all inclusive.



The Claimant's further is that on the March 1, 2015 the claimant was promoted to the position of Assistant Vault Treasurer at a basic salary of Kshs.65,000 per month together with other benefits which was later increased to Kshs. 70,000/=.

3. The Claimant's other case is that his performance was per and was promoted and had several salary increments.

The Claimant avers that on the August 31, 2017 he received a letter from the Respondents informing him that his employment had been terminated effective 31st December, 2017. It is his further case that on this date he was issued with a Notice of Retirement which was to take effect on same date. This was before attaining his retirement age of 65 years.

4. It is ultimate case that the circumstance under which he was retired does not conform to the requirement of the contract of employment existing between the company and the claimant, the Employment Act and modern labour practices.

He prays thus;

- b. Compensation for unlawful termination.
- c. compensation for forced retirement
- d. Terminal benefits
- e. 18 days pay for each of the 7 years worked
- f. Severance pay
- g. Overtime dues
- h. Leave days and Public Holidays not taken
- i. Cost of the suit.
- j. Interest at Commercial Rates
- k. Any other relief that this Honourable Court may deem fit to award.

5. The Respondent denies the claim.

Her case is as follows;

- a. The retirement age was not specified under the claimant's contract of employment dated May 26, 2010.
- b. By a letter dated December 20, 2010 the respondent wrote to Bank of Africa indicating that the claimant's retirement age was sixty (60) years.
- c. Be a letter dated December 20, 2012 Metropolitan Teachers Sacco was notified that the claimant's retirement age was sixty five (65) years. There being no adjustment in position stated in 2010, the reference to 65 years was clearly in error.
- d. The matter of retirement age became a contractual term in 2015. Clause 11 of the claimant's contract dated February 26, 2015 clearly provides that the claimant's retirement age is sixty (60) years.

6. The Respondent denies that there was an implied assurance on retirement age as alleged or at all. There was an express provision on retirement contained in the claimant's contract of employment dated



February 26, 2015. Further, the claimant's debt obligations are between the claimant and the lender. The respondent was not a guarantor or a party to the loan agreement. He was therefore retired lawfully and paid all his terminal dues in accordance with his contract of service.

In the penultimate, the respondent denies that the claimant is entitled to any of the reliefs sought or at all and states that;

- a. There is no basis for the declaratory order sought. The claimant's employment came to an end after attaining the contractual retirement age.
  - b. The claimant's employment was lawfully brought to an end. The claim for compensation for unlawful termination and alleged forced retirement is without basis.
  - c. The claimant was paid his terminal dues. No particulars on any further entitlements have been provided to enable the respondent to respond.
  - d. The claim for 18 days' pay for each year worked is denied.
  - e. The claim for severance pay is without basis as the claimant was not declared redundant.
  - f. The claim for overtime payment is denied and lacking in any basis.
  - g. The claimant had used up his annual leave entitlement before his employment came to an end.
7. This matter came for hearing on April 18, 2023 where the parties testified in reiteration of their respective cases.
1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
  2. Whether the Claimant is entitled to the relief sought.
  3. Who bears the costs of this suit.
8. The 1st issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant submits a case of termination of employment and wishes to rely on authority of section 43 of *Employment Act*, 2007 in that the Respondent did not give any reasonable grounds for termination for termination and or varying his retirement age.
- It is also his case that the Respondent did not comply with section 41(1) and 42(1) and 44(3) or (4) in that he was not given a valid reason for termination or awarded an opportunity to be heard.
9. The Respondent submits that the contract dated February 25, 2015 provided for retirement for age of sixty (60) years and that the letter written to the Sacco in 2012 as approve of retirement age was in error. She seeks to rely on the authority of *Victoria Commercial Bank Ltd v Intra Africa Assurance Co Ltd* [2000] eKLR where the court held that;
- Where parties have embodied the terms of their contract in a written document, the general rule is that verbal evidence is not allowed to be given so as to add to or subtract from, or in any manner to vary or qualify the written contract. This rule is often known as the "parol evidence" rule. Its operation is not confined to oral evidence, but extends to extrinsic matters in writing such as drafts, preliminary agreements and letters of negotiation."
10. Parol evidence therefore be utilize to vary the terms of a written contract inter partes.



The circumstance of this case bring out a case against the Claimant. This is because he has failed to establish a case of wrongful retirement as pleaded. He falls short of establishing his case in accordance with section 47(5) of the [Employment Act](#), 2007 which mandates him so to do.

47(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

11. The Respondent's case overwhelms the Claimant's case on a preponderance of the evidence. It is also the more probable of the two. I therefore find a case of lawful termination of employment and hold as such.

The 2nd issue for determination whether the claimant is entitled to the relief sought. He is not. Having lost a case of unlawful termination of employment, he becomes disentitled to the relief sought.

I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 22ND DAY OF NOVEMBER 2023.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Chengecha instructed by Wangai Nyuthe & Company Advocate for Claimant

Mr. Alosa instructed by Hamilton Harison & Mathews for the Respondent.

