



**Karani v Attorney General (Employment and Labour Relations Cause
2228 of 2016) [2023] KEELRC 3306 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3306 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2228 OF 2016
MN NDUMA, J
DECEMBER 20, 2023**

BETWEEN

ROBERT THORONJO KARANI CLAIMANT

AND

THE HONOURABLE ATTORNEY GENERAL RESPONDENT

JUDGMENT

1. The suit was filed by the claimant on 2nd November 2016 against the Attorney General seeking the following reliefs:
 - a. A declaration that he is entitled to payment of retirement benefits/ service gratuity after working 20 years for the National Police Service
 - b. An order for computation and payment of the Retirement Benefits/ Service gratuity due to him.
 - c. Costs of the suit

Facts of The Case

2. The facts giving rise to the dispute are not contested and are therefore common cause.
3. These facts are that the claimant was a police officer, enlisted in the Kenya Police Service as a Police Constable *vide* appointment letter dated 17th September 1990. He served in the police force for 23 years, attaining the rank of Senior Sergeant.
4. On the 30th September 2013, the claimant issued a notice of his intention to retire from the National Police Service. On 16th October 2013, he followed through with an application for retirement under the 12-20 year rule.



5. Through letter dated 18th November 2013, the claimant's application for early retirement was approved and set to taking effect from 1st December 2013. Subsequently, the claimant was duly cleared and issued with the Government Liability Clearance Certificate and a Certificate of Discharge. The Kenya Police Service then proceeded to process the claimant's claim of pension. However, the same was declined by the Pension Department on the grounds that the claimant was in contravention of Section 6 of the [Pensions Act](#).
6. Consequently, the claimant wrote a letter to the Director of Personnel, Kenya Police Service on the 25th of September 2015 whereby he followed up on his claim for pensions. The letter was copied to the Director of Pensions. None the less, the said letter allegedly failed to elicit any response from the two officers listed by the respondent in this suit.
7. The court has by a ruling dated 19th May, 2022, found that the Employment and Labour Relations Court has jurisdiction to resolve this dispute it being a clear matter of interpretation of employment law relating to accrual of pension - under section 26 of the [Pensions Act](#) Cap 189 Laws of Kenya which provides that payment of pension to public officers under early retirement scheme is applicable to officers who had served for more than 12 years but had not exceeded 20 years.
8. On the other hand, the [National Police Service Act](#) Cap 84 of 2011 under which officers wishing to go on early retirement made their application for retirement under Section 76(2) thereof provided that,

“If an officer retires from service after more than 20 years of service but before attaining 50 years, the benefits payable shall be calculated as if the officer had retired after twenty years of service.”
9. The claimant had attained 23 years at the time he applied for early retirement and this was the reason the Pensions office declined to process his pension on the argument that early retirement under the [Pensions Act](#), only applied to officers who had served between 12 years and 20 years and not more.
10. The claimant having already been retired by the Police Service could no longer go back to service yet the authority that is responsible to process and pay his pension decided to deny the claimant his pension.
11. The claimant clearly was caught between a rock and a hard place. His retirement had been lawfully processed by the Police Service under Section 76(2) of the [Police Act](#) 2011 and now he was being denied lawfully accrued pension under a technicality contained in an older statute being The [Pensions Act](#), Cap 189 of the Laws of Kenya.
12. The claimant was under the terms of his employment, permanent and pensionable and was issued with certificate of discharge from service dated 17th December 2013 duly written “Cause of Discharge Retirement under 12-20 year Rule.”
13. The question that arises is whether by merely exceeding 20 years of service disqualified an officer from being paid pension under Section 76(2) of the [Pensions Act](#).
14. The court maintains what it stated in its Ruling dated 19th May 2022, that, this stalemate is between the National Police Service and the Retirement Benefits Authority and that conflict cannot be to the detriment of an employee who was lawfully retired from service in terms of the law directly applicable to him being the [National Police Service Act](#), 2011 which law was enacted on a latter date and clearly the



legislature had that provisions of Section 26 of Pensions Act, Cap 189 in mind when it enacted Section 76(2) of the National Police Service Act, 2011 which provides:-

“If an officer retires after service for more than twenty years and before attaining fifty years, the benefits payable shall be calculated as if the officer had retired after twenty years of service”
(Emphasis added).”

15. The above latter provision is as clear as day light and the Retirement Benefits Authority is bound by it. The Authority is bound by all laws of Kenya collectively and cannot purport to hide under a narrow interpretation of an older statute under which it directly operates.
16. Accordingly, the court finds that the claimant who retired after 23 years’ service should have his pension computed and paid as if the claimant had retired after 20 years of service. This is a command by our legislature and the Retirement Benefits Authority cannot wiggle out of it under any pretext.
17. The respondent and the Retirement Benefits Authority are directed to implement the decision of the National Police Service to retire the claimant and process his pension with effect from 17th December 2013, the date of his discharge. The pension payable is with interest from 17th December 2013 till payment in full.
18. The costs of the suit is to be taxed and be paid by the Retirement Benefits Authority and the respondent.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2023

Appearances

Mr. Mapee for claimant

Ms. Oyugi for respondent

Ekale Court Assistant

