



**Mohamed v Hakika Transport Services Limited (Cause 296 of 2018)
[2022] KEELRC 1365 (KLR) (8 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1365 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 296 OF 2018**

**B ONGAYA, J
JULY 8, 2022**

BETWEEN

SITI HAMISI MOHAMED CLAIMANT

AND

HAKIKA TRANSPORT SERVICES LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim on 03.05.2018 through Kisiwa Koja and Company Advocates. The claimant pleaded as follows. The respondent employed her on 01.11.2003 as a messenger at a gross of Kshs. 23, 500.00 as at the time of termination. It is the mutual case and evidence of the parties that sometimes in 2017 the claimant fell ill. For three months she was unwell she was paid half monthly salary. In December 2017 she had fully recovered and she resumed duty and she was paid full salary. It is her case and testimony that on 05.01.2018 she was summoned and told the boss had decided she should to go home and stop working. Further, she telephoned the boss called Abdulkhakim who told her she was working slowly. It her case and testimony that he further told her to go away and get paid terminal dues. That was on 05.01.2018 and later on 06.01.2018 she was summoned by telephone to collect a termination letter of 06.01.2018. Further, she was asked to write a letter that she was unable to work so that she could get paid her terminal dues.
2. The letter of 06.01.2018 was titled as notice of termination on account of retirement. It referred to a brief meeting that was held between the claimant and the human resource officer on 05.01.2018 in the afternoon at which it was pointed out to the claimant that that she had attained the mandatory retirement age and that she would retire in a month's time. Her final dues would be computed and paid.
3. It is her case that she had not attained the mandatory retirement age and that the termination was unfair.
4. The claimant claimed and prayed for judgment against the respondent for:



- a) One-month salary in lieu of the notice Kshs. 23, 500.00.
 - b) Maximum compensation for unlawful and wrongful termination $23, 500 \times 12 =$ Kshs. 282, 000.00.
 - c) Punitive damages.
 - d) Certificate of service.
 - e) Costs of the suit and interest.
5. The respondent filed the reply to the memorandum of response on 08.01.2018 through Kisiwa Koja Advocate. The respondent denied all the allegations and urged that the suit disclosed no cause of action.
6. The respondent's witness(RW) was Rajab Yeri Kombe, the Human Resource Manager. Her testimony was that in 2017 the claimant had been sick from August to November 2017 on half pay sick leave and in December 2017 she had recovered so that she resumed duty on full pay. On 05.01.2018 she had attained the retirement age and a notice to retire issued dated 06.01.2018. She took the letter but declined to sign in acknowledgement stating that she needed to consult before doing so. Next, the respondent received the demand letter and then the suit papers. Thus, effective 06.01.2018, the claimant had never reported at work.
7. At the hearing on 24.03.2022 by consent order the documents filed for parties were admitted and, by further consent it was ordered:
1. The claimant retired on account of attaining 50 years when she was actually 56 years old.
 2. The letter of retirement is dated 06.01.2018.
 3. No dispute the claimant was employed by the respondent.
 4. Issue in dispute to be established by evidence is whether the policy on retirement existed and was fairly invoked.
8. On the issue to be established by evidence, the claimant denied knowledge of retirement policy prescribing a mandatory retirement age. For the respondent, the retirement policy was exhibited as signed on 05.01.2005 by the respondent's Managing Director. The policy states that the respondent had adopted and recognised its retirement age to be 55 years and above depending on line of work, least qualified and recently employed. The policy further states thus, "The only exception is for employees with disability whose retirement age is 60 years. All employees MUST be informed on day one of employment by the Human Resource Manager and a copy of this policy be filed in every employee file. This policy document is available to all Department heads and a copy to the Company notice board." The Court has no reason to trust the claimant's denial that she had no knowledge of that policy. She did not plead that she had no such knowledge. Her case was that she had not attained the mandatory retirement age but which by evidence, she had indeed attained the age of 55 years. As to whether the policy had been incorporated in her contract of service, the answer is in the affirmative. In particular, her letter of appointment stated in part, "You hereby bind yourself to adhere to company rules and regulations, which are available on request and any further instructions that may be given to you on the course of your employment" By that provision, the Court finds that the policy was not only incorporated in the contract of service but also, the burden to discover its existence was placed on the claimant. Accordingly, as urged and submitted for the respondent, the allegations of unfair termination are found unjustified. It should be that the parties should henceforth amicably conclude the ended employment relationship within the design of the respondent's retirement policies, benefits



and generally, the terms and conditions of the contract of service between the parties. The suit will collapse.

9. The Court has considered all the circumstances of the case and returns that there will be no orders on costs.

10. In conclusion, the suit is hereby dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 8TH JULY, 2022.

BYRAM ONGAYA

JUDGE

