



**Okumu v Nairobi City Water & Sewerage Company Ltd (Cause 92 of 2018)
[2022] KEELRC 12723 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12723 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 92 OF 2018
L NDOLO, J
SEPTEMBER 29, 2022**

BETWEEN

DICKSON OPOLA OKUMU CLAIMANT

AND

NAIROBI CITY WATER & SEWERAGE COMPANY LTD RESPONDENT

JUDGMENT

1. The claimant's claim against the respondent is for unfair termination of employment. The claim is contained in a memorandum of claim dated January 26, 2018 and amended on September 17, 2021. The respondent's defence is by way of a memorandum of response as amended on November 15, 2021.
2. At the trial, the claimant testified on his own behalf and the respondent called its Human Resource Coordinator, George Oketch. The parties also filed written submissions.

The Claimant's Case

3. The claimant states that he was employed by the respondent in 1978 in the position of Clerical Officer III. He adds that his contract was renewed to run from July 1, 2013 to June 30, 2018 but was terminated on February 10, 2016.
4. The claimant avers that on January 26, 2015, the respondent wrote to him informing him that his retirement was due and that he ought to vacate office on February 10, 2016. At the time of leaving employment the claimant occupied the position of Credit Control Officer.
5. The claimant claims that the notice of retirement served on him by the respondent was contrary to his contract of employment and the [Employment Act](#).
6. The claimant tabulates his claim as follows:
 - a. Unexpired contract period (28 months)..... Kshs 6,650,924



- b. Salary in lieu of notice237,533
- c. Certificate of service
- d. Costs plus interest

The Respondent's Case

- 7. In its memorandum of response as amended on September 17, 2021, the respondent states that the claimant was among employees absorbed by the respondent from the City Council of Nairobi in the year 2004.
- 8. The respondent admits having renewed the claimant's employment contract to run from July 1, 2013 to June 30, 2018.
- 9. The respondent however denies that it unprocedurally and/or illegally terminated the contract on February 10, 2016 and states that being a public entity, its employees are subject to the mandatory retirement age of 60 years, applicable in the public service.
- 10. The respondent avers that the claimant's employment was terminated on attainment of the set retirement age.
- 11. The respondent further avers that the claimant was duly notified of his impending retirement in accordance with the terms of the respondent's policy.
- 12. The respondent adds that the claimant was issued with a notice of twelve (12) months prior to his attaining the mandatory retirement age.
- 13. In further response, the respondent states that the claimant was paid all his terminal dues upon which he signed a clearance form.

Findings and Determination

- 14. There are two issues for determination in this case:
 - a. Whether the termination of the claimant's employment was lawful and fair;
 - b. Whether the claimant is entitled to the remedies sought.

The Termination

- 15. On January 26, 2015, the respondent wrote to the claimant as follows:

“Dear Dickson,

Re: Notice of Retirement

I write to inform you that according to records held in this office, you will attain the compulsory retirement age of 60 years by February 10, 2016.

You are hereby informed that your last day of service will be February 10, 2016. You will also be expected to have taken all your leave days and off duty days before February 10, 2016. Please note that under no circumstances will payment be made for accumulated administrative leave days and off days.

I take this opportunity to thank you for the loyal service you have rendered to this company during the course of your appointment.



Please contact the Payments Office before the date of retirement regarding your terminal benefits, which will be paid to you after clearing yourself of any liabilities you owe the company.

Yours sincerely,

(signed)

Rose Kariuki-Mwaura

Human Resource Manager

16. The claimant's complaint against the respondent is that the aforesaid retirement notice ran contrary to his contract of employment which was to run from July 1, 2013 until June 30, 2018. The claimant however conceded that the respondent, being an employer in the public service, was bound by the mandatory retirement age of 60 years set by the Government.
17. The respondent's Human Resource Policy Manual at Clause 8.27.4 states as follows:
 - 27.4
Retirement
The mandatory retirement age for the company staff is sixty (60) years. However, one may be retired early due to poor health or disability rendering one unfit to work in which case the opinion of an independent doctor would be sought. An employee who is due to retire on attainment of the mandatory retirement age shall be given one (1) year's notice before the retirement age.
An employee may also opt to retire on or after attaining the age of 50 years by giving a year's notice. All officers on retirement notice should utilise all their pending leave days before the actual retirement date. Employees with no pending leave may be granted thirty (30) days terminal leave.
18. As held by Onyango J in *Inter Public Universities Councils Consultative Forum of the Federation of Kenya Employers v Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) & 2 others; Ministry of Education, Ministry of Labour, Attorney General, Salaries and Remuneration Commission, Universities Academic Staff Union (Interested Parties)* [2021] eKLR an employment contract cannot be negotiated outside government policy.
19. With this in mind, it follows that the claimant's employment contract, which purported to extend his employment beyond the mandatory retirement age of 60 years was irregular to that extent.
20. The conclusion therefore is that the claimant's claim which is based on the aforesaid contract fails and is dismissed.
21. Each party will bear their own costs.

Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2022

LINNET NDOLO

JUDGE

Appearance:



Mr. Arum for the Claimant

Mr. Ochieng for the Respondent

