



**Wilson v Kerio Valley Development Authority (Cause 12 of 2019)  
[2022] KEELRC 13079 (KLR) (1 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13079 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 12 OF 2019  
NJ ABUODHA, J  
NOVEMBER 1, 2022**

**BETWEEN**

**KIPKUTOL WILSON ..... CLAIMANT**

**AND**

**KERIO VALLEY DEVELOPMENT AUTHORITY ..... RESPONDENT**

**JUDGMENT**

1. By a statement of claim filed on March 15, 2019 the claimant averred that he was employed by the respondent on November 1, 1998 as superintendent Geologist at a basic salary of Ksh. 81,404/=.
2. Sometime in February, 2018 the respondent offered the claimant a voluntary early retirement package. The package had a provision for severance pay to be calculated at 1.5 months for every year served which amounted to Ksh.3,622,478.
3. The claimant accepted the offer but was later surprised when the terms thereof were reviewed and the respondent failed to make good on the offer while insisting on paying severance pay based on remaining years of service (6.05 years) as opposed to what was agreed on (29.66 years).
4. The claimant therefore claimed against the respondent the sum of Ksh.4,691,120/= being the entire amount owed under the Voluntary Early Retirement package. The claimant further claimed leave allowance for leave days amounting to 30 days for the financial period 2018/2019.
5. The respondent filed a memorandum of response on 10<sup>th</sup> July, 2019 and averred that it admitted the claimant was employed as alleged in the statement of claim and further that the claimant retired. Pursuant to voluntary early retirement programme. The respondent however denied the existence of any agreement between itself and the claimant and further averred that any offer (if any) was rejected by the claimant’s union and the same escalated into a case. The respondent further averred that the voluntary early retirement criteria and package applicable was derived from a consent order entered



- into between Kenya Plantation and Agricultural Workers Union which the claimant was a member. The consent was entered into on June 7, 2018 at ELRC Nakuru cause No. 68 of 2018.
6. The respondent further averred that in the said consent it was ordered that every employee above fifty years of age would receive one and a half months' basic salary for the remaining years to retirement and this was the criteria applied by the respondent in paying the claimant who was above fifty years at the time he voluntarily retired.
  7. The respondent further averred that the claimant was paid his retirement package with the tax waived save for deduction of liabilities on unpaid utilities and further that accrued leave days were encashed as was captured in the voluntary Early Retirement Individual Package statement and the consent order dated June 7, 2018.
  8. On February 7, 2022 the court informed the parties that it had perused the pleadings and noted that the dispute seemed to revolve around the amount payable to the claimant under Voluntary Early Retirement Program (VER). The respondent contended that the claimant was unionisable hence was bound by a consent recorded in Nakuru ELRC No. 68 of 2018 which according to the respondent settled the issue of the amount payable to unionisable employees.
  9. The claimant on his part maintained that he was not unionisable hence was not bound by the consent.
  10. The issue in dispute between the parties therefore seem to be a matter of interpretation of the terms of the VER vis a vis the claimants position as well as the scope of the consent recorded in Nakuru ELRC 68 of 2018.
  11. From the record, the claimant herein was on August 16, 2010 appointed as Acting Deputy Managing Director with immediate effect. The appointment was subject to the approval of the Board of Directors. On July 23, 2012 the claimant was issued with a letter by the respondent acknowledging his exceptional performance while acting as Deputy Managing Director of the Respondent. The letter further informed him that as a result it had been decided that he be upgraded on merit from Job Group KV 12 to KV 13 with effect from July, 2012.
  12. From the record, the Voluntary Early Retirement (VER) Program was announced by the respondent's Managing Director on February 5, 2018 and staff asked to participate by filling a Voluntary Early Retirement form and return within 7 days to reach the respondent on or before Monday, February 26, 2018. The application had a disclaimer that the authority reserved the right to accept or decline any application. The claimant duly applied and by a letter dated June 28, 2018 the respondent accepted the claimant's application for Voluntary Early Retirement.
  13. The claimant at the time of applying for Voluntary Early Retirement had as observed been upgraded from job group KV12 to KV13 which was outside the unionsable employees covered by the CBA. The CBA exhibited, covered employees between grade KV4 to KV8. To this point, the claimant by the time he was applying for Voluntary Early Retirement had ceased to be unionisable. The respondent however received his application for Voluntary Early Retirement and made an offer to him. Although the claimant alleges that the respondent made to him two offers, the first higher than the second. The second offer according to the respondent was as a result of unionisable employees' contestation culminating in a suit filed in Nakuru as Nakuru ELRC cause Number 68 of 2018. This suit was compromised through a consent filed in court on June 7, 2018.
  14. The claimant despite a significant reduction between the first Voluntary Early Retirement package and the second offer made after the consent in Nakuru ELRC 68 of 2018 accepted the second offer.



15. The foregoing being the case and the claimant having applied for Voluntary Early Retirement while knowing it only concerned unionisable employees and accepting the package cannot turn around and claim that he was not bound by the consent recorded in the Nakuru case. Nothing prevented the claimant from contesting the reduction in the initial offer and rejecting the same and continuing in employment or seeking legal redress as the unionisable employees did via Nakuru ELRC No.68 of 2018. To this extent the claim is found to be without merit and is hereby rejected.
16. There would be no order as to cost since it would seem the claimant honestly believed he was entitled to a different method for calculation of his Voluntary Early Retirement from the unionisable employee.
17. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

