



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 2481 OF 2012

(Originally Nairobi High Court Civil Case No. 760 of 2002)

KENNEDY KANYI

CLAIMANT

v

THE HON. ATTORNEY GENERAL

RESPONDENT

JUDGMENT

1. Kennedy Kanyi (Claimant) instituted legal proceedings against the Hon Attorney General (Respondent) on 7 May 2002 alleging that his retirement in the public interest on 18 September 2000 was premature and unlawful.
2. In its Response, the Respondent contended that the retirement in the public interest was justifiable.
3. The Claimant filed Draft Issues on 9 May 2003, and on 19 November 2012, the High Court transferred the suit to this Court because of jurisdictional competency.
4. The Claimant's evidence was taken on 12 April 2017 and after the close of his case, the Respondent secured an adjournment to present a witness. The hearing was rescheduled to 20 June 2017.
5. On 20 June 2017, the Respondent applied for and got another adjournment.
6. On 9 July 2018 the Court, in the presence of the advocates on record fixed the Respondent's case for hearing on 13 November 2018, but when the Cause was called out for hearing, the Respondent was absent.
7. The Court therefore deemed the Respondent's case closed and directed the parties to file submissions.
8. The Claimant filed his submissions on 15 January 2019 while the Respondent filed its submissions on 11 January 2019.
9. The Court has considered the pleadings, evidence on record and submissions and adopted the Draft Issues as proposed by the Claimant.

Was retirement of Claimant lawful under the terms of employment?

10. The Claimant testified that he was born on 23 August 1957 and that he was employed as a teacher from 1 January 1970 (letter of appointment dated 13 August 1973 is on record). In 1985, he joined the Provincial Administration.
11. In the course of the employment, the Claimant also served with the Ministries of Labour and Tourism.
12. Around 7 September 2000, the Permanent Secretary, Ministry of Tourism wrote to the Claimant giving him notice of retirement under the '50 year rule'.
13. The notification indicated that the records held by the Ministry indicated that the Claimant was born in 1947. The Claimant contends he was retired prematurely.
14. It is not disputed that the Claimant was employed by the Teachers Service Commission in 1970.
15. If the testimony by the Claimant that he was born on 23 August 1957 is correct, then he was 13 years old in 1970 when he was employed as a teacher.

16. By the stretch of any imagination, that is a logical impossibility. The Claimant could not have been employed as a teacher while in his early teens.

17. In the view of the Court, it is more probable that the Claimant was born in 1947 as indicated in the notification of early retirement and if that is so, the Claimant was 53 years old in 2000.

18. If there was a requirement to hear the Claimant before the retirement, he did not disclose or reveal to the Court the source of that requirement. There was no express general statutory requirement as to a hearing unlike under the current statutory framework.

19. The Claimant having not disputed that there existed provisions for retirement under the '*50 year rule*', the Court finds that the retirement was under a valid statutory provision and therefore lawful.

Appropriate remedies

Declaration

20. The Claimant sought a declaration that the retirement was illegal and view of the finding above, the declaration cannot be granted.

Special damages

21. The Claimant did not plead the particulars of any special damages or prove the same during the hearing as expected, and the Court finds the relief is not available.

Conclusion and Orders

22. The Court finds no merit in the Cause herein and orders it dismissed with no orders as to costs.

Delivered, dated and signed in Nairobi on this 25th day of January 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Opiyo instructed by Aminga, Opiyo, Masese & Co. Advocates

For Respondent Ms. Komu, State Counsel

Court Assistants Lilian/Lindsey