



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NUMBER 831 OF 2012**

**CALEB BW'AUMA MANYAGA.....CLAIMANT**

**VERSUS**

**KENYA PIPELINE COMPANY LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The Claimant pleaded that he was employed by the respondent as an Accounts Assistant on 25<sup>th</sup> July, 199 and worked for the respondent and gradually rose to the position of Finance Manager on 28<sup>th</sup> April, 2005. He was however compelled to take early retirement on 15<sup>th</sup> June, 2009. At the time of retirement, the claimant's salary was Kshs. 510,000/- per month.
2. By a letter dated 4<sup>th</sup> March, 2009 the claimant was sent on leave ostensibly to recover 274 days of accrued leave citing the company policy however, the claimant was also asked to handover all his responsibilities to the Chief Accountant (Tax) and forward his hand over report directly to the Acting Managing Director Mr. Selest N. Kilinda.
3. On 4<sup>th</sup> May, 2009 the claimant was summoned to appear before the Human Resource Committee to shed more light on the circumstances under which the company released product under Collateral Finance Agreement to Triton Oil Company without the financiers authority.
4. The claimant duly appeared before the Board Human Resource Committee and gave all the information required which was available to him.
5. By another letter dated 17<sup>th</sup> May, 2009 the claimant was once more summoned to appear before the Human Resource Committee on 19<sup>th</sup> May, 2009 to shed light on Line 1 Capacity Enhancement Project. However by a letter dated 15<sup>th</sup> June, 2009, the claimant was informed that the Board of Directors had resolved that he be retired from the respondent with immediate effect.
6. According to the claimant the Line 1 Capacity Enhancement Project was under the Engineers who had the authority to manage the project. The engineer could request for procurement of items and the request upon reaching the tender committee to which the claimant was member, could deliberate, consider and approve or defer the subject matter. If the items required a higher amount the approval of the Board Tender Oversight Committee was sought.
7. The claimant further pleaded that the composition of the Board HR Committee which sat on the 12<sup>th</sup> and 19<sup>th</sup> May, 2009 had two of its members who presided over the Board Tender Oversight Committee. Further, the Acting Managing Director was the claimant's immediate supervisor while the other was the Chairman of the Board Audit Committee. Therefore the purported queries as contained in the letters dated 4<sup>th</sup> May, 2009 and 17<sup>th</sup> May, 2009 and subsequent meetings regarding CFA to Triton Oil and Line 1 Capacity Enhancement Project were mere smoke screens intended to get the claimant out of the way. The claimant further pleaded that he realized that pursuant to circular OP. CAB.2/7A dated 20<sup>th</sup> March, 2009 the then Head of Public Service Amb. Francis Muthaura, he was entitled to continue working for the respondent until he attained 60 years hence the early retirement was a form of constructive dismissal.
8. The respondent on his part pleaded that the claimant was employed on 3<sup>rd</sup> Septemebr, 1979 and that he bargained with or implored the respondent to grant him some soft landing via early retirement on account of his long years of service inspite of the breaches he was found to have engaged in.
9. The respondent further averred that under terms of service any leave days not taken were forfeited some were deferred by the Chief Executive or if he approves, in the case of senior staff, a maximum of 15 working days. The claimant had accumulated many leave days.
10. The respondent further pleaded that after becoming aware of the wrongful and unauthorized product released under the CFA to Triton

Petroleum Company Ltd. (PPCL), It engaged Price Waterhouse Coopers (PWC) sometime in 2009 to carry out a strictly confidential forensic investigation into the administration of the CFA transaction. The claimant who held a senior management position of Finance Manager was among several senior members of staff similarly placed, implicated in wrongdoing by the findings of the private and confidential forensic investigation of the CFA transaction.

11. According to the respondent and as admitted by the claimant, the respondent's Board of Directors held a meeting on 30<sup>th</sup> April, 2009 and resolved that the claimant together with other senior member of staff similarly placed be summoned to appear before the respondent's Human Resource Committee (BHRC ) on 12<sup>th</sup> May,2009 for interrogation. The claimant was summoned and appeared before the BHRC on 12<sup>th</sup> May, 2009 and the respondent's letter dated 4<sup>th</sup> May, 2009 the claimant was notified on the subject matter under inquiry. His awareness or understanding of the circumstances involving the unauthorized releases of the produce under the CFA to TPCL. On commencement of interrogation, the adverse findings of the private and confidential PWC forensic investigation the claimants of omission were disclosed to him and he was called upon to controvert or rebut them. The committee upon inquiry and deliberation found him to have made some contribution in the unauthorized produce released under CFA to TPCL.

12. The committee further found that inspite of his denials, the claimant was responsible for overseeing the product accounting function. Secondly, that if the claimant had discharged his duties or functions as required, that unauthorized produce released would have been detected and arrested. The claimant according to the respondent carelessly and improperly performed his oversight work which form its nature was his duty under his contract to have performed carefully and properly.

13. The respondent further averred that it was entitled to summarily dismiss the claimant from his employment consequent upon the findings of the committee but the claimant implored the committee to consider his 30 years of service in arriving at the verdict against him. The BHRC therefore instead of recommending to the Board of Directors summary dismissal, recommended that the claimant be retired under the early retirement rule since he was over 50 years of age.

14. Given the magnitude or gravity of the unauthorised product releases, and the senior management position of Finance Manager with other senior members of staff, they could not be summoned before the ordinary staff Disciplinary Committee which was comprised of junior officers. Any disciplinary matter or questions on the performance of the claimants work could only be addressed by the BHRC which would make recommendations to the Board of Directors of the respondent.

15. In his oral evidence the claimant additionally stated that he was the Finance Manager when he was retired. It was his evidence that he never sought early retirement and that he was on leave when he got retired. He confirmed he was called by the Board to shed light on the product released and that he appeared before the Board Committee. He further stated that he was paid his terminal dues upon retirement.

16. In cross-examination he stated that he was appointed Finance Manager in 2004 and that previously he was the Chief Accountant.

17. As Acting Finance Manager he prepared the budget, managed the respondent's finances which included payments receipts and product accounting. He used to report to Chief Manager Finance and Strategy. According to him supply matters were not under him. Product accounting was reporting to Operations Manager. His role was to ensure the product was accounted for.

18. According to the claimant, collateral finance agreement was managed by operations department. The Finance Department was to invoice the oil marketer once the oil leaves the facility. The Operations Department had the obligation to inform the financier before the product is released.

19. Regarding his age, the claimant stated that in June, 2009 he had attained 54 years and that early retirement policy did not apply to him. He however stated that early retirement could be done in good faith.

20. The respondent's witness Mr. Ezekiel Cheptumo stated that he was the Human Resource Officer in charge of industrial relations. According to him the Assistant Accountant was the head of product accounting and that he reported to the Finance Manager.

21. Mr. Cheptumo informed the court that KPC Revenue and Accounting Procedure Manuel (OUTTURN) was a documentation process of product handling including amendments. It guided the process from receipts to total release of the products. From 2007 to 2009, the claimant was incharge of this process.

22. Concerning claimant's retirement he stated that the Board resolved to retire the claimant early and that no reason was assigned in the early retirement letter. According to him, the minutes of the Board meeting held on 30<sup>th</sup> April, 2009 recommended that the claimant be sent on early retirement based on issues captured in the PWC report. It was his evidence that the claimant accepted that he was responsible for overseeing product release. The Human Resource Committee recommended early retirement for the claimant. According to him, the procedure for early retirement was that any staff upon attainment of 50 years, and before age 55, could be sent on early retirement without assigning any reason.

23. It was his evidence that upon retirement the claimant was paid his terminal dues and that he signed for the payment.

24. In cross-examination, he stated that the audit was at the invitation of the Board. He further stated that there was huge product mishandling which was public knowledge.

25. Clause 9C of the respondent's staff rules CP17 of Respondent's bundle of documents provides as follows :-

*“Early Retirement*

*The normal retirement age for staff is 55 years. Staff on attaining the age of 50 years may elect to retire any time thereafter or may be required to retire by the Company any time thereafter, without assigning any cause. Electing to retire or being retired under the 50 year provision will be subject to the normal notice period for termination of employment and the staff will be eligible for payment of the surrender value of all the company's and his/her own contributions under the Pension Scheme in full. Authority for retirement under this provision must be obtained from the Chief Executive."*

26. It was common ground that early retirement could where appropriate be initiated either by the employee or employer and that there was no obligation to assign any reason. The claimant herein however was sent on early retirement against a background of unauthorized release of oil products from the custody of the respondent without the authority of the financier and contrary to the CFA. The claimant both in the reports by PWC and oral evidence in court appeared shifty on the issue whether as Assistant Finance Manager it was his responsibility to administer the OUTFURN procedure which govern product release from the respondent's premises. On one hand he admitted the process was under his docket while on another he sought to shift the responsibility to the operations department.

27. Whereas the claimant's service was not terminated the court is of the view that there existed justifiable reason to terminate the claimant's service. The early retirement may perhaps have been soft landing for him. However as observed earlier, early retirement was at the discretion of either the employee or the employer and there was no obligation to assign any reason for such retirement.

28. The claimant accepted the early retirement and received his terminal dues without any reservations. He cannot therefor turn around and disown his actions if he did not then dispute the decision to retire him.

29. In conclusion the court finds the claim without merit and the same is hereby dismissed with costs.

30. It is so ordered.

**Dated at Nairobi this 18<sup>th</sup> day of January 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 18<sup>th</sup> day of January, 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the claimant

.....for the Respondent

**Abuodha J. N.**

**Judge**