



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE NO. 81 OF 2017**

**(Formerly Kisumu 151/2014)**

***(Before Hon. Justice Mathews N. Nduma)***

**AMANYA RAPHAEL ANABASWA.....CLAIMANT**

**VERSUS**

**MUMIAS SUGAR COMPANY LIMITED...RESPONDENT**

**JUDGMENT**

1. Suit was filed on 26<sup>th</sup> June 2014, seeking a declaration that the claimant was a person with disability and the respondent be restrained and/or be enjoined from retiring the claimant until he attains 65 years of age. That in the event the claimant is retired before the age of 65 years, he be reinstated back to work.
2. The claimant was employed by the respondent on 10<sup>th</sup> August 1994 and has worked for the respondent continuously for over 20 years.
3. That the claimant suffered an accident in the course of work in the year 1995 and has had to attend clinics for the back pains at Kakamega General Hospital.
4. That on 4<sup>th</sup> April 2013, Dr. Alushula D.O, and on 20<sup>th</sup> April 2013 Dr. Geoffrey C. Kabuga of Kenyatta National Hospital and Medi Heal Hospital and Facility Centre on 8<sup>th</sup> January 2014 respectively diagnosed that the claimant suffered from Lumber spondylosis/ Lumbar Sacral Spine condition.
5. That on 5<sup>th</sup> June 2014, a medical team at Kakamega County Hospital examined the claimant and reported that the claimant was a person with disability and the Director of Medical Services needed to issue the claimant a certificate to that effect.
6. That the respondent despite knowledge of the claimant's medical status issued the claimant a retirement letter with effect from 1<sup>st</sup> July 2014. The letter was issued on 29<sup>th</sup> January 2014. Claimant responded to the letter of retirement on 3<sup>rd</sup> February 2014 and by a letter dated 24<sup>th</sup> February 2014, respondent confirmed that the claimant was to retire on 1<sup>st</sup> July 2014.
7. The claimant testified under oath as CW1 and relied on annexe '1 to 42' to the memorandum of claim which elaborate the aforesaid history of the case.
8. Claimant testified on 10<sup>th</sup> April 2018 and adopted a witness statement dated 25<sup>th</sup> June 2014 as his evidence in chief.
9. As at the time the suit was heard, the claimant had been retired at the age of 55 years. The claimant testified that the early retirement was unlawful since he had been certified as a person with disability and ought to have been retired at the age of 65 years.
10. The claimant stated under cross examination that he was born on 23<sup>rd</sup> April 1959 and attained 55 years of age on 23<sup>rd</sup> April 2014. He was retired with effect from 1<sup>st</sup> July 2014. As at the time the notice of retirement was given, the claimant was not registered as a person with disability.
11. This case was filed on 26<sup>th</sup> June 2014 after the claimant had attained 55 years of age. At the time the claimant had been recommended for registration as a person with disability. The council had however not registered him yet. The claimant got registered on 2<sup>nd</sup> July 2014 and obtained an identification card as a person with disability.

## **Response**

12. The suit is opposed vide a memorandum of response filed on 9<sup>th</sup> February 2018. RW1 Mathew Guy Wahongo testified for the respondent. He testified that he worked for the respondent between 1<sup>st</sup> June 1985 to 5<sup>th</sup> April 2018 as the Employee Relations Officer. He had since retired. He relied on a witness statement dated 27<sup>th</sup> July 2018 as his evidence in chief.

13. RW1 said that the claimant was issued a retirement notice on 29<sup>th</sup> January 2014 on 3<sup>rd</sup> February 2014 and the claimant wrote back stating that he was a person with disability and ought to be retired at the age of 65 years.

14. That the Director of medical services wrote on 8<sup>th</sup> October 2015, stating that the claimant did not qualify as a person with disability.

15. The National Council of persons with disability recalled documents from the claimant and others stating that they did not qualify to be registered as such and upon review made their final findings. RW1 produced documents in support of his testimony marked as exhibits '1' to '7'.

16. RW1 stated that this suit lacks merit and it be dismissed with costs.

## **Determination**

17. The issues for determination are:

(i) Whether the claimant was as at the time he was retired a person with disability within the meaning of the law for purposes of retirement at the age of 65 years.

(ii) Whether the claimant is entitled to the reliefs sought.

## **Issue I**

18. The claimant was retired by the respondent on 1<sup>st</sup> July 2014 at the age of 55 years. The claimant protested the intended notice of retirement by a letter dated 3<sup>rd</sup> February 2014. The notice of retirement had been issued on 29<sup>th</sup> January 2014. The respondent informed the claimant that he was not registered as a person with disability by the Director of Medical Services at the time the notice of retirement was issued and that the notice would take effect on 1<sup>st</sup> July 2014 as scheduled.

19. The claimant was retired as scheduled. It has been proved that as at the date of retirement the claimant was not certified by the Director of Medical Services as a person with disability and registered accordingly. The claimant was subsequently registered as such on 2<sup>nd</sup> July 2014 after he had already been retired.

20. Furthermore, the Director of medical services re-evaluated the employees of Mumias Sugar Company for purposes of registration as persons with disability and made a report dated 5<sup>th</sup> -8<sup>th</sup> October 2015. In the report produced before court, the claimant was assessed and listed as employee number 25. The Director of Medical Services concluded that the claimant had no disability and was not recommended for registration as a person with disability. The Director further recommended that the claimant needed psychiatric review and counselling. The claimant was 56 years old at the time.

21. The review had been requested with a view to revisit the issue of retirement with regard to the affected employees.

22. It is the court's considered finding that the claimant was not registered as a person with disability as at the date of retirement on 1<sup>st</sup> July 2014.

23. The claimant did not qualify to retire at the age of 65 years as alleged or at all.

24. This position was reconfirmed by the Director of Medical Services in his report before court.

25. The suit by the claimant lacks merit and is dismissed with no orders as to costs.

**Judgment Dated, Signed and delivered this 8<sup>th</sup> day of July, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Oyagi for Claimant

Muigai for Respondent

