



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1137 OF 2017

(Before Hon. Justice Mathews N. Nduma)

JANEROSE NJERI NDUATI.....CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. The issue in dispute in this suit is the retirement age of the Claimant, the Claimant stating that she was born on 24th February, 1960 whereas the Respondent states that the Claimant was born in 1957, the date of birth she provided the employer upon employment.
2. Interim orders were granted by the court on 21st June, 2017 restraining the Respondent from retiring the Claimant before the hearing and determination of the Notice of Motion dated 19th June, 2017. The Respondent filed a replying affidavit to the application on 12th July, 2017 opposing the application and stating that the Claimant was due to retire having been born in 1957.
3. Before this application was heard inter parties, the Respondent filed an application dated 5th July 2017, seeking the interim orders granted on 21st June, 2017 be set aside because, the Respondent's/Applicant's application system had automatically deleted the Claimant's name from the payroll effective 1st July, 2017 and the Respondent had no funds therefore to sustain the Claimant in employment before her retirement age.
4. The court finds that there was material non-disclosure by the Claimant at the time the interim orders were granted. She did not provide proper history of the matter in the Notice of Motion and supporting affidavit.
5. The balance of convenience at this stage favours the discharge of the interim orders, pending the hearing and determination of the suit.
6. The claim will be satisfied by an award of damages if the court finally finds that the Claimant was retired prematurely by about three (3) years.
7. Public interest and policy is in favour of persons being retired on the basis of the age they first provided to the employer upon employment unless there are very compelling reasons to find otherwise.
8. Accordingly, the interim orders granted on 21st June, 2017 are discharged and set aside.
9. The main suit to be heard on a priority basis on a date to be granted by the Principal Judge Employment & Labour Relations Court.

Dated and Signed in Kisumu this 7th day of March, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 6th day of April, 2018

Maureen Onyango

Judge

Appearances

Mr. Omwenga for Claimant

Mr. ngere for Respondent

Anne Njung'e – Court Clerk