



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1128 OF 2014**

**(Originally Nairobi High Court Civil Case No. 188 of 2012)**

**SAMUEL OSORO KEBATI**

**CLAIMANT**

v

**KENYA REVENUE AUTHORITY**

**RESPONDENT**

**JUDGMENT**

1. Samuel Osoro Kebati (Claimant) wrote to the Kenya Revenue Authority (Respondent) on 8 November 2007 requesting to be allowed to retire early under the 50 year rule. The letter did not indicate the effective date of retirement.
2. About a week later, on 14 November 2007, the Respondent summarily dismissed the Claimant on account of gross misconduct for having participated in the general elections of 2007 without having resigned as required.
3. The Respondent through a letter dated 19 November 2007 rescinded the dismissal of the Claimant in order to consider the request for early retirement.
4. The Respondent considered the request for early retirement and through a letter dated 4 December 2007, it advised the Claimant that his request had been accepted and therefore his retirement would be effective from 8 November 2007.
5. On or around 15 January 2008, the Claimant was involved in a road accident while travelling to the Respondent's head office to discuss the question of his early retirement.
6. As a result of the accident, the Claimant sustained serious injuries and he was airlifted to Nairobi and got admitted at Nairobi Hospital.
7. Upon discussions between the Hospital and the Respondent, the Respondent through a letter dated 23 January 2008 gave an undertaking to the hospital that it would pay a further Kshs 400,000/- towards the Claimant's hospital bill.
8. On 30 January 2008, the Respondent's *Senior Assistant Commissioner, Security* wrote to the *Senior Deputy Commissioner* asking that an undertaking of Kshs 500,000/- from the Group Personal Accident cover be committed towards meeting the Claimant's hospital bill.
9. On the same day, the Respondent wrote to the hospital withdrawing the undertaking to meet the Claimant's hospital bills, and the reason given was that he was no longer its employee.
10. The withdrawal of the undertaking must have prompted the hospital to write to the Claimant on 2 February 2008 to settle the outstanding bill which then stood at Kshs 1,195,254/- and a doctors' bill of Kshs 689,000/-.
11. On 11 February 2008, the Claimant wrote to the Respondent seeking to withdraw the request for early retirement (copy of letter was not filed in Court).
12. On 14 February 2008, the Claimant wrote another letter to the Respondent seeking to withdraw the request for early retirement under the 50 year rule. The Claimant indicated in the letter that the early retirement was effective in January 2008.
13. On 7 May 2008, the Respondent replied to the Claimant's plea to have the early retirement request withdrawn by indicating that the request had been declined and he should proceed to clear with the Authority.
14. Undeterred, the Claimant wrote another letter to the Respondent on 6 August 2008 (copy was not filed) and in a response dated 9 October

2008, the Respondent advised the Claimant that his request that the retirement date be varied from 8 November 2007 to 30 January 2008 had been declined.

15. Having or appearing to have hit a dead end, the Claimant instituted legal proceedings against the Respondent on 25 April 2012 contending that he was an employee of the Respondent up to 30 January 2008, and therefore the Respondent should be found liable for hospital bill of Kshs 3,000,000/- he incurred as a result of the accident on 15 January 2008.

16. Despite service of Summons, the Respondent did not enter Appearance or file a Defence and on 13 June 2012, the High Court entered interlocutory judgment against the Respondent.

17. On 7 February 2013, the Respondent filed an application seeking to have the default judgment set aside, and on 23 June 2014, a consent setting aside the default judgment was filed in Court.

18. The Claimant disowned the consent before the High Court on 3 July 2014, and the Court therefore declined to adopt it.

19. At the same sitting, the High Court directed that the suit be transferred to this Court.

20. On 13 November 2014, the application to set aside the interlocutory judgment was dismissed by Abuodha J because the Respondent failed to prosecute it.

21. On 1 December 2015, Sally Lumadi filed a *Notice of Change of Advocate* to come on record for the Respondent instead of *R.W. Ngugi Advocate*.

22. When the Cause came up for hearing on 16 April 2018 during the service week, the Claimant indicated that he was ready to proceed, and the Court allowed him to proceed.

23. The Claimant gave sworn testimony and filed written submissions on...

24. The Court has considered the pleadings, evidence and submissions and has identified 2 primary questions arising for determination as

*Whether the Claimant was still an employee of the Respondent as of 15 January 2008 and*

*Whether the Respondent was liable for the Claimant's medical bills.*

25. The Court will then address the issue of appropriate remedies/orders.

26. For the sake of clarity, the Court will not consider the documents filed in Court by the Respondent (the same were however referred to in giving the background to the dispute).

### **Employment status as of 15 January 2008**

27. The Claimant put in a request for early retirement through a letter dated 8 November 2007 without indicating when he wanted the retirement to be effective.

28. In the Respondent's acknowledgment and acceptance of the request for retirement, the Claimant was informed that the early retirement was effective 8 November 2007.

29. The Claimant did not challenge the effective date as indicated by the Respondent until after the accident he was involved in on 15 January 2008.

30. He exchanged correspondence with the Respondent on the issue to no avail prompting the present proceedings.

31. In the pleaded case, the Claimant contended that in terms of the *Public Service Retirement Regulations*, his early retirement should have been effective from 30 January 2008, and therefore by the time he was involved in the accident, he was still an employee of the Respondent.

32. However, the Claimant did not testify as to the specific Regulations he had in mind or draw the attention of the Court to where the Regulations could be found.

33. To buttress his case, the Claimant introduced a letter dated 15 August 2011 from the Respondent to his advocate on record in which the advocate was informed that the effective retirement date had been varied from 8 November 2007 to 1 January 2008.

34. Despite the Respondent not defending the Cause, it is view of the Court that the letter is of doubtful origin.

35. For one, it predated the filing of the instant Cause and there was no reference to such variation in the pleadings. The pleadings made reference to the *Public Service Retirement Regulations* and omitted to make reference to this *key evidence* regarding the effective date of retirement.

36. Two, the Claimant's written statement filed in Court also omitted to make any reference to this *key evidence*.

37. Lastly, there are records filed by the Claimant indicating that the Respondent had declined several requests to vary the effective date of retirement.

38. The Claimant's assertions therefore fall to be determined on the basis of the statutory and contractual provisions which were in place at the material time.

39. If there was a statutory basis to the contentions by the Claimant, he failed to discharge the burden expected of him by demonstrating that the early retirement should have been effective from the date suggested by him.

40. It is telling that the Claimant's letter on retirement was silent on whether there was a notice period or timeline by which the retirement would be effective.

41. The early retirement having been governed by a specific statutory/regulatory framework which has not been proved leads the Court to find that the employer/employee relationship between the Claimant and the Respondent had come to an end as of 15 January 2008.

#### **Liability for medical bills**

42. The Court having concluded that the employment relationship having come to an end before the date of the accident, it is of the view that the Respondent cannot be held liable for the bills incurred by the Claimant.

43. If the Court were wrong on that conclusion, it would still have dismissed the liability question because the cause of action herein constituted special damages which ought to have been pleaded and proved.

44. The Claimant, in an attempt to prove this head of claim relied on documents including invoices from doctors and a bill from Nairobi Hospital for Kshs 1,033,833/- and a final bill summary for Kshs 1,004,933/-, and not Kshs 3,000,000/-.

45. Although the Claimant pleaded that he paid the hospital bills, he did not provide adequate or sufficient evidence of the payments.

46. A bill or invoice is not proof of payment but may serve as secondary material.

47. The receipts for payments the Claimant produced were for a total of less than Kshs 170,000/-.

#### **Conclusion and Orders**

48. Despite the Cause having not been defended, the Court finds that the Claimant failed to prove his case on a balance of probabilities.

49. The Cause is dismissed with no order as to costs.

**Delivered, dated and signed in open Court in Nairobi on this 11<sup>th</sup> day of May 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                    Mr. Mbaka instructed by Migos Ogamba & Co. Advocates

For Respondent                Sammy Lumadi, Advocate (did not attend Court)

Court Assistant                Lindsey