



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 61 OF 2018**

(Before Hon. Justice Hellen S. Wasilwa on 21<sup>st</sup> June, 2018)

BANKING, INSURANCE AND FINANCE UNION (KENYA).....CLAIMANT

VERSUS

BANK OF INDIA.....1<sup>ST</sup> RESPONDENT

KENYA BANKERS ASSOCIATION.....2<sup>ND</sup> RESPONDENT

**RULING**

1. The application before court is one dated 24<sup>th</sup> January 2018 brought under section 5(2)(3) of the Employment Act No. 11 of 2007, Section 74 of the Labour Relations Act No. 14 of 2007, Article 27 of the Constitution of Kenya and all other enabling provisions of the law seeking orders:

- a. That the honourable court be pleased to certify this application as being urgent and the same be heard exparte in the 1<sup>st</sup> instance and service be dispensed with.*
- b. That this Court do issue interim exparte orders restraining the 1<sup>st</sup> Respondent from unfairly, discriminatively and prematurely retiring employees from employment before attaining the age of 60 years in full disobedience to the laid down rules and regulations and the industry practice until this application is heard and determined ex-parties.*
- c. That the Honourable Court do issue orders compelling the 1<sup>st</sup> Respondent to stop prematurely terminating the services of employees by way of retirement before retirement age of 60 until his application is disposed of.*
- d. That the Honourable Court do award costs of this application in favour of the Applicant.*

2. This application is supported by the affidavit of Mr. Joseph Ole Tipape and is premised on grounds:

- 1. That all parties to this suit have a recognition agreement which was signed in the year 2000.*
- 2. That as a result of the Recognition Agreement parties have since entered into negotiations of the terms and conditions of service for unionisable bank employees.*
- 3. That in appendix A of Recognition Agreement condition No. 4 is itemized as duration of individual contracts is listed as a negotiable clause.*
- 4. That the 2<sup>nd</sup> respondent has on such occasions insisted that the retirement age clause is non-negotiable and cannot be included in the parties CBA.*

3. The Respondents filed their replying affidavit where they aver that the mandate of negotiating and executing any CBA between the 2<sup>nd</sup> respondent and the applicant, including negotiable items, springs from the authority given by the Recognition Agreement and as laid down by the provisions of the Labour Relations Act and that one of the non-negotiable items in the parties recognition agreement listed in Appendix B is pension and provident fund/schemes, which inevitably cover retirement age.

4. They further aver that during recent negotiations, the Applicant proposed that retirement be made a negotiable item between themselves and the 2<sup>nd</sup> respondent but then the matter was dropped from the CBA and the status quo was retained with a new CBA being executed on 30<sup>th</sup> August 2017 for a duration of 24 months to 28<sup>th</sup> February 2019. They state that for avoidance of any doubt, the CBA does not include a retirement clause showing the retirement age in banking industry to be 60 years and that there is no directive that the banking industry shall operate a retirement age of 60 years.

5. They further state that retirement age is not a negotiable item and there is no industry practice of the retirement age. Each bank has its own retirement age, ranging from 55 to 65 years. The 2<sup>nd</sup> Respondent which regulates the banking industry in its industrial relations matters has not developed any practice on non-negotiable matters especially on the issue of retirement age.

6. They aver that both the application and claim of the application lack merit and should be dismissed with costs as the Claimant has failed to prove that the 1<sup>st</sup> Respondent has breached any retirement requirement when it retires its employees at 55 years of age hence prays to court not to interfere with the 1<sup>st</sup> Respondent's right to determine its own retirement age within the law. Currently, its normal retirement age of 55 years with an option of retiring at 50 years bring within the law.

7. They further aver that the 1<sup>st</sup> Respondent's employees do not fall within the category of public officers nor civil servants in Kenya or within the East African Community and the 1<sup>st</sup> Respondent is not a public institution therefore the applicant's claim is untruthful and misleading thereby an abuse of the process of this Court and in granting the Applicant's application will have effect of subjecting the 1<sup>st</sup> Respondent's employees in Kenya branches to the contractual terms of engagement for the overseas officers to be detrimental of the employment contracts.

8. They also state that the prayers sought by the Applicant cannot be granted as there is no urgency requiring the granting of an injunctive order and that the Applicant's members can adequately be compensated by way of costs should the Court grant the reliefs sought in the application.

9. They also state that the orders sought by the Applicant are unfounded in law or contract and laced with untruths and therefore cannot be issued to an Applicant who has come to court with unclean hands. They submit that it is therefore in the interest of justice that the application be dismissed with costs to the Respondent.

10. I have considered the averments of both parties. I note that under the Recognition Agreement of the Parties herein, issues of Parties duration of employment is a negotiable item. This in essence will mean that if this item is negotiated before a Conciliator, this matter will be resolved.

11. It is for this reason that I refer this matter to Labour Commissioner for conciliation. The conciliation process should be handed within 2 weeks due to the urgency of the issues raised.

12. In the meantime, the status quo be maintained.

**Dated and delivered in open Court this 21<sup>st</sup> day of June, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Macharia for 1<sup>st</sup> Respondent – Present

Namasake for 2<sup>nd</sup> Respondent – Present

Marieta holding brief Odero for Applicant – Present