



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 155 OF 2015**

*(Before D. K. N. Marete)*

**MARY RIOBA.....CLAIMANT**

**VERSUS**

**NYAMIRA COUNTY GOVERNMENT.....RESPONDENT**

**JUDGEMENT**

This matter was brought to court by way of a Memorandum of Claim dated 17th June, 2015. The issue in dispute is herein cited as;

*Unprocedural, illegal, continued, refusal and unconstitutional holding the claimant's salary and retirement arrears by the County Government of Nyamira.*

The claimant's case is as follows;

*2. The claimant was an employee of the respondent prior to the promulgation of the New constitution under the defunct Nyamira Town Council as a support staff.*

*3. The claimant served the respondent diligently and faithfully until the respondent came with an early retirement policy accompanied by a package of benefits with effect 1/7/2005.*

The claimant's further case is that she was amongst the retirees set for early retirement and vacated employment on 31st June, 2005 on an arrangement that her benefits and allowances would be computed upto 30th June, 2005 to an aggregate figure of Kshs.432,415.00. These have not been paid to date despite frequent follow up with the respondent.

The claimant prays for judgement against the respondent for;

*a) The respondent do pay to the claimant her retirement benefits and salary arrears of Kshs.432,415 forthwith.*

*b) The interest in (a) above at 12% court rates.*

*c) Costs of the suit.*

The respondent's case is the denial of the case or any dispute in the parties.

The respondent further denies an employment relationship with the claimant or liability in terms of the claim. She further contends a case of misjoinder in these proceedings. The matter came for hearing severally until the 5th May, 2017 when the claimant requested for judgement in terms of the pleadings and documents adduced and filed in court.

The issues for determination therefore are;

1. Was there an employment relationship between the claimant and the respondent?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this cause?

The 1st issue for determination is whether there an employment relationship between the claimant and the respondent. The claimant in support of her claim has filed the following list of documents;

1. *Town Council of Nyamira Repor dated 16.1.2012 to the Permanent secretary and Minister For Local Government.*
2. *Demand letter of Omboga & Company Advocates dated 16.8.2010.*
3. *Demand letter of Permanent Secretary Ministry of Local Government dated 13.7.2011*
4. *Notification of early retirement from Nyamira Town Council dated 28.2.2006.*

These, coupled with witness statements of the claimant filed on 5th May,2017 are the bedrock of the claimant's case.

I find this case in favour of the claimant. This is because the respondent's defence is phantom and comprises of mere denial. I only fall short of striking it out but this does make a difference. The claimant has demonstrated her case on a balance of probability and preponderance of evidence and therefore takes the day. Her support documents tilts the case in her favour. I therefore find a case of employment and early retirement of the claimant by the respondent.

The 2nd issue for determination is whether the claimant entitled to the relief sought. She is. Having won a case of employment and early retirement with undue nonpayment of her retirement dues, she becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i. The respondent be and is hereby ordered to meet and pay Kshs.432,415.00 being retirement benefits and salary arrears to the claimant.
- ii. Interest at court rate from the date of retirement till payment in full
- iii. The cost of this claim shall be borne by the respondent.

Delivered, dated and signed this 16th day of May 2017.

**D. K. Njagi Marete**

**JUDGE**

Appearances

1. Claimant in person.

2. Mrs. Asati instructed by E. Asati & Company Advocates for the Respondent.