



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 886 OF 2014

NOBERT MANYASI SANGURA.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

RULING

1. The claimant pleaded that up to 25th January, 2010 he was employed by the respondent as the Chief of Mukuwa location in Bumula District. By a letter dated 2nd May 2008 the claimant was advised that he was to retire on age grounds with effect from 1st July, 2008. He duly complied with the requirements by signing and forwarding the retirement documents however, thereafter the claimant became a beneficiary of extension by Government of retirement age from 55 to 60 years.
2. Through a letter dated 26th January, 2010 the office of the President retired the claimant from service in the public interest but was advised that he could appeal to the Public Service Commission against the decision within one year from 26th January, 2010 if he was aggrieved. The claimant accordingly appealed by a letter dated 1st March, 2010 written through District Commissioner, Bumula district.
3. According to the claimant, his appeal was forwarded by the District Commissioner on 2nd March, 2010 over ten months later through a letter dated 21st January, 2011. The claimant further averred that while his appeal was pending the retirement age public servants with disabilities was adjusted to 65 years and to which the claimant was a beneficiary and ought therefore to have retired on 1st July, 2019.
4. Through a letter dated 10th July, 2012 which was two and a half years later after his appeal the Ministry of Interior and Coordination of National government advised him that the Public Service Commission had considered his application for review but disallowed the same and decided that the case be closed. He however contended that letter did not disclose the reason for disallowing of the claimants application for review hence denied him the right to fair administrative action under article 47(2) as read with article 35(1) and 50(1) of the Constitution.
5. The claimant therefore sought a declaration that his retirement in the public interest and the conduct of his appeal for review was unconstitutional, wrongful and unlawful. He therefore sought damages as a result. The claimant further sought reinstatement to service.
6. The respondent on its part stated that suit arose out of a decision of the PSC to retire the claimant in the public interest. The PSC gave reasons including dismal work performance and conduct below expected

requirements.

7. In his oral testimony the claimant stated further that he worked for seventeen years and was earning Kshs 24,000/= at the time of his retirement. He complained that he received response to his appeal 2 ½ years later and was told the DC delayed in submitting a report on the quality of his services for consideration by the appeals panel. According to him the DC recommended that he be pardoned and allowed to retire in 2014 upon attainment of 60 years. He further complained that reasons for his retirement in public interest were never given.

8. The claimant further contended that as a person with disability he ought to have actually retired in 2019 since the retirement age for persons with disability was enhanced to 65 years during the pendency of his appeal to PSC.

9. In cross-examination he admitted knowing an organization called Majazo Human Development Organization. According to him it was a humanitarian organization and they used to raise funds to assist those in urgent need. The claimant further stated that he knew about an organization called Mahude and that it was operating with the blessing of the DC and that the DC never told him to disassociate himself from Mahude. He further stated that he never attended the meetings, he was accused of not attending because they were being held at the Divisional headquarters and further that he sought permission not to attend Kenyatta Day Celebrations.

10. The respondent called one witness namely Mr George Kihara who testified that according to records the claimant was born in 1954 hence was to retire in 2009 but in March, 2009 retirement age was extended by 5 years. The claimant was therefore meant to leave service by July, 2014.

11. According to Mr Kihara, the claimant was subjected to disciplinary proceedings. He got involved in NGO activities hence failed to attend to duties assigned by his seniors. The claimant was issued with a show cause letter and he responded. The matter was subsequently referred to PSC who decided to retire the claimant in public interest.

12. In cross examination he stated that the claimant was not dismissed but retired. He however stated that he did not know if the claimant was called before a disciplinary panel. The claimant herein was retired on 26th January, 2010 he appealed against the decision on 1st March, 2010 and a final communication made to him on 10th July, 2012 telling him his appeal had been disallowed.

13. The claimant in his letter in response to the PS- Provision Administration letter dated 28th November, 2005 reacted to accusations against him by admitting that he was doing some voluntary duties outside the office of the chief but that these duties were purely humanitarian and honorary and that they did not attract any monetary gains. The claimant further went on to elaborate in detail the nature of the activities the respondent deemed were outside his official duties.

14. In response to this letter the DC in his letter dated 27th December 2005 recommended to the PS Provincial Administration that the claimant be retired in public interest due to his NGO activities.

15. The claimant further received a letter dated 19th July, 2006 accusing him of involvement in NGO activities and neglecting to attend meetings and trainings for chiefs and assistant chiefs. The letter informed the claimant that there was intention to retire him in public interest and called upon him to show cause why this should not be done within 21 days failure to which the decision would be taken without reference to him.

16. Apart from the claimant's letter dated 28th November, 2005 to the PS Provincial Administration responding to similar accusations, the court did not see nor was reference made to any response by the claimant to the show cause letter of 19th June, 2006. Neither the claimant nor the respondent attached such letter in their bundle of documents. The claimant was consequently on 26th January 2010 retired in public interest as earlier warned.

17. The parties herein appear to have resorted to dealing with the matter herein through written correspondence. Neither the claimant nor respondent seemed to have had a problem with this. In fact the claimant's complaint is not over the initial reason to retire him in public interest but rather over failure to furnish him with reasons why his appeal against such retirement was rejected.

18. An appeal against a disciplinary decision is not strictly speaking a disciplinary hearing. It is a relook at a decision already made by panel at the first instance. The claimant herein seemed not to have taken issue with the initial decision and the manner at which it was arrived at.

19. Further, the claimant did not allege or produce any code of regulations or Human Resource Manual which set out the procedure for dealing with disciplinary matters such is in order to show the extent which the respondent failed to follow such procedure in order for the court to make a finding as the claimants seeks that his constitutional rights and rules of natural justice were violated.

20. In the circumstances, the court finds no material on which it can grant the prayers sought by the claimant and hereby dismisses this claim with costs.

It is so ordered.

Dated at Nairobi this 14th day of July 2017

Abuodha J. N.

Judge

Delivered this 14th day of July 2017

In the presence of:-

..... for the Claimant

..... for the Respondent

Abuodha J. N.

Judge