



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 904 OF 2015

JAMES KIARIE

ROBERT KASAINI KIPILA

RAPHAEL EMOI

FRANCIS GICHARA alias P. K. WACHIRA

HENRY WACHIRA.....CLAIMANTS

VERSUS

NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES.....RESPONDENT

JUDGEMENT

1. This is a very old matter having been commenced on 18th February, 1992 at the High Court. The claimants averred that they were employed by the respondent in various capacities in the years 1968, 1970, 1978, 1981 and 1987. The respondent was then a department within the Ministry of Labour. According to them they served the respondent continuously and on 1st August, 1988 they became officers of the newly reconstituted respondent by virtue of paragraph 5 of the fourth schedule and section 33 of the Constitutive Act. The claimants further averred that their terms and conditions of service in public service remained the same but with necessary modifications under the newly reconstituted NSSF (the respondent).

2. On 27th September, 1988 the respondent offered the claimants employment to similar positions they held under the previous outfit. The claimant's contended that the said job offers were *ultra-vires* the NSSF Act hence null and void. The claimants further pleaded that they continued in the service of the respondent until 30th April, 1991 when the respondent purported to transfer them back to Ministry of Labour. The claimant contended that the transfers were *ultra-vires* the Act, null and void since the respondent was a separate legal entity from the Ministry.

3. The claimants therefore sought orders among others that they became officers and or servants of the respondent under the Act and that the offer of employment by the respondent and purported transfer back to the Ministry on 30th April, 1991 was incompetent in law.

4. The respondent on its part averred that it commenced operations on 1st July, 1988 and the claimants who were then employees of the Ministry of Labour applied for employment and were issued with letters

of offer for employment. The letters placed the claimants on probation for 3 months with provision for extension. The claimants according to the respondent were not confirmed. On 1st May, 1991 the claimants were paid their dues and transferred to Ministry of Labour where they worked until their services were terminated.

5. Among the documents filed and exchanged between the parties were letter so appointments dated 27th September, 1988 issued by the respondent to the claimants. The claimants appended their signatures to these letters. They did not raise any concerns about any clause in these letters. It was an express term that the claimants would be initially hired on probation for three months which period would be renewable at the discretion of the Board of Trustees.

6. The respondent further in its supplementary list of documents exhibited letters dated 16th November, 1988 and 21st November, 1988. The 1st letter dated 16th November, 1988 was on the Absorption of serving officers. At clause (ii) the letter stated that it was proposed that civil servants who had been serving the Fund and have only a few years to go before retirement be seconded to the Fund by the Government.

7. Clause (iii) further provided that all the serving civil servants who were to be absorbed by the Fund would be taken on probationary period. During this period officers who would have liked to opt to go back to the civil service would be allowed but those who may be rejected by the Board because of some reason would be allowed to go back to the Ministry of Labour for re-deployment.

The claimants herein were rejected by the respondent's Board on grounds of poor performance and that they had disciplinary issues. They obliged and returned to the Ministry of Labour and only raised the issue of their re-deployment when their services were terminated by the Ministry of Labour.

8. The court having considered the entire claim and the responses offered by the respondent is of the view that whereas the claimant purport to dispute the actions by the respondent, their conduct was inconsistent with the grievances they purport to raise in the suit. They accepted to sign a new contract with the newly reconstituted NSSF in which a probationary clause was stipulated. They were further offered an option to remain in the mainstream civil service but offered to join the respondent. They cannot therefore question the legality of their being issued with appointment letters and redeployment back to the Ministry of Labour when the respondent became of the view that they (the claimants) did satisfactorily perform during the probationary period and besides they had disciplinary issues.

9. Paragraph 5 of the 4th schedule to the Act relied on by the claimant merely deemed among others that employees of the former NSSF to be employees of the new NSSF but did not create any administrative or human resource structures on how the new organization should handle transitional staff. The court is alive to the fact that the intention of creating the new NSSF was to make it more independent and professional in management of member's affairs and funds. It was therefore not surprising that some staff found not to live to the vision of the new organization would fall by the wayside

10. The court is therefore of the conclusion that the claim is found without merit and is hereby dismissed with no order as to costs.

11. It is so ordered.

Dated at Nairobi this 3rd day of November, 2017

Abuodha J. N.

Judge

Delivered this 3rd day of November 2017

Abuodha J. N.

Judge

In the presence of:-

.....for Claimant

.....for Respondent

Abuodha J. N.

Judge