



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**

**CAUSE NUMBER 1255 OF 2013**

**PRAXEDES ADHIAMBO OTIENO.....CLAIMANT**

**VERSUS**

**KENYA BROADCASTING CORPORATION.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that she was employed by the respondent on 7<sup>th</sup> March, 1994 as a Chief Accountant and later became Accounts Controller (Finance manager) By a letter dated 6<sup>th</sup> December 2006 the claimant was re-deployed as the head of supplies division (Procurement Manager). She worked for the respondent until 30<sup>th</sup> October, 2009 when she was retired by the respondent under the early retirement rule upon attaining 50 years.
2. The claimant complained that the termination of her employment was without notice or letter to show cause why she should not be retired. According to the claimant, she appealed against the retirement to the Managing Director but did not receive any response after several reminders.
3. According to the respondent, it denied unfairly terminating the claimant's services and stated that section 16 of the Kenya Broadcasting Corporation Act gave the respondent power to make regulation generally relating to the terms and conditions of service of its employees and further that there was statutory basis for making the retirement under fifty rule as contained in regulation B16(11) of the respondent's code of regulations.
4. According to the respondent, regulation B16 (11) of the respondent's code of regulation provided that an officer on attaining age of fifty may elect to retire anytime thereafter or may be required to retire by the respondent without assigning any cause.
5. The respondent further pleaded that the requirement of the six months notice period under regulation B16(11) was not mandatory as the said regulation had a provision in item B16(11)(iii) that where an employee on permanent terms was required to retire in accordance with mandatory retirement provisions or optional retirement provisions he or she shall be given six months notice unless the Board otherwise directs in any particular case.
6. The respondent contended that in the claimants case the Board in exercise of its powers under B16(11) (iii) directed that the claimant be retired under the fifty year rule with immediate effect.
7. In her oral evidence in court the claimant further stated that she was informed that the Board had

resolved to retire her under the fifty year rule. She was not given any prior notice of intention to retire her. According to her, retirement had to be discussed first. She complained that she was not given 6 months notice as required but was paid in lieu. She stated further that she was never summoned to the Board meeting where her retirement was discussed. In cross-examination she admitted that a person could be retired under respondents regulations and that the Board can direct that retirement takes immediate effect.

8. The respondent's witness Ms Violet Araka stated that the claimant was retired on the resolution of the Board and that she was not the only one retired. It was her evidence that the board resolved to pay the claimant in lieu of notice and that the claimant was paid all her dues upon retirement.

9. In cross-examination she stated that the claimant did not attend the board meeting where it was resolved to retire her and further that no letter of intention to retire was issued to the claimant.

10. It is not disputed by both parties that the claimant herein was retired under the 50 year rule. The claimant's complaint seems to be that the retirement was without notice and that she was never called before the Board where the decision to retire her as aforesaid was being considered. The claimant therefore seeks an order of this court that her retirement was unlawful and unfair and sought an order for compensation for unfair termination of services. The claimant further sought other heads of compensation such as two months basic salary as transport allowance, severance pay, unutilized leave days, unpaid responsibility allowance for 9 months, telephone allowance and early retirement pension benefits factor all totaling to Kshs 2,803,230.64.

11. The respondent denied the claimants allegations and contended that it was under no obligation to assign any reason for retiring the claimant under the 50 year rule. The respondent further stated that it paid the claimant six months salary in lieu of notice of retirement as provided for under its code of regulations. The respondent further denied the claimant was entitled to any invitation to the Board meeting where her retirement was being considered.

12. Rule B16(iii) provides as follows:

*“where an employee on permanent terms is required to retire in accordance with the mandatory retirement provisions or optional retirement provisions above, he, shall be given six months notice unless the Board otherwise directs in any particular case”.*

13. The claimant herein was retired with immediate effect and paid six months salary in lieu of notice.

14. Retirement is a life changing event in an employee's life cycle especially when it is done before its due date. The rationale of the six months' notice was therefore to give an employee due to be retired an opportunity to readjust to the impending retirement or appeal against the same. To retire an employee immediately must be for good cause which ought to be made known to the employee concerned in order for him or her to make representations in regard thereof before the decision is taken.

15. It cannot be cured by payment of salary in lieu of notice. No where in rule B16 (iii) under which the claimant was retired is any provision made for payment of salary in lieu of the six months' notice.

16. The respondents board may have tried to take advantage of the phrase “unless the Board otherwise directs in any particular case” to give the basis for paying the claimant six months salary in lieu of notice but even if that were so, it was incumbent upon the board to furnish the claimant with reasons why and the exigency which made her case different from others.

17. Failure to do so rendered the claimants right of appeal under rule 16(iv) ineffective since she had no idea about the reasons for early retirement. Early retirement is a form of termination of services. It ought therefore to be carried out for valid and or justifiable reasons and in accordance with fair procedure.

18. For reasons advanced above, the court is of the view that although the respondent had power to retire

the claimant, her retirement was without any valid and or justifiable cause. The court therefore finds and holds that the termination of the claimants services under 50 year rule was unfair.

19. Concerning other heads of claim the court does not finds them merited and in any event the claimant upon her retirement was paid Kshs 1,878,387/= which included six months salary in lieu of notice, accrued leave days and two months basic salary to cater for transportation which she was claiming again. The claimant further in her documents in support of the claim and oral evidence in court did not provide any evidence to support these other heads of claim.

20. In conclusion the court enters judgement against the respondent in favour of the claimant at Kshs 1,071,350/= being ten months salary as compensation for unfair termination of services. This sum shall be subject to statutory deductions and taxes. The claimant shall further have costs of the suit.

21. The decretal sum shall attract interest at court rates from the date of this judgement.

22. It is so ordered.

Dated at Nairobi this 8<sup>th</sup> day of December, 2017

**Abuodha J. N.**

**Judge**

Delivered this 8<sup>th</sup> day of December, 2017

**In the presence of:-**

..... for the claimant

..... for the Respondent

**Abuodha J. N.**

**Judge**