



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 524 OF 2014

HARON CHEBOK ROTICH

CLAIMANT

v

THE SECRETARY, PUBLIC SERVICE BOARD, BARINGO 1ST RESPONDENT

COUNTY GOVERNMENT OF BARINGO

2ND RESPONDENT

JUDGMENT

1. Haron Chebok Rotich (Claimant) sued the Respondents on 21 October 2014 alleging that he was *forcefully* retired on 24 February 2014 without being accorded a hearing and before reaching the retirement age of 60 years.
2. The Cause was first mentioned on 25 November 2014, but because none of the parties were represented, the Court directed the Deputy Registrar to notify them to appear for directions on 11 December 2014.
3. On 11 December 2014, Mr. Chepkwony appeared for the Claimant while the Respondents were not represented, and the Court finding no evidence of service upon the 2nd Respondent adjourned the Cause to 15 January 2015.
4. In the interlude and on 24 December 2014 to be precise, the Respondents filed a Response through J.J. Chesaro & Co. Advocates, contending that the Claimant had fraudulently altered his identification records.
5. Come 15 January 2015, none of the parties were in attendance and the Court directed the Deputy Registrar to issue a show cause notice why the suit could not be dismissed with a return date of 2 February 2015.
6. On 2 February 2015, the Court being satisfied with service fixed the hearing for 8 December 2015. The Claimant was ordered to serve a hearing notice.
7. When the Cause was called for hearing on 8 December 2015, the Respondents were not represented. An affidavit of service confirming service and acknowledgment by the firm of J. J. Chesaro & Co. Advocates was on record and the Court therefore allowed the hearing to proceed.
8. The Claimant testified and produced documents.

9. He stated that he worked with the County Council of Baringo and was later on absorbed by the County Government of Baringo when the Counties were established, and that sometime in 2013 he received a notice of retirement dated 27 November 2013 from the 2nd Respondent.

10. He also stated that in January 2014 the payment of his salary was stopped.

11. The Claimant further stated that he had not reached retirement age and he produced a copy of his identity card showing he was born on 15 August 1960. He also produced a copy of his birth certificate showing that he was born on 15 August 1960.

12. He equally produced copies of his pay slips which indicate the retirement was due in January 2020.

13. The Claimant had also undergone an age assessment and a report issued by the Medical Officer of Health, Baringo dated 28 March 2007 indicated that his age had been assessed then as approximately 47 years.

14. The Claimant's testimony and documents (identity card, certificate of birth and age assessment) which are issued from governmental bodies remain unchallenged and uncontroverted.

15. The legal effect being that there are no real disputes as to the facts.

16. In the circumstances, the Court has no hesitation in finding in favour of the Claimant.

Conclusion and Orders

17. In the view of the Court, this is a fit and appropriate case to order that the Claimant be reinstated into service of the Respondents with effect from January 2014 without loss of any benefits, as sought in prayer (a) of the Memorandum of Claim. It is so ordered.

18. The Claimant did not file submissions as directed and therefore he is denied costs.

Delivered, dated and signed in Nakuru on this 8th day of April 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Tarus instructed by Tarus & Co. Advocates

For Respondent J.J. Chesaro & Co. Advocates (did not attend hearing)

Court Assistant Nixon