



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. 1081 OF 2013

PETER SANGANYI MARIARIA CLAIMANT

Versus

REGISTRAR OF THE HIGH COURT 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

Mr. Rakoro for claimant

M/S Akuno for respondent

JUDGMENT

1. The suit was brought vide a memorandum of claim on 16th October 2013 seeking the following reliefs;
 - a) A declaration that the claimant was prematurely retired in 2004 when he was fifty two (52) years old and not 55 years, which was wrongful and unlawful;
 - b) Salary arrears, loss of future earnings and other allowances amounting to Kshs.728,111.00;
 - c) General damages and / or compensation for unlawful retirement from service / or alternatively reinstatement;
 - d) Interest and costs.

2. The claim is opposed vide a memorandum of reply filed on 26th November 2014 by the Hon. the Attorney General.

Facts of the case

3. The facts of this case which are common cause are that the claimant was appointed into service of the Judiciary on 3rd April 1978 at the age of 30 years.

That the claimant voluntarily filed on first appointment public service commission forms and indicated his date of birth as 1948.

That on 5th September, 1986, the claimant produced an identification card, doctor's note, birth certificate and deposed to an affidavit and changed his date of birth from 1948 to 1952.

By a letter dated 16th June 2004, the claimant was retired from service having attained the compulsory retirement age of 55 years.

4. The claimant disputes that he had attained the retirement age at that time by dint of the changed date in his identification card obtained after he had been employed. Going by the identity card, he ought to have been 52 years then having been born in 1948.

5. The claimant also seeks payment of transfer allowance, per diem and refund of salary deductions set out in the memorandum of claim.

Determination

6. The issues for determination are;

(i) Which is the correct date for retirement of the claimant.

(ii) Whether the claimant is entitled to the reliefs sought.

Issue i

7. The claimant supplied his date of birth as 1948 in 1978 in the employment form (PSC 20). The claimant purported to change the date of birth seven (7) years after being absorbed in the service. In terms of regulations for civil servants and for purposes of retirement, the correct date of birth is that date which is voluntarily declared without duress on application for employment form (PSC 20).

8. The contract of employment between the claimant and the government is predicated on the information given at the point of employment. That information became a term of the contract of employment between the parties. The subsequent change of the date of birth, which in the court's view was self-serving did not alter the terms and condition of employment between the parties.

9. The 1st respondent retired the claimant correctly in terms of the contract of service and this particular relief has no merit and is dismissed.

Issue ii

10. The court has already found that the claim that the claimant was retired prematurely lacks merit and therefore any relief related to this issue is not warranted.

11. With regard to other claims by the claimant the court finds as follows;

Transfer allowance

This claim is based on a transfer from Sirisia to Molo Law Courts in March 2004. The claim is supported by a circular dated 31st August 1990 and letters dated 24th March 2004 and 10th June 2004 and payslip for August 2004 produced by the claimant in his bundle of documents.

The respondent did not seriously contest the claim and same is found to have been proved on a balance of probability. The court grants the claimant Kshs. 14,055.00 accordingly.

Per diem

12. The claimant has demonstrated that he was out of station on official duties and was due for payment of per diem of Kshs.3,700.00 per day as per the circular dated 12th February 1999. The claimant raised vouchers for the same on 5th June 2003 for Kshs.16,200.00 but were not paid upon submission. The court grants the claimant Kshs.16,200.00 accordingly.

House allowance

13. The claimant seeks payment of under payment of house allowance for a period of six (6) months between April to September 2004 at the rate of kshs.1,700 per month. The claim is supported by payslips for April to September 2004. The claimant has proved the claim on a balance of probability and the court awards him Kshs.10,200 accordingly.

Unpaid salary for two (2) days

14. The claimant has also demonstrated vide documentary evidence that he was wrongfully deducted two (2) days salary amounting to Kshs. 896.00 and the court awards him accordingly.

15. The total terminal benefits payable to the claimant by the respondent is **Kshs.41,351.00**.

16. The claimant having been lawfully retired, the claims for reinstatement and / or payment of compensation for wrongful and unlawful termination of employment are dismissed.

17. In the final analysis the court finds;

- a) the claimant was lawfully retired from employment;
- b) the claimant was owed terminal benefits amounting to **Kshs.41,351.00**;
- c) the award is payable with interest at court rates from date of filing suit till payment in full;
- d) the respondent to pay the costs of the suit.

Dated and delivered at Nairobi this 31st day of May, 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE