



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 1916 OF 2015**  
**[FORMERLY MERU HCC NO 159 OF 2009]**  
**FRANCIS BUNDI KIMATHI.....CLAIMANT**  
**VERSUS**  
**NATIONAL SECURITY INTELLIGENCE SERVICE.....RESPONDENT**  
**AWARD**

1. This matter was initially filed in the High Court at Meru in 2009 and was transferred to this Court in 2015 on the Claimant's request.
2. The parties made several appearances before me during which the following was agreed upon:
  - a) That the Claimant would officially hand over and sign the Official Secrets Act Form, at the Respondent's Headquarters;
  - b) That the Respondent would issue the Claimant with a clearance certificate;
  - c) That the parties would file submissions on the Claimant's claim for pension under the Pensions Act upon which the Court would make a determination.
3. On its part, the Respondent maintains that since the Claimant had voluntarily resigned from service, he was not entitled to benefits under the Pensions Act.
4. In his submissions filed on 18<sup>th</sup> April 2016, the Claimant contends that his resignation from service was caused by illness and was therefore not voluntary. He blames the Respondent for failure to provide adequate medical cover, an allegation the Respondent denies.
5. The Claimant's resignation notice dated 7<sup>th</sup> February 2005 states as follows:

**“RE: NOTICE OF RESIGNATION FROM THE SERVICE (N.S.I.S)**

*I am the above named officer stationed at R.C's Office NYANZA performing guard duties. I have been in the service for the last six years. Before then I served as an Administration Police constable from 8<sup>th</sup> August, 1995.*

*I hereby give a one month notice for resignation from the Service from the date of this letter.*

*Please organize to pay my dues as required.*

*Thanking you in advance, I remain,*

*Yours Obedient*

*(Signed)*

**BUNDI FRANCIS KIMATHI**

6. The Claimant's resignation was accepted by the Respondent's letter dated 12<sup>th</sup> April 2005 stating as follows:

***“RESIGNATION***

*Reference is made to your letter dated 7<sup>th</sup> February, 2005 tendering your resignation from Service with effect from 7<sup>th</sup> March, 2005.*

*This is to inform you that your resignation has been accepted with effect from 8<sup>th</sup> April, 2005. You should make arrangements to surrender all Service documents or property in your possession.*

*In respect of this letter, you are required to fill and return the Official Secrets Act Form for officers leaving the service and also complete the attached Service clearance form.*

*Wishing you success in your future endeavors.*

***FIDEL J. MUMINA, EBS***

***FOR: DIRECTOR GENERAL***

7. In a subsequent letter dated 27<sup>th</sup> June 2005, the Claimant was advised on disbursement of his benefits under the NSIS Staff Superannuation Scheme.

In my understanding, this part of the Claimant's benefits is not in dispute.

8. What is in issue is whether the Claimant was entitled to additional benefits under the Pensions Act. It is the Respondent's case that having voluntarily resigned from the Service the Claimant cannot lay a claim under the Pensions Act.

9. In support of its case, the Respondent cites Regulation 38(2) of the Code of Regulations which provides that employees who voluntarily resign from Government service forfeit all claims to retirement benefits under the Pensions Act.

10. In the final submissions filed on behalf of the Respondent, it is submitted that under Section 6 of the Pensions Act as read together with Regulations 6 and 26 of the Pensions Regulations, a public officer is eligible for grant of pension only when he retires from the service of Government in any of the following circumstances:

- a) Attainment of retirement age;
- b) Abolition or re-organization of office;
- c) Permanent disability; and
- d) Public interest

11. The Claimant states that his resignation was not voluntary. I have however looked at his resignation letter which I have reproduced above and do not find any evidence of coercion exerted on him to resign. I say so having taken notice of the Claimant's complaints about his working conditions which in my view cannot be said to have caused any such coercion.

12. There was also no evidence that the Claimant left the Respondent's employment on account of permanent disability.

13. Having found that the Claimant's resignation was voluntary, I must agree with the Respondent that he is not entitled to retirement benefits under the Pensions Act.

14. The result is that the Claimant's claim fails and is dismissed with no order for costs.

15. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 2ND DAY OF SEPTEMBER 2016**

**LINNET NDOLO**

**JUDGE**

Appearance:

Francis Bundi Kimathi (the Claimant in person)

Miss Chege for the Respondent