



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 507 OF 2014

JACKSON K. BEREGE.....CLAIMANT

v

MAASAI MARA UNIVERSITY.....RESPONDENT

RULING

1. Jackson K. Berege (applicant) was appointed by Maasai Mara University (Respondent) as a Registrar (Academic) through a letter dated 24 June 2009. The appointment was subject to terms and conditions of service specified in the Terms of Service document.
2. The Terms of Service document provided for retirement age of 65 years.
3. The Respondent, through a letter dated 3 June 2014 gave notice to the applicant that he would retire effective 30 June 2015. The letter informed him that he was past the retirement age of 60 years.
4. The applicant was aggrieved and on 13 October 2014, he instituted legal proceedings against the Respondent seeking a declaration that the notice of retirement varying the contract of employment is unlawful and unfair.
5. At the same time the applicant filed a motion seeking injunctive relief against retirement pending hearing of the Cause. On 22 October 2014, the parties agreed to grant of prayer 2 of the motion.
6. What is now pending is prayer 3 of the motion.
7. According to the applicant, the notice by the Respondent amounted to a unilateral variation of his contract of employment. The notice made reference to retirement age as 60 years while the contract stipulated the retirement age as 65 years.
8. The Respondent on its part admits that the retirement age agreed with the applicant was 65 years, but because of a government circular dated 20 March 2009, the retirement age for all public servants was reviewed to 60 years and that its notice was founded on the circular.
9. The Court has dealt with another Cause involving the Respondent on similar facts.
10. As a general legal principle, for a variation of an employment contract to be lawful, it should be by mutual agreement. Consent may be implied or express (see *Harlow v Artemis Ltd* (2008) IRLR 629 and *Security and Facilities Division v Hayes* (2001) IRLR 81). The applicant contends the variation was

unilateral. The Respondent on its part seeks to rely on a government policy.

11. The Court is of the view that the applicant has made out a prima facie case for the grant of order 3 in the motion dated 13 October 2014. The Court accordingly orders

(a) THAT pending the hearing and determination of the Cause, the notice of retirement dated 3 June 2014 be stayed and the applicant be retained in his employment position with all benefits and enjoyment of the terms of service.

(b) Costs of the motion be in the cause.

(c) The Cause be fixed for hearing on an accelerated basis and on a date convenient to the parties and the Court, forthwith.

Delivered, dated and signed in open Court in Nakuru on this 23rd day of January 2015.

Radido Stephen

Judge

Appearances

Mr. Oumo instructed by Oumo & Co. Advocates - Applicant

Mr. Mogere instructed by S. Mogere & Co. Advocates - Respondent