



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**

**CAUSE NUMBER 831 OF 2012**

**CALEB BW'AUMA MANYAGA..... CLAIMANT**

**VERSUS**

**KENYA PIPELINE COMPANY LIMITED.....RESPONDENT**

**RULING**

1. By a motion dated 8<sup>th</sup> August, 2013, the Respondent objects to the production in evidence of certain documents set out on the face of the motion on the grounds that they are privileged official communication.
2. At the hearing of the motion, Mr. Obok for the Respondent submitted that the minutes of the Respondents' meeting held on 11<sup>th</sup> March, 2007 concerned internal business of the Respondent and had no relation to the dispute before the Court. Counsel submits the same concerning the letter dated 20<sup>th</sup> March, 2009 from the Office of the President and the letter dated November, 2010 from Ministry of Energy requesting for the approval of salary increment for management.
3. Regarding Price Waterhouse Coopers' (PWC) report, Counsel submitted that the same was prepared for purposes of seeking legal redress by the Respondent and should not be brought to Court. According to counsel, the report stated that it was confidential and could not be used or reproduced without the consent of Price Waterhouse Coopers.
4. Mr. Ongicho for the Claimant on his part submitted that his client had a right to access the documents. These documents, he argued, existed during the time the Claimant was in employment of the Respondent.
5. Counsel submitted that the Respondent has not objected to the authenticity of the documents but on how they may have been procured. According to Mr. Ongicho, the cause of action in the claim is early retirement which the Claimant considers as constructive dismissal. Counsel further submitted that the early retirement letter refers to the minutes which the Respondent was objecting to. According to counsel, the minutes will enable the Court to see what informed the early retirement.
6. The Claimant in his memorandum of claim avers that on 4<sup>th</sup> March, 2009, he was sent on compulsory leave in order to recover some 274 days of accrued leave as per the Respondent's policy. While on such leave he was summoned to appear before the Human Resource Committee to shed more light on the circumstances under which the company released a product under collateral finance agreement to Triton Oil Company without the financiers authority.

7. Further, he avers that by a letter dated 17<sup>th</sup> May, 2009 the Claimant was once again summoned to appear before the Human Resource Committee to shed light on the Line 1 Capacity Enhancement Project. He was thereafter informed by a letter dated 15<sup>th</sup> June, 2009 that the Board of directors had resolved that he be retired from the Respondent's services with immediate effect.

8. The Claimant although initially accepted the retirement felt later that it was not fair and justified hence sought to contest the same through the present claim.

9. In the Claimant's view, by virtue of the letter dated 20<sup>th</sup> March, 2009 from the Office of the President he was entitled to continue working for the Respondent until he attained the age of 60 years. Further he contended that if he continued working he could have benefitted from the 15% pay rise approved by the Ministry of Energy as per the letter dated 20<sup>th</sup> November, 2010.

10. To this extent, the letter dated 20<sup>th</sup> March, 2009 from the Office of the President and the one dated 20<sup>th</sup> November 2010 from the Ministry of Energy are of relevance to the Claimant's line of claim besides these letters especially the one from the Office of the President was not for the exclusive consumption of the Respondent.

11. The letter is a general letter addressed to other recipients including all Permanent Secretaries, all Provincial Commissioners etc. Besides the increase of retirement age is in the public domain hence the Court fails to appreciate the purpose of the objection by the Respondent.

12. Early retirement, is a form of termination of employment hence governed by Section 45 of the Employment Act. This section prohibits unfair termination of employment. It further provides that a termination shall be unfair if the employer fails to prove that the reason for termination is valid and that the reason for termination is fair reason.

13. I have perused the retirement letter dated 15<sup>th</sup> June, 2009. The letter simply informs that the Claimant, that the Board of Directors in its meeting held on 2<sup>nd</sup> June, 2009 resolved that the Claimant be retired with immediate effect. The letter does not give any reason or hint as to what informed the Claimant's early retirement as contemplated by section 45 of the Employment Act.

14. In this context, it would require additional evidence to show what could have led to the decision to retire the Claimant early. This far the Court is of the view that the documents sought to be relied on by the Claimant may be of useful assistance to his claim even if he fails to prove the claim ultimately.

15. In conclusion the Court is not persuaded that any prejudice or exposure will occur to the Respondent if the Claimant relies on the documents objected to with the consequence that the motion dated 8<sup>th</sup> August, 2013 is dismissed with costs.

16. It is so ordered.

Dated at Nairobi this 10<sup>th</sup> day of February 2015

Abuodha J. N.

Judge

Delivered this 10<sup>th</sup> day of February 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge