



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO. 874 OF 2013**

**HUSSEIN ADAN GALGALO.....**  
**CLAIMANT**

**VERSUS**

**STANDARD GROUP LIMITED.....**  
**RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit on 10<sup>th</sup> June 2013 and sought the resolution of the dispute he had with the Respondent, to wit, unlawful termination of employment. The Claimant was a driver engaged on 1<sup>st</sup> May 2005 and earning a consolidated monthly salary of 25,100/=. He worked until 10<sup>th</sup> May 2011 when he was issued with a retirement letter to take effect after expiry of 2 months. The Claimant sought that the retirement be deferred but that plea was not acceded to. He thus claimed 2 months in lieu of notice, payment of his salary for 5 years and 60 months, 12 months compensation for unfair loss of employment and certificate of service.
2. The Respondent opposed the claim and filed a Reply to Claim on 3<sup>rd</sup> July 2013. The Respondent denied that the Claimant had a right to be heard per section 41 of the Employment Act 2007 as the section relates to termination on grounds of misconduct, poor performance and physical incapacity which did not inform the Respondent's decision to retire the Claimant.

The Respondent averred that the claim was an attempt by the Claimant to unjustly enrich himself. The Respondent denied receipt of any demand letter from the Claimant and prayed that the suit be dismissed with costs.

3. The parties called their respective witnesses who testified on their behalf. The Claimant testified that he was told that he had reached the retirement age on 10<sup>th</sup> May 2011 and was given a letter informing him of this. He testified that in law retirement is 60 years and he wrote a letter asking to be allowed to continue. He stated he had wanted to continue working till 60 years. He thus wanted to be allowed to work for the balance of 5 years or in the alternative work until he was 60 years. The amount sought was 1,875,400/=. He testified that the amount he received per month did not include house allowance. He thus sought costs, interest alongside the sums he had mentioned being house allowance. He testified that he had rented a house in Eastleigh where he paid 15,000/= a month.
4. In cross-exam he denied that he was lying and that he was hired by the Respondent in 2005. He

claimed the documents were burnt by “*shifita*”. He testified that he signed a contract with KTN written on it. He was shown the contract of employment exhibited by the Respondent as document 1 and confirmed that the signature on the document accepting the appointment was his. He admitted knowing Joseph Yegon who witnessed his signature. He testified that he attained the age of 55 years and denied he was paid for 2 months. He admitted seeking extension of the contract of service. He stated his contract was over but years for retirement had changed.

5. In re-exam he testified that he could not remember the exact date but if he saw his contract he would be able to tell when he was employed. He stated he was to retire at 55 years according to the contract and that there were changes to the law. He denied receiving the money said to have been applied to the loan.
6. The Respondent called Erick Kakemu Kivuva a legal officer with the Standard Group. He testified that he prepares contract for employees and when preparing the contracts of employment due regard is given to the Employment laws applicable. He stated even now the retirement age is 55 years and the contracts reflect that. The Claimant was given the requisite retirement notice which is 2 months. He stated by the time one gets the payslip the amount is in the account.

He exhibited the Certificate of Service for the Claimant.

7. In cross exam he testified that he joined the Respondent on 17<sup>th</sup> May 2011 and at the time the Claimant had not left employment yet. He stated he was aware mandatory retirement age was changed to 60 years. He testified that at 55 years an employee could be retired. He stated he did not know of any law that extended retirement to 60 years.

He stated that the Respondent abided by the law and the retirement of Claimant was proper.

8. In re-exam he testified that the contracts are standard documents and the Claimant was issued with the Certificate of Service. Parties closed their cases and agreed to file written submissions which were duly filed by both parties on 4<sup>th</sup> March 2014 for the Claimant and 17<sup>th</sup> March 2014 for the Respondent.

Each reiterated the specific positions of the parties and cited various provisions of law. The Respondent attached the cases of **Kenya Plantation and Agricultural Workers Union v. Kenya Cuttings Ltd. [2013] eKLR, Michael Maina & Anor v. Stanley Kigara Kahombe [1996]eKLR, Hahn v. Singh [1985] KLR 716** for the propositions of contract and special damages.

I have considered the pleadings, evidence adduced, the testimony of witnesses, the submissions of parties and the law in coming to this decision.

9. The Claimant seeks to be permitted to work until the age of 60 years. He was retired on attainment of the age of 55 years in 2011. He claims that he did not receive the retirement benefits but that the sum was paid to offset his loan. On the side of Respondent it was stated the contract was terminated by effluxion of time as the Claimant reached retirement age, was served the retirement notice and paid his dues.
10. The terms of a contract are between parties and the Court cannot rewrite contracts for parties. What the Claimant is inviting Court to do is to rewrite the contract and substitute the clause on retirement from 55 years to 60 years. This Court, and indeed no other Court, can pretend to do so. The Claimant had no proper basis for the claim and in the premises it is inappropriate to find in his favour.
11. The Claimant was untruthful whilst on the stand. He pleaded that his salary was consolidated yet on testifying alleged he was not paid house allowance. He did not even claim it in his claim. I am persuaded on the strength of **Hahn v. Singh & Maina & Anor. v. Kagombe** that the special damages being house allowance even if unpaid were not specifically pleaded and will not be

awardable. He was paid his terminal dues and the notice before retirement.

The upshot of the foregoing is that the Claimant's claim is dismissed with costs to the Respondent.

Orders accordingly

**Dated and Delivered at Nairobi this 4<sup>th</sup> day of April 2014.**

**Nzioki wa Makau**

**JUDGE**