



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

**CAUSE NO. 1041 OF 2012**

JOHN MAINA NYAGA.....  
**CLAIMANT**

**VERSUS**

CHARTERHOUSE BANK LTD.....  
**RESPONDENT**

**JUDGMENT**

1. The Claimant seeks resolution of the alleged wrongful dismissal or unfair termination of his services from the Respondent. He seeks gross salary for 10 months of the contract amounting to 1,647,758/=, twelve months salary as compensation for wrongful unfair or unlawful dismissal, 1,977,000/= one month salary in lieu of notice, damages for trauma depression, anxiety, stress, humiliation, frustration and suffering occasioned by the Respondent. He also sought interest on the special damages and costs of the suit in addition to any other reliefs the Court may deem fit to grant.
2. The Respondent opposed the suit and averred that it was lawful to terminate the contract pursuant to clause 17 of the memorandum of agreement and neither the letter of the appointment nor the memorandum of agreement guaranteed future renewal of the employment contract. The retirement age of male employees was averred to be 60 years an age the Claimant attained in 2010. The Respondent thus prayed for the dismissal of the suit with costs.
3. The Claimant testified on 29<sup>th</sup> May 2013 and stated that he was employment by the Respondent from 1<sup>st</sup> April 2003 until his termination on 2<sup>nd</sup> February 2012. The contracts he had we annual and upon the takeover of the Respondent by the Central Bank of Kenya he continued to work for the Respondent under statutory management of the CBK. The Statutory Manager wrote a letter stating the Claimant's last day of service was 31<sup>st</sup> January 2012.
4. The Respondent called Jimmy Muiwa who testified that the Claimant was the Manager Human Resource at the Respondent and ought to have notified the Respondent when he achieved the retirement age of 60.
5. The Claimant during cross-examination by Mr. Ogalo-Omondi admitted he turned 60 in December 2010. The terms of employment of the Claimant and other employees of the Respondent were contained in the Staff Terms of Employment. Clause 7 headed Termination date had a sub clause headed Retirement. Under Retirement clause 2 on Normal Retirement Age was that the normal retirement age for all male employee is 60 years and 55 years for female employees. The clause on Retention Beyond Retirement Age made provision that an employee could be retained beyond 60 years or 55 years for male and female employees upon application to be made 5 months before normal retirement age.
6. The Claimant wrote in 2012 seeking an extension to serve as employee till the end of 2012. He was aged 61 at the time. That clearly was not 5 months before attainment of the age of 60 years.

He continued to enjoy a salary for 1 year, 1 month beyond his retirement age. His claim is therefore without basis. The Claimant's case was not proved on a balance of probabilities. If he suffered trauma, depression, anxiety, stress, humiliation, frustration and suffering, he did not adduce any medical report or tender evidence of such. The claim on General damages would therefore not lie. The termination was lawful and proper. The suit is dismissed with costs to the Respondent.

It is so ordered.

**Dated and Delivered at Nairobi this 10<sup>th</sup> day of December 2013.**

**Nzioki wa Makau**

**JUDGE**