



**KUDHEIHA Workers v Kitui Mwingi Parkside Motel Limited (Cause E145 of 2020) [2025] KEELRC 2883 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2883 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E145 OF 2020  
DKN MARETE, J  
OCTOBER 22, 2025**

**BETWEEN**

**KUDHEIHA WORKERS ..... CLAIMANT**

**AND**

**KITUI MWINGI PARKSIDE MOTEL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Claim dated 14th February, 2020. It does not disclose any issue in dispute on its face.
2. The Respondent in a Response to Memorandum of Claim dated 20th February, 2024 denies the claim and prays that its be dismissed with costs.
3. The claimant's case is that the grievant was a union member registered in the trade union as Kitui KUDHEIHA Workers Branch on 16th February 2015 with a membership card number 229. He has continued to pay Union dues as in the receipts annexed to this claim.
4. The claimant's further case is that on 1st May, 2015 the grievant was served with a verbal suspension for two weeks awaiting a determination of the management. She reported on duty on 14th June, 2016 when he was informed that her services were terminated but was not issued with a letter of termination. Her stint of service was blemish free with no warning letter(s), or at all.
5. The claimant's other case comes as follows;
  - i. The Union booked an appointment with the Respondent Management on 15th July, 2016 but this was not answered.
  - ii. The Branch Secretary reported the matter to the head office who in effect referred the dispute to the Cabinet Secretary as per section 62 of the Labour Relation Act, 2007.



- iii. The conciliator invited both parties to a meeting on 7th February, 2028 but the Respondent declined attendance. This was re-scheduled to 14th March, 2018 with no success forcing the conciliator to schedule another meeting on 28th March instant.
  - iv. On 13th December, 2018, the conciliator issued a certificate of unresolved dispute per section 69(a) of the Labour Relations Act, 2007. The claimant could now proceed to the next level.
6. The Claimant's penultimate case is that the Respondent contravened section 41(1) of the Employment Act, 2007 that provides for the engagement of an employee before termination. This dialogue and explanation should be in the presence of another employee or shop floor union representative of his choice.
7. Overall, the claimant worked for four years at a consolidated salary of Kshs.9000.00 per month. He therefore claims the following as remedies for unfair and unprocedural termination of employment.
- a. Notice – Kshs.10,496
  - b. House allowance – 2013 – 2016 (3years) – Kshs.56,678
  - c. Six (6) months compensation for unfair termination – Ksh.62,976
  - d. Underpayment of wages (2013-2016) – Kshs.94,360
- TOTAL =Kshs. 224,510

He prays as follows;

- i. One months's salary in lieu of notice – Kshs.10,496
  - ii. House allowance 15% of basic salary x 36 months(3years) (15/100x10,496x36 months) – Kshs.56,678
  - iii. Six(6) months compensation for unfair termination – Kshs.62,976
  - iv. Costs of the suit (as the court determines)
- Total ..... Kshs.224,510

The Respondent's case is a denial of the claim.

8. It is its case that the Respondent salary was inclusive of housing allowance and all other monetary allowances arising out of this employment. Further, the claimant abandoned his duties on being caught stealing from the employer and therefore the case of termination does not arise. This is pure desertion from work. There were attempts to amicably resolve the issues in disputes but this failed with no acceptable results to the parties.
9. The Respondent's other case is that there was not case of underpayment and further that before her relief from duty, the grievant was to resume work and undergo disciplinary process but she declined.
10. This matter came to court variously until the 7th November, 2024 when it was heard inter partes. Here, the parties testified in reiteration of their respective cases.

The issues for determination therefore are;

- 1. Whether this court has jurisdiction to hear and determine this matter.
- 2. Whether there was a termination to employment of the claimant by the Respondent.



3. Whether the termination of employment of the claimant by the Respondent was wrongful, unfair and unlawful.
  4. Whether the claimant is entitled to the relief sought.
  5. Who bears the costs of this claim?
11. The 1st issue for determination is whether this court has jurisdiction to hear and determine this matter. The Respondent raises an issue of jurisdiction and seeks to rely on section 89 (read section 90) of the [Employment Act](#), 2007 which provides that all actions relating to a contract of service shall lie within three (3) years after the act, neglect or default complained of.
  12. In the instant case, the grievance indicated in her pleadings that her employment was terminated on 14th June, 2016. This suit was filed on 9th March, 2020 therefore making it good material for the rule on statutory bar. The court therefore has no jurisdiction to hear and determine the claim.
  13. The Respondent in such submission sought to rely on authorities of *John Kiiru Njiri v University of Nairobi* [2021] eKLR (cited with approval in *Butali Sugar Mills v Shari & another* (Employment and Labour Relations Appeal E029 of 2022) [2023] KEELARC 589 (KLR) (9 March 2023) (Judgment) the Court observed that,

“ ... the Act is framed in mandatory terms. A claim based on a contract of employment must be filed within 3 years. This Court is denied jurisdiction to extend time to file suits not lodged with the court within 3 years from the date the cause of action arose... The limitation period is never extended in matters based on an employment contract... The period can only be extended in claims founded on tort and only when the applicant satisfies the requirements of Sections 27 and 28 of the [Limitation of Actions Act](#) which provisions do not apply in employment and labour relations claims.”
  14. The fact that an employee whose employment has been terminated seeks a review or an appeal or makes demand thereof does not mean that accrual of the cause of action is held in abeyance until a final verdict on the review or appeal or a response on the demand is made as held in *Hilarion Mwabolo V Kenya Commercial Bank* [2013] KEELRC 932 (KLR) where the Court went on to hold that,

“In my view, termination kicks in from the date stated in the letter of termination. In this case, although the Claimant's termination letter was not produced, the Claimant stated in his own Memorandum of Claim that his employment was terminated on 10th June 2006 and the Court adopted this date as the effective date of the termination of employment and consequently as the accrual date.”
  15. The claimant does not address the issue of jurisdiction, or at all in their written submissions dated 16th January, 2025. This is not explained or even mentioned throughout these proceedings.
  16. I agree with the submissions by the Respondent that it is beyond any shadow of doubt that the matter was filed out of time. In such circumstances, this court lacks jurisdiction to continue hearing or even determination of the issues in dispute. The court is obliged to put down its hands for want of jurisdiction. This being the case, the suit becomes a non -starter and material for striking for lack of jurisdiction. I am therefore inclined to down my tools and strike out this matter for being time barred in inception.
  17. With a striking out of this matter, all the other issues for determination fall by the way side. They are not material for any consideration.



18. The matter is therefore struck out with orders that parties bear their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 22<sup>ND</sup> DAY OF OCTOBER 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

1. Miss Mwendwa for the Claimant Union.
2. Mr. Mwalimu instructed by J. K. Mwalimu and Company Advocate for the Respondent.

