



**Kenya National Private Security Workers Union v Lavington Security Limited  
(Cause E068 of 2024) [2025] KEELRC 3135 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3135 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E068 OF 2024  
MA ONYANGO, J  
NOVEMBER 6, 2025**

**BETWEEN  
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION ..... CLAIMANT  
AND  
LAVINGTON SECURITY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the *akn ke act 2007 14 Labour Relations Act* to represent employees in the private security sector.
2. The Respondent is an organization which operates a private security company and employs security guards. The Claimant is therefore the proper union entitled to represent the employees of the Respondent in labour matters.
3. It is the Claimant's case that the Grievant, Mr. Paul Onyoni Obanda was an employee of the Respondent, and on 5<sup>th</sup> October 2023, he tendered his resignation on grounds that he had attained the age of retirement.
4. The Claimant avers that the Respondent acknowledged receipt of the Grievant's resignation letter but failed to pay his terminal dues.
5. In the Memorandum of Claim dated 16<sup>th</sup> August 2024, the Claimant seeks the following remedies from this court on behalf of the Grievant: -
  - a. Order the Respondents to pay the Grievant his terminal dues
  - b. Annual leave for years worked
  - c. Grant of any other relief deemed fit and just to meet the ends of justice
  - d. Underpayment of wages



- e. Costs of the suit
6. In response to the Memorandum of Claim, the Respondent filed a Memorandum of Response dated 20<sup>th</sup> January 2025 in which it admitted that there was indeed correspondence between itself and the Grievant regarding the Grievant's resignation letter dated 5<sup>th</sup> October 2023 following his retirement.
7. The Respondent maintained that it was not obligated to communicate with the Claimant after the separation with the Grievant.
8. The Respondent asserted that the Grievant was competitively remunerated during the course of his employment with the Respondent and he was not required to work on public holidays.
9. In response to the claim for leave dues, the Respondent maintained that the Grievant utilised his leave days whenever they accrued.
10. The Respondent thus prayed that the Claimant's suit be dismissed with costs.

### **The evidence**

11. The Grievant testified on 18th March 2025 as CW1. He stated that he was employed by the Respondent in 2006 at a salary of Kshs. 3,000 as a night guard, that by the time he left employment, his salary had risen to Kshs. 12,000. He testified that he retired upon attaining retirement age and duly notified the Respondent, who acknowledged receipt and approved his retirement. He contended that he was not paid his retirement dues. He further testified that during his employment, he never went on annual leave, worked 12-hour shifts without overtime pay, and worked on public holidays without compensation.
12. On cross-examination, the Grievant testified that he was never issued with a pay slip and that his salary was paid through the bank. He asserted that he cleared with the Respondent before receiving the letter approving his retirement, but maintained that he was not paid his terminal dues. He admitted that no specific monetary claim was indicated in the Memorandum of Claim.
13. The Respondent called Samuel Obanda, its Human Resource Manager who testified as RW1 and adopted his witness statement recorded on 20<sup>th</sup> January 2025 as his evidence in chief. He also adopted and relied on the documents filed by the Respondent in support of its case.
14. On cross-examination, RW1 stated that the figures in the Grievant's pay slip and bank statement differed because the bank reflected net pay after deductions. He asserted that the Grievant was paid his leave dues. He admitted that the Grievant's terminal dues had not been paid as he was yet to clear with the Respondent. RW1 further stated that the Grievant worked from 8:00 a.m. to 5:00 p.m. and that his employment contract provided for four rest days per month.
15. At the close of the hearing, the Court directed the parties to file written submissions. The Claimant filed its submissions on 26<sup>th</sup> May 2025, which substantially reiterated the contents of the Memorandum of Claim and the Grievant's testimony.

### **Determination**

16. I have considered the pleadings, the evidence and submissions of on record. The issues that arise for my determination are: -
  - i. Whether the Grievant is entitled to payment of terminal dues;
  - ii. What reliefs should issue



17. It is not in dispute that the Grievant tendered his resignation letter dated 5<sup>th</sup> October 2023, indicating that he was retiring upon attaining the mandatory retirement age. The Respondent acknowledged receipt of the letter and approved the retirement.
18. The Grievant contended that although his retirement was accepted, he was not paid any terminal benefits. The Respondent's witness RW1, admitted that the Grievant's terminal dues had not been settled, explaining that the same was pending because the Grievant had not cleared with the Respondent.
19. Ordinarily, once an employee retires and clears with the employer, the employer is obligated to compute and release the employee's dues within a reasonable period. The Respondent did not produce any evidence to show that the Grievant failed to clear. It did not tender any evidence that it had informed the Grievant that he was required to clear before being paid his terminal dues. In the absence of evidence that the Grievant declined or failed to complete clearance formalities, the Court finds that the continued withholding the Grievant's terminal dues by the Respondent was unjustified.
20. The Grievant is therefore entitled to payment of his terminal benefits as may be provided under the terms of his employment.

### **What reliefs should issue**

21. Having found that the Grievant is entitled to his terminal dues, I now consider if he is entitled to any of the remedies sought. In the Memorandum of Claim and his evidence in court, the Claimant sought for unpaid leave dues, underpayment, overtime dues, gratuity and public holidays dues.
22. On the claim for unpaid leave dues, the Grievant testified that during the entire duration of his employment, he never proceeded on annual leave and was not compensated for the same. The Respondent on its part denied that the Grievant is entitled to unpaid leave dues arguing that the Grievant proceeded on his leave days during the course of his employment. In support of this position, the Respondent produced leave forms for the period between 2016 to 2023.
23. Although these records do not cover the entire duration of the Grievant's employment since 2006, they demonstrate that the Respondent consistently granted leave to the Grievant during the latter years of service.
24. Under Section 74(1)(f) of the *Kenya Employment Act 2007*, an employer is required to maintain proper employment records, including records of annual leave taken. The Respondent's documentation, though incomplete, sufficiently shows that the Grievant went for his annual leave from 2016 to 2023. Any claim before the period for which records were produced by the employer would be time barred under section 90 of the Act.
25. With regard to the claim for overtime dues, the Grievant testified that he worked twelve (12) hours daily without overtime compensation. The Respondent produced duty rosters for January 2019 and October 2023, which demonstrated that the Grievant was allocated regular shifts during those months.
26. As regards the claim for underpayment, the Grievant alleged that he was paid below the prescribed statutory minimum wage. The Respondent produced pay slips for October, 2023 where the Grievant was paid Kshs. 12,921.30 as basic salary and Kshs. 2,280 house allowance, payslip for December, 2021 where the Grievant was paid 12,325 and house allowance of Kshs. 2,175 and pay slip for January, 2014 where the Grievant was paid Kshs. 11,475 and house allowance of Kshs. 2,025. The Grievant produced bank statement but did not highlight the payments for salary. As pointed out by RW1 the



bank statement would not reflect actual payment as the same only reflected net salary after deductions. From the evidence on record, the Grievant did not prove underpayment on a balance of probabilities.

27. On the claim for gratuity, the Regulation of Wages (Protective Security Services) Order 1998 (as amended from time to time) provide that a security guard who has served for five or more continuous years is entitled to gratuity at the rate of eighteen (18) days' pay for each completed year of service, payable upon retirement, resignation, or termination not arising from misconduct. The evidence on record shows that the Grievant served the Respondent continuously from 2006 until his retirement in October 2023, a period of seventeen (17) years. Based on the evidence of RW1 that the Grievant's last salary was Kshs. 14,500, I will use the said rate for tabulation of his terminal dues. Based on the same, the gratuity is computed as follows:  $(18 \times 14,500 \times 17) = \text{Kshs. } 147,900$ . The Court therefore awards the Grievant Kshs. 147,900 as gratuity.
28. With regard to the claim for payment for work done on public holidays, the Grievant did not lead any evidence to demonstrate that he worked on any public holidays or that he worked and was not paid. In the absence of such proof, the claim fails and is hereby dismissed.
29. In conclusion judgment is entered in favour of the Claimant as against the Respondent in the sum of Kshs. 147,900 being gratuity. All other claims were not proved and are dismissed.
30. The Respondent is directed to compute and pay the total award to the Grievant through the Claimant within sixty (60) days of this judgment failing which interest will accrue from date of judgment.
31. The Claimant is awarded costs of Kshs. 50,000 in view of the fact that the Claimant was represented by a union official and is not subject to taxation under the Advocates Remuneration Order.

**DATED, DELIVERED AND SIGNED**

**THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**M. ONYANGO**

