



**Magara v Teachers Service Commission; Public Service Commission (Interested Party)
(Petition E128 of 2024) [2025] KEELRC 3179 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3179 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E128 OF 2024
HS WASILWA, J
NOVEMBER 13, 2025**

BETWEEN

SAMSON BASIL MAGARA PETITIONER

AND

TEACHERS SERVICE COMMISSION RESPONDENT

AND

PUBLIC SERVICE COMMISSION INTERESTED PARTY

JUDGMENT

1. By a Petition dated 9th August 2024, the Petitioner sought for the following reliefs; -
 - a. A declaration that the Respondent’s actions of withholding of the Petitioner’s Pension Terminal (Retirement) Benefits amounts to a serious violation of his Constitutional rights to Property and Social Security under Articles 40 (3) and 43 (1) (e) of *the Constitution* of Kenya 2010 plus his legitimate expectation to be paid and to enjoy his pension like any other public servant and accordingly, the same is unlawful, null and void hence illegal for all intents and purposes.
 - b. A declaration that the Petitioner is entitled to payment of Pension Terminal (Retirement) Benefits in line with Articles 40 (3) and 43 (1) (e) of *the Constitution* of Kenya 2010 together with interest legitimately accrued thereof from the date the same fell due.
 - c. An Order be and is hereby issued directed to the Respondent to compute the Pension Terminal (Retirement) Benefits due for the Petitioner together with interest legitimately accrued thereof and effect payment(s) thereof without any further delays, and in any event, within Thirty (30) days from the date of Judgement and thereafter the Petitioner to continue earning a monthly pension as provided for in the Civil Service Regulation.



- d. A declaration that the Petitioner's rights under Articles 40 (3) and 43 (1) (e) of *the Constitution* of Kenya 2010 were violated by the Respondent and the Petitioner be awarded general damages against the Respondent for losses and inconveniences suffered as a result of its unconstitutional actions.
- e. The Petitioner be awarded the costs of this Petition.
- f. The Honourable Court do make any such other or further Orders as it may deem just and expedient in the circumstances to remedy the violation of the Petitioner's fundamental rights

Petitioner's Case

2. The Petitioner avers he is a qualified teacher registered by the Respondent under registration number 141498. In May 1979, the Respondent employed him as a primary school teacher on permanent and pensionable terms. He was first posted at Kenuchi Primary school in South Mugirango in the now Kisii County and thereafter taught in other schools within the former Kisii District including Kekinga primary school, in the now Nyamira County.
3. The Petitioner avers that his wife also trained as a teacher and she graduated as P1 teacher and was given TSC number 06121 on 16th February 1987.
4. In 1985, the Petitioner with the consent of his wife, applied for unpaid study leave to go and study in India. His wife played a big role in supporting him financially from her salary and earnings from their small farm in Kenya.
5. The Petitioner avers that during his study at Agra University, India, he graduated with a BA Honours degree in English, Economics, and political science. Additionally, during his spare time there, he also enrolled, studied, and graduated with a Diploma in Industrial Relations and another in labour welfare from Indian School of Labour Education, Madras.
6. The Petitioner avers that he returned to Kenya in 1992, reported back to work and was posted briefly to his previous position and thereafter he was transferred to teach English and Business studies at Marani secondary school. He subsequently received his confirmation appointment letter dated 21st June 1995. He was then transferred to Sengeru Girls High School in 1996.
7. He avers that he applied for unpaid study leave to study in the United Kingdom, which was granted and cleared paving way for his travel to the UK on 11th August 1998.
8. Upon his arrival, he was forced to do a computer course for 3 months before starting his master's degree studies on 12th October 1998 because he was computer illiterate and with no typing skills which were essential. He thus applied for an extension of his unpaid study leave on 8th May 1999 which was approved.
9. The Petitioner avers that he enrolled for his Master of Art degree at the University of Liverpool on 15th May 2000.
10. He avers that he applied for another extension on 15th July 2000 which was granted unto 31st August 2002.
11. During his time at the UK, he got a job as supply teacher on 12th March 2001 where one can work when free. He could do tutoring during school holidays, however, there was no guarantee of work. On 17th January 2002, he joined teaching personnel for it was possible to give work when he was free from college, similarly, there was no guarantee of work.



12. It is the Petitioner's case that his mother, younger sister and father passed away on 19th February 2002, 21st March 2002 and 27th January 2003 respectively which prompted him to travel back to Kenya.
13. The Petitioner avers that he applied for an extension of unpaid study leave on 29th May 2002, however, he received a termination letter from the Respondent in July 2003 which stated that his appointment as a teacher lapsed on 31st October 2002. In response, he served the Respondent with a letter dated 10th August 2003 stating that he had not been given specific allegations and/or reasons for the termination.
14. The Petitioner avers that he received the Respondent's reply in January 2004 stating that the earlier letter of 3rd July 2003 stands.
15. The Petitioner avers that on 28th January 2004, he made a visa application to extend his stay in the United Kingdom and he got a response from the home office on 24th February 2004. At the time, he had been given a visa relaxation from a student visa that could allow him to do more hours to finance himself.
16. The Petitioner avers that he continued with his studies and organised a research (data collection) through his wife and eventually graduated with Master of Art in Curriculum and Instruction in 2005.
17. It is the Petitioner's case that upon graduation, he considered that he did not have a job to go to in Kenya and had a family, thus, he decided to stay back in the UK and do any work that he could get as he continued on with his studies on his student visa.
18. In August 2010, he received an indefinite leave to remain extension of stay in the United Kingdom endorsement on his passport
19. He avers that he attained the mandatory retirement age of 60 years in 2017 and legitimately expected payment of his Pension (Retirement) Benefits.
20. The Petitioner avers that the Interested Party issued the circular PSC/ADM/13/28 titled 'Entitlement to Terminal Benefits on Dismissal' dated 21st October 2022 which is within the public domain. Consequently, on 28th November 2023, he wrote to the Respondent demanding his retirement benefits to be processed but he did not receive any reply.
21. The Petitioner avers that his former advocatwrote and served the Respondent further demanding for his retirement benefits giving reference to the circular by the Interested Party. The Respondent responded vide a letter dated 6th March 2024.
22. In its reply, the Respondent did not demonstrate that the Petitioner was aware or duly informed of the applicable disciplinary policy and/or Code of Regulation. Moreover, he was not duly informed and/or notified of any breach or violation or contravention or infringement on his part in writing, or none was/ has been brought to his attention, or at all. Further that, he was neither afforded the opportunity to be heard of any allegations of breach or violation or contravention or infringement on his part nor invited to any form of hearing; that is, physical as was the norm, then. Additionally, he was not informed the options he had under the law on review or appeal in the event he was dissatisfied with the decision by the Respondent.
23. The Petitioner avers that the Respondent's actions of withholding his Pension Terminal (Retirement) Benefits amounts to a violation of his fundamental constitutional rights to Property and Social Security as enshrined under Articles 40 (3) and 43 (1) (e) of the Constitution and that the same is unlawful, null and void for all intents and purposes.



24. It is the Petitioner's case that the Respondent's actions and/or inactions are an infringement and violation to his economic and social rights as pleaded above and further in that, in 1998, when he applied for unpaid study leave and was cleared to travel, the Respondent did not give him any conditions of his leave to read and sign. It also did not draw his attention to any existing policy if there was any.
25. The Petitioner avers that when he arrived in the UK, things were quite different from his expectations. It was an expensive country to live in. For his stay and study expenses, he did not have anyone else to look to for help. It was primarily his sole responsibility.
26. As a fulltime student he was only allowed to work 20 hrs per week during term time and full-time during school holidays. No employer would allow one to do more for the employer would be in trouble. This was the money he was depending on and his little savings.
27. The Petitioner avers that in 2002, UK had a shortage of teachers. The government gave teaching employment agencies and schools permission to recruit teachers from abroad; and students like him who were already trained as teachers were given temporary work permits through agencies to work in schools near them as supply teachers as they study to ease the shortage. The students taught in schools near them when they were free from their lessons. This enabled students anytime from Monday to Friday when colleges were open, and they were free.
28. Pursuant to this, his employer who he started working for in 2001, processed for the temporary work permit and in the work agreement, his job title was a supply teacher (section 2) and the company had no obligation to provide him with any work or provide a minimum number of hours of work in any day or week (Section 6.1), but they promised an annual salary that one will earn by the end the year.
29. It is the Petitioner's case that the Respondent had the responsibility to know where he was as he had not reported back when the leave granted had come to an end. The Respondent did not make any effort to find out from him what was happening and why he had not reported back to work.
30. He was surprised when he received the termination letter one year after the Respondent knew he had not reported back, when he innocently applied for an extension of the unpaid study leave.
31. The Petitioner avers that the Respondent did not follow its own laid down disciplinary procedure in that: He was not told the allegations in writing; He was not given a chance to be heard. He was not invited to the hearing; After communicating its decision, he was not told how to seek for a review/appeal if he was not satisfied. All the time he worked for the Respondent he had not seen a disciplinary policy and none was brought to his attention, at all; Everything is/was unfair and discriminative, at all fronts.

Respondent's Case

32. In opposition, the Respondent filed a replying affidavit dated 24th September 2024 sworn by its Acting Director in charge of Human Resource Management and Development, Kenneth Marangu.
33. The Respondent avers that it is an independent Constitutional Commission established under Article 237 (1) of *the Constitution*, with its principal functions being to manage teachers under its employment and to regulate the teaching service.
34. The Respondent avers that it employed the Petitioner as a teacher in 1979. His employment terms were permanent and pensionable and were governed by, among others, the TSC Act, the *Employment Act* and the Code of Regulations for Teachers.



35. The Respondent avers that it employed the Petitioner as a teacher in 1979. His employment terms were permanent and pensionable and were governed by, among others, the TSC Act, the [Employment Act](#) and the Code of Regulations for Teachers.
36. The Respondent avers that on 1st July 1998, the Petitioner requested and was granted unpaid study leave from July 1998 to 30th June 1999 upon admission to study at a University in Britain.
37. On 8th May 1999, the Petitioner requested an extension of his unpaid leave for a further one year up to 30th August 2000. He additionally requested a further extension on 15th July 2000 and 15th August 2002 all of which were granted.
38. The Respondent avers that the Petitioner requested for a further extension of his study leave from August 2002 to August 2003 to enable him to work in the United Kingdom from 15th August 2002.
39. The Respondent avers that noting the purpose of the extension, and the stipulation of the relevant policy on study leave, it declined the request vide a letter dated 4th September 2002, and informed the Petitioner that failure to resume duty in August 2002, his employment will be terminated.
40. Despite the warning, the Petitioner failed, neglected and refused to heed the call to report back to work. Consequently, the Respondent vide its letter dated 11th February 2005 terminated the employment of the Petitioner.
41. It is the Respondent's case that the termination of the Petitioner's employment was lawful as he failed to resume duty in line with the conditions and stipulations for study leave. The Petitioner himself admitted in the petition that he has never returned to the country and has taken up employment in the United Kingdom.
42. The Respondent avers that the entitlement and payment of free pension is a matter regulated by the [Pensions Act](#) Cap 189 of the laws of Kenya. Therefore, it contends that its role in the payment of the pension emoluments is regulated, and the substantive entity to have been sued or joined in these proceedings is perhaps the Director of Pension being the office tasked to manage and pay out such payments.
43. The Respondent avers that Petitioner, having been validly dismissed from teaching service, is therefore not entitled to a pension under the [Pensions Act](#) and the Code of Regulations for Teachers. The [Pensions Act](#) and the Code of Regulations for Teachers regulate the payment of free pensions. Accordingly, one is only eligible for such payments in line with Section 5 of the [Pensions Act](#).
44. It is the Respondent's case that the petition has not met the threshold of a constitutional petition enumerated in *Anarita Karimi Njeru v Republic* [1979] KEHC 30 (KLR).

Petitioner's Submissions

45. The Petitioner submitted that in 1998, when he applied for unpaid study leave and was cleared to travel, the Respondent did not give him any conditions of his leave to read and sign. It also did not draw to his attention to any existing policy if there was any.
46. It is the Petitioner's submission that when he arrived in the United Kingdom, things were quite different from his expectations. It was an expensive country to live in and he had to fund his stay and study expenses, he did not have anyone else to look to for help. It was primarily his sole responsibility. As a fulltime student he was only allowed to work 20 hours per week during term time and full-time during school holidays. No employer would allow one to do more for the employer would be in trouble. This was the money he was depending on and his little savings.



47. It is the Petitioner's submission that the Respondent did not make any effort to find out from him what was happening and why he had not reported back to work when the leave granted had come to an end. Therefore, he was surprised when he received the termination letter one year after the Respondent knew he had not reported back due to him innocently applying for an extension of the unpaid study leave.
48. The Petitioner submitted that it was unfair for the Respondent on first instance to decide on the punishment and thereafter to legitimize the decision by asking him to explain why. The Respondent did not follow its own laid down disciplinary procedure in that; he was not told the allegations in writing, he was not given a chance to be heard, he was not invited to a hearing and after communicating its decision he was not told how to seek for a review/appeal if he was not satisfied. All the time he worked for the Respondent he had not seen a disciplinary policy and none was brought to his attention, at all, therefore, everything is/was unfair and discriminative, at all fronts.
49. It is the Petitioner's submission that the Respondent's actions of withholding his Pension Terminal (Retirement) Benefits amounts to a violation of his fundamental constitutional rights to property and social security as enshrined under Articles 40 (3) and 43 (1) (e) of *the Constitution* and the same is unlawful, null and void.
50. The Petitioner further submitted that the Respondent's Replying Affidavit of Kenneth Marangu dated 22nd October 2024 was filed in vacuum for want of a valid appointment and/or appearance duly filed in court, hence the same is incompetent, not properly on record and liable for striking out.
51. The Petitioner submitted that his request for further extension of his study leave from August 2002 to August 2003 was not made with malice for this time he was experiencing financial difficulties, having neither a sponsor nor an alternative other than to stay longer in order to complete the program he was doing.
52. The Petitioner submitted that he did not receive the Respondent's letter dated 4th September 2002 purported to have been sent to him and challenged the Respondent to show proof that the letter indeed was sent and received by him. He confirms that if he had received the said letter, he could have not waited without responding to make another request for extension which he knew he could not get.
53. It is the Petitioner's submission that he is and was not aware of the conditions and stipulations of unpaid study leave. He was also not made aware of any policy when he was given/granted the unpaid study leave.
54. The Petitioner submitted that the Respondent's letter dated 4th September 2002, which he saw for the first time after service of the Respondent's Replying Affidavit, stated that: "You will be deemed to have terminated your appointment voluntarily if you will not have resumed duty by that date." The Petitioner contends that the term voluntary termination of appointment refers to an employee's decision to leave a job on their own accord, that is, voluntary termination occurs when an employee makes the decision to leave a job or end a contract early. Hence, his exit was through voluntary termination of employment and not dismissal.
55. The Petitioner submitted that the Respondent cannot be allowed to choose, elect or dictate to him the form and/or manner to institute his suit. If the Respondent wished to cross-examine the Petitioner or to call viva voce evidence, then, nothing stopped it from doing so. These are procedural technicalities which have no constitutional backing in light of Article 159 of *the Constitution* which mandates that justice be done to all, without delay, and without undue regard to procedural technicalities.



56. The Petitioner submitted that under Article 19 of *the Constitution*, all people, including the Petitioner are entitled to full enjoyment of rights and fundamental freedoms in the Bill of Rights and the Respondent is duty bound to ensure realization of the said rights and freedoms in the view of the obligation imposed upon it. Additionally, Article 20(1) of *the Constitution*, binds every state organ, bodies and persons in their application and interpretation of the rights and fundamental freedom in the Bill of Rights under *the Constitution* and thus the Respondent being a Commission within the meaning of Article 260 of *the Constitution*, is duty bound in application and interpretation of *the Constitution*.
57. The Petitioner submitted that Article 20(2) of *the Constitution* provides that every person has the right to enjoy the rights and fundamental freedoms to the greatest extent consistent with the nature and the right or fundamental freedom. It is a value and principle of our constitution that laws which are inconsistent with it are invalid to the extent of the inconsistency. As such, the Petitioner enjoys equal rights and freedoms which are not suspended at any time and the same should not be infringed and/or trampled upon.
58. The Petitioner submitted that Article 22 of *the Constitution* entitles him to institute these proceedings on his own behalf, or in public interest to remedy the Respondent's denial, violation or infringement of his fundamental freedom in the Bill of Rights. Further, Article 23, grants the court the jurisdiction in accordance with Article 162(2) to hear and determine applications for redress or denial, violation or infringement of, or threat to a right or fundamental freedom in the Bill of Rights.
59. The Petitioner submitted that *the Constitution* grants him the right to equal protection, inherent dignity, property ownership, fair labour practices and economic and social rights which include the right to Pension Terminal (Retirement) Benefits under Articles 27, 28, 40, 41 and 43 of *the Constitution*.
60. It is the Petitioner's submission that under Section 60 (1) (o) of the *Evidence Act*, the retirement age at that time was 55 years, and it was later extended to 60 years in 2009, when he was 52 years old. During this time, he was ineligible to claim pension from the Respondent. He attained the present retirement age in 2017 and shortly afterwards, he started making follow-ups about his pension. Before his termination, the Petitioner had been employed by the Respondent for 23.5 years.
61. The Petitioner submitted that the matter before the court being a constitutional Petition, the question of limitation does not arise as was held in *County Government of Nyeri & another v Ndungu* [2015] KECA 1011 (KLR).
62. The Petitioner submitted that it is irrefutable and a demonstrable fact that this case relates to breach of specified provisions of *the Constitution* and not on issues of pure employment relations. The Petitioner is not claiming damages for wrongful, unfair, unjust and unlawful termination/dismissal but clear-cut reliefs under *the Constitution*.
63. The Petitioner submitted that the Respondent's preliminary objection is improperly on record thus in-competent for having been filed without a Notice of Appointment, or Notice to Act in Person, or Memorandum of Appearance filed by the Respondent, it has no merit.
64. The Petitioner submitted that Section 12 (4) of the *Employment and Labour Relations Court Act* stipulates that costs is a discretion of this court and it is also trite law that costs follow the event. Therefore, he urged the court to exercise its discretion in his favor and award him costs and interests.
65. It is the Petitioner's submission that he has sufficiently proved that the Respondent's actions amount to a serious violation of his constitutional rights to property and social security under Articles 40 (3)



and 43 (1) (e) of *the Constitution* plus his legitimate expectation to be paid and to enjoy his pension like any other public servant and accordingly, the same is unlawful, null and void hence illegal for all intents and purposes.

Respondent's Submissions

66. The Respondent submitted on two issues: whether the Petitioner is entitled to pension benefits; and whether the Petition is pleaded with reasonable precision.
67. On the first issue, the Respondent submitted that Section 5(2) of the *Pensions Act* provides: "The right conferred under subsection (1) shall not apply in respect of compensation for past services, nor shall anything in this Act affect the right of the Government to dismiss any officer at any time and without compensation." Section 6 of the Act further gives scenarios where one is eligible for Pension Benefits. In the same breadth Regulation 181(2) of the Code of Regulations for Teachers states: "A teacher who is dismissed from service shall forfeit all claims that relate to pension and gratuities"
68. The Respondent submitted that the Petitioner having been lawfully dismissed from employment did not qualify for pension. Section 6 of the *Pensions Act* sets out the modes of exit from employment on the basis of which one would qualify for pension and dismissal is not one of them.
69. It is the Respondent's submission that pension benefit is not an absolute right. Pension benefit under the *Pensions Act* is earned after service and is only payable in the manner contemplated under the Act. The constitutionality of section 6 of the Pension Act and Regulation 181(2) of the Code of Regulations for Teachers has not been challenged. Therefore, they are valid pieces of legislation that they must be adhered to. The Petitioner's prayer if granted will be unlawful and contrary to the *Pensions Act* and the Code of Regulations for Teachers.
70. The Respondent cited *Teachers Service Commission v Henry Kamau Ngari & another* [2020] KECA 217 (KLR) where it was held:

"Clearly, under that regulation, retirement is an indispensable condition for eligibility for pension. It is a sine qua non or conditio sine qua non for eligibility for pension. Mr. Ngari did not retire from service. He was one year short of retiring when he brought upon himself matters that led to his dismissal. The trial court correctly found that his employment was terminated and that his dismissal from employment was justified, valid and fair. That finding by the trial court has not been challenged. Therefore, under Regulation 73(1), he was not eligible for pension."
71. The Respondent submitted that it is a constitutional Commission with its independence provided under Article 249(2) of *the Constitution* as being only subject to *the Constitution* and the law and not subject to direction or control by any person or authority. Further, Article 234(3) of *the Constitution* further provides for independence of the Respondent by stating that it is not subject to the human resource functions of the interested party.
72. The Respondent submitted that noting the distinct separation and its independence and the interested party, circulars, and any communication from the interested party touching on human resource function of employees in the public sector including payment of pensions does not give directions and/or instructions to the Respondent.
73. The Respondent submitted that the contention by the Petitioner that following the circular by the interested party dated 21st October 2022 entitles him to pension benefit despite being dismissed is misleading. The Petitioner was dismissed from service on 11th February 2005, 17 years before the date



of the circular. The circular does not indicate that it will apply retrospectively. Further, the Interested Party issued another circular Ref: PSC/ADM/13/ (28) dated 16th December 2022, to all authorized officers titled “Clarification on entitlement to terminal benefits on dismissal. ”Clarifying that the circular dated 21st October 2022 was only applicable to employees who exited service from 2018 onwards following the judgment in *Obadiah Mutisya Kitonyi v Attorney General* [2018] KEELRC 2125 (KLR).

74. The Respondent submitted that this court while considering the applicability of the two circulars (dated 21st October 2022 and 16th December 2022) noted in *Mwilitsa v Attorney General* [2024] KEELRC 13293 (KLR):

“The petition is confusing because the Petitioner resigned voluntarily and was not dismissed. Even if the circulars which were issued were applicable which the court finds are not applicable as they were issued long after he resigned the same applied to civil servants who were dismissed.”

It is the Respondent’s contention that the circular was not intended for employees who exited service before 2018 such as is the case with the Petitioner.

75. The Respondent further submitted that teachers under its employment, the teacher unions during the signing of the 2025-2029 Collective Bargaining Agreement negotiated for payment of pension benefits for dismissed teachers with effect from August 2025 and therefore, the Petitioner having been dismissed in 2005 does not benefit from the negotiated term in the 2025-2029 Collective Bargaining Agreement.
76. It is the Respondent’s submission that the Petitioner’s prayer for payment of pension benefits albeit being dismissed is unlawful and untenable noting that it contravenes the provisions of the Pension Act, Code of Regulations for Teachers and the 2025-2029 Collective Bargaining Agreement for teachers.
77. On the second issue, the Respondent submitted that the Petition must plead the alleged constitutional violation with reasonable precision as enunciated in the celebrated case of *Anarita Karimi Njeru v Republic* [1979] KECA 12 (KLR) and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR).
78. It is the Respondent’s submission that precision requires that the Articles of *the Constitution* which the Petitioner alleges infringement must be precisely enumerated and the claim pleaded to demonstrate such violation with the violations, manner in which violations were committed and to what extent must be pleaded in a precise manner. The Petitioner has quoted an array of Articles of *the Constitution* in the petition’s title and in the prayers sought. However, illustration of violation of these Articles and the extent of such violations have not been pleaded.
79. The Respondent submitted that the Petitioner ought to produce evidence inform of pleadings to demonstrate the alleged infringement/violations of the listed rights in the Petition. It is trite that who alleges must prove his claim.
80. I have examined all the averments and submissions of the parties herein. From the documents provided the fact of the petitioner proceeding on study leave from July 1998 is acknowledged. It is also true that the petitioner sought extension of the study leave on various occasions which extension was granted in August 2002.
81. On 15/8/2002, the petitioner requested yet again for another extension of unpaid study leave in which he indicated that he wanted the extension to enable him have an opportunity to work in order to raise his college fee which was now outstanding after being issued with a permit for one year.



82. Vide a letter of 4/9/2002, the request for extension of study leave was denied. He was informed that he was expected to resume duty on 30/9/2002. It is apparent that the petitioner never resumed duty and was then terminated with effect from 31/10/2002 vide a letter dated 11/2/2005.
83. The petitioner indicated that he received this termination letter. He now filed this petition dated 9/8/2024 where he now seeks payment of his pension dues. The petitioner does not explain why he took 19 years to file this petition in view of the fact that he knew of his termination in 2005. In terms of pension however, it is true that under the *Pensions Act* Cap 189 Laws of Kenya in force at the time the petitioner left service, “ every officer shall have an absolute right to pension and gratuity”..
84. At the time, under section 5(3)” where an officer has completed five years of pensionable service, the benefits accruing to the officer within this Act shall vest in that officer and shall become payable in such manner and at such time as may be determined under this Act.
85. It is true that the petitioner served the respondents the TSC for over 5 years and so his pension was payable. It is however true that the TSC is not the entity responsible for paying pension and the pension department are not party to this case.
86. That being the case and in view of the fact that the petitioner chose to sue his former employer and left out the department responsible for paying pension, this petition cannot stand. It is therefore stuck out with no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF NOVEMBER 2025.

HELLEN WASILWA

JUDGE

