

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E414 OF 2023

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS & HOSPITAL WORKERS.....
CLAIMANT**

VERSUS

**MASAI TECHNICAL TRAINING INSTITUTE.....
.....RESPONDENT**

JUDGMENT

Introduction

1. In a Memorandum of Claim dated 23rd May 2023, the Claimant brought this action on behalf of her members (the grievants), namely Joseph Kaliti Kyalo and Stephen Kithuku Musyimi, seeking orders for payment of their terminal dues, comprising salary arrears, terminal leave dues, accrued leave days, and service gratuity.
2. The Respondent entered an appearance on 6th September, 2024, and subsequent thereto, filed a Statement of Defence dated 17th October, 2024, wherein it contends that it computed the grievants' benefits upon their retirement on age grounds, but the grievants failed and/or refused to collect their dues.

3. The matter proceeded for hearing on 24th June, 2025. The Claimant presented the two grievants who testified in support of their respective cases. The Respondent's case was fixed for hearing on 23rd September, 2025. Counsel for the Respondent closed the Respondent's case as his witness failed to attend court for the hearing.
4. Both parties filed written submissions on the matter, and have been duly considered.

The Claimant's Case

5. The Claimant avers that this Honourable Court has previously addressed and determined the issue of the applicability of the parties' CBA in *Cause No. 435 of 2010: Kudheihya Workers Union v. Naaro High School*.
6. The Claimant states that an employer/employee relationship existed between the 1st grievant (Mr. Joseph Kaliti Kyalo) and the Respondent. It avers that he was hired on 3rd January 1979 as an office messenger earning Ksh.425 per month, and that he served the institution diligently, maintaining a clean record of service, resulting in his subsequent promotion to accounts clerk.
7. The Claimant avers that the 1st grievant was again promoted to Deputy Finance Officer, a position he held until his retirement on 31st December 2019.
8. It is the Claimant's case that for the 2nd grievant, Mr. Stephen Kithuku Musyimi, he similarly had an employer/employee relationship with the Respondent,

having been hired on 1st November 1979 as a kitchen hand earning Ksh.365 per month. It avers that he also served the institution diligently and maintained a clean record of service, which led to his promotion to the position of cook, and later to storekeeper in 1985, a position he held until his retirement on 21st December 2019.

9. The Claimant states that the grievants reported a dispute to the Claimant's union, Kajiado Branch, when the Respondent failed to pay their retirement and terminal benefits. It further states that the Branch Secretary wrote to the Respondent's Management on 13th January, 2020, and again on 17th December, 2020, seeking an amicable settlement.

10. It is the Claimant's case that it subsequently reported the matter to the Secretary General on 5th July, 2020, who then declared a trade dispute to the Ministry of Labour and Social Protection, which subsequently appointed a conciliator.

11. The Claimant avers that although several conciliation meetings were convened, the Respondent failed to attend, and the process was further hindered by COVID-19 restrictions. It states that after conciliation failed, the Branch Secretary sought the intervention of the national office, but despite several meetings, the Respondent still declined to pay the grievants in accordance with the parties' CBA and the Ministry's guidelines on service gratuity.

12. The Claimant states that the 1st and 2nd grievants were not paid their salaries in accordance with the DPM Circular Ref.

No. MPSYG.DPSM.2/6/4A VOL XI (21) dated 4th June 2018, contrary to paragraph 18 of Legal Notice No. 39 of 2015.

13. It states that the Respondent also failed to pay service gratuity as required under clauses 30 and 31 of the CBA between the Ministry of Education, Science and Technology and Kudheihia Workers Union, and further that the grievants were not paid their special terminal leave as mandated by Clause 11(b) of the CBA. It is its case that they were also denied payment for their accumulated annual leave days in violation of Clauses 11 and 12(a)(ii) of the same CBA.
14. The 1st grievant told the court that his last salary was KShs.24,350, while the salary applicable to his position in job group F was Kshs.28,970, and was therefore underpaid.
15. It is his position that he was paid Kshs.495,855/- as service gratuity which was computed at the rate of 21 days for every year worked instead of 30 days for every year worked.
16. It is his further testimony that he was entitled to terminal leave, but which he was not given prior to his retirement. He avers that he retired in 2019.
17. He confirmed on cross-examination that he retired in December 2019, that he cleared with the Respondent, and that his dues were processed. It is his case that there was no Human Resources Manual in force when he retired. He further avers that he raised an objection when he was being

paid a gratuity. It is his position that the CBA governs the payment of gratuity.

18. He further told the court on cross-examination that he picked his dues though gratuity was underpaid.

19. In re-examination, the 1st grievant told the court that he did not collect his benefits.

20. The 2nd grievant on his part told the court that his salary at retirement was Kshs.34,260/- while the salary applicable to his job group was Kshs.37,070/-, hence, he was underpaid.

21. He further told the court that he seeks payment on account of special terminal leave and service gratuity at the rate of 30 working days for every year worked in accordance with the applicable CBA.

22. The 2nd grievant confirmed that he was paid his terminal dues through the union, but did not know how the union received the money.

23. On cross-examination, he told the court that he was entitled to special leave, but did not take it. He confirmed further that he was paid gratuity, though not in full.

24. The Claimant prays that the court allow its claim and award the grievants the remedies sought.

The Respondent's case.

25. The Respondent states that it issued retirement notices to the grievants herein lawfully and in accordance with their employment contracts and internal policies. The Respondent maintains that due process was followed, including informing the grievants of retirement clearance procedures, which they voluntarily undertook.
26. The Respondent asserts that it facilitated the grievants' clearance process and prepared their final dues, which consisted of outstanding leave, gratuity, and final salary, in compliance with legal requirements and its 2018 Human Resource Policy.
27. The Respondent further avers that the letters dated 26th August 2020 were issued informing the grievants to collect their terminal dues cheques, but the cheques later became stale because they failed to collect them. The Respondent denies engaging in discriminatory labour practices and contends that no valid dispute existed since the dues had already been computed under the applicable HR policy.
28. It is the Respondent's case that it did not participate in conciliation meetings because the Claimant relied on an allegedly altered version of the CBA, and further argues that the SRC salary structure is not binding on the institution, but is merely a recommendation dependent on fiscal sustainability.

29. The Respondent states that it was unable to implement the SRC-recommended salary adjustments during the employees' tenure due to affordability constraints. It further argues that the employees never raised salary complaints during their service and are therefore estopped from seeking salary increments after retirement.

30. The Respondent contends that its 2018 Human Resource Policy constructively modified the CBA, particularly regarding gratuity, pursuant to Clause 16 of the CBA, and additionally asserts that the employees were members of the managerial or executive cadre and thus outside the Claimant union's representation.

31. The Respondent states that in computing terminal dues, gratuity was calculated at 70% of the employees' final basic monthly salary multiplied by their years of service. On special terminal leave, the Respondent maintains that the employees failed to request this leave as required by the HR Policy 1 month before retirement, and therefore forfeited it. The Respondent also denies failing to pay accrued leave, asserting that these days were included in the terminal dues.

32. The Respondent further states that all dues, including salaries, gratuity, and accrued leave, were issued through cheques dated 3rd August 2021 and delivered to the County Labour Office as agreed. It is the Respondent's case that the cheques were later collected and cashed by the grievants on

25th and 26th November 2021. It maintains that all payments owed were fully settled, and it acted lawfully and in compliance with the CBA and the 2018 HR Policy.

33. It is the Respondent's case that, having paid the grievants all their dues, the Claimant is not entitled to any of the remedies sought.

34. The Respondent prays that the claim herein, be dismissed with costs.

Analysis and Determination

35. Upon careful analysis of the pleadings, the evidence adduced, the witnesses' testimony, and the parties' submissions, the issues that arise for my determination are:

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- i. Whether the Claimant's suit is time barred
- ii. Whether the grievants are entitled to the reliefs sought

Whether the Claimant's suit is time barred

36. The Respondent did not raise an issue of whether or not the suit herein is statute barred. This, however, is a matter that goes to the jurisdiction of the court, and for which the court must first determine when the facts of the case point to such a possibility, before proceeding to determine the primary issues between the parties.

37. Section 89 (formerly S.90) of the *Employment Act* provides thus on time limitation: -

“Notwithstanding the provisions of Section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof. “

38. It has been held repeatedly that the 3 year limitation period under Section 89 of the Employment Act is strict, and courts have no latitude to extend time in employment claims. In ***Beatrice Kahai Adagala v Postal Corporation of Kenya [2015] eKLR***, it was held that limitation runs from the date of termination, and not from when the employee “discovers” the claim.

39. The grievants herein were not terminated, they separated with the Respondent on account of regular retirement on age grounds. The record indicates that the 1st grievant retired from the service of the Respondent on 31st December 2019, while the 2nd grievant retired on 21st December 2019.

40. Ordinarily, the cause of action accrues on the date of retirement on the basis that terminal dues, which are what the grievants herein seek, fall due immediately upon clearance. It therefore follows that the limitation period

starts running on the retirement date, unless the employer expressly defers payment to a later specific date.

41. It is evident from the record that the Claimant's Memorandum of Claim was filed on 23rd May 2023, which goes to say that the grievants who retired in December 2019 ought to have lodged their claim by December 2022 at the latest.

42. In the circumstances, calculating strictly from the retirement date, confirms that the claim was filed 3 years and 5 months after the accrual of the cause of action, hence outside the 3 year statutory period.

43. In ***G4S Security Services v Joseph Kamau & 468 Others [2018] eKLR***, the court held that claims filed after the 3-year time limit are incurably time barred.

44. Further, although I note that the Respondent issued cheques in respect of the terminal dues that were dated 3rd August 2021, and which were said to have been collected and cashed by the grievants on 25th and 26th November 2021, the Court of Appeal has held consistently that terminal dues fall due on the date of termination, not when the employer later decides to process or pay them. Further in ***Attorney General & Another v Andrew Maina Githinji & Others [2016] eKLR***, the court was emphatic that terminal dues accrue on the date employment ends. In light of the foregoing, it follows that the late issuance of cheques does not shift the limitation period.

45. In the upshot, I find and hold that the Claimant's claim dated 23rd May, 2023, is statute barred under Section 89 of the Employment Act.

46. For the reasons foregone, the court lacks jurisdiction to entertain the claim, and I proceed to strike it out and down my tools.

47. I make no orders on costs.

48. Orders accordingly.

SIGNED, DELIVERED, AND DATED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH DAY OF DECEMBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Maina present for the Claimant

Mr. Echesa present for the Respondent

Ms. Esther S - C/A