

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
PETITION NO. E043 OF 2025

PROF. LAWRENCE OTWEYO MIGIRE GUMBE.....PETITIONER

VERSUS

**THE VICE CHANCELLOR,
THE TECHNICAL UNIVERSITY OF KENYA.....1ST RESPONDENT**

**THE CHAIRMAN OF COUNCIL
THE TECHNICAL UNIVERSITY OF KENYA.....2ND RESPONDENT**

JUDGMENT

In the Petition dated 20/3/2025, the Petitioner seeks an order in the following terms: -

1. A declaration does issue that the withholding of the gratuity is illegal, null and void and contrary to Article 41 of the Constitution of Kenya 2010 as read with the Employment Act of Kenya and the Fair Administrative Action Act.
2. An order of compensation does issue pursuant to Article 23 of the constitution directing the Technical University of Kenya to pay damages to Prof. Lawrence Otweyo Migire Gumbe, the Petitioner herein, for the violation and contravention of his fundamental rights and freedom.
3. An order does issue pursuant to Article 23 of the constitution directing the Technical University of Kenya and Vice-Chancellor to pay the overdue gratuity of Kshs. 4,270,672.53 unconditionally
4. An order awarding costs of the petition to the Petitioner.

5. Any other or further orders, writs and directions this court considers appropriate and just to grant for the purpose of the enforcement of the Petitioner's fundamental rights and freedom.

It is not in dispute that the Petitioner served the Respondent as a Professor on fixed contract terms from 19th December 2014; 9th November 2018; 7th October 2020; and 4th July 2022. The Petitioner completed his last contract on 31st December 2024.

The Petitioner claims gratuity calculated at 31% of his total emoluments for the period served in the sum of Kshs. 4,270,672.50 in terms of the circular from the office of the President dated 14th December 2020 Ref No. DPM/2/38/Vol. II (315) before court.

The Petitioner deposes that the Respondent had in the past paid him end of contract gratuity at 31% of the total earnings on 9th June 2016; 10th April 2017; 7th July 2017; and 20th July 2017. The payments are evidenced by bank statements attached to the Petition from Standard Chartered Bank.

That the Petitioner based on this practice had legitimate expectation to be paid end of contract gratuity, which is a term of service for all Public Officers on fixed term contracts in terms of the aforesaid circular.

The Petitioner deposes that the refusal by the Respondent to pay his gratuity despite demand violates his constitutional rights protected under

Articles 27, 41 and 47 against discrimination and equality before the law; unfair labour practices and unfair administrative action.

Replying Affidavit

The Respondents relies on the replying affidavit sworn to by Ruth Kirwa the Chief Legal Officer of the 1st Respondent in which she admits the employment history of the Petitioner by the 1st Respondent on contract terms.

The Respondents admit that the last contract expired on 31st December 2024, as stated in the Petition.

The Respondent denies that the Petitioner is entitled to gratuity in the sum of Kshs. 4,270,672.53 as claimed or at all.

The deponent states that under the University's Human Resource Policies and Procedures and the applicable laws, gratuity is exclusively reserved for employees on permanent and pensionable terms of service.

That the fixed term contracts did not provide for payment of gratuity.

That gratuity for employees on fixed term contract is not an automatic right as it is for permanent and pensionable staff.

That this is a simple contractual dispute regarding interpretation of his terminal benefits and does not meet the legal threshold to be elevated to a constitutional dispute.

That the Petitioner has not demonstrated any violation of his constitutional rights and should have exercised constitutional avoidance and file a simple claim.

That the petition lacks merit and it be dismissed.

Further Affidavit.

The Petitioner filed further affidavit in response to the replying affidavit and joined issues with the Respondents reiterating that the Respondents have not denied that they have paid gratuity to the Petitioner in respect of previous contracts on 9th June 2016; 10th April 2017; 7th July 2017; and 20th July 2017; as shown in annextures EX1(a), (b), (c) and (d).

That the Respondents have not demonstrated any difference between the previous contracts in respect of which gratuity was paid and the contracts the subject of this dispute.

That the Petitioner's rights violated by the Respondent have been expressly and specifically cited and explained in the Petition.

That the petition has merit and it be allowed.

DETERMINATION

The parties filed written submissions which the court has carefully considered together with the affidavit and documentary evidence presented before court. The issues for determination are:

- (a) Whether all Public Officers on fixed term contracts and not permanent and pensionable are entitled to payment of gratuity at 31% of the total basic earnings.
- (b) Whether the Petitioner is entitled to the reliefs sought.

The circular dated 14th December 2000 from the office of the President was addressed to the Attorney General; All Permanent Secretaries (with sufficient copies to all Chief Executive of State Corporations and Statutory Boards) among others. The circular reads:-

“PAYMENT OF SERVICE GRATUITY TO OFFICERS SERVING ON LOCAL AGREEMENT/CONTRACT

Where substantive vacancies cannot be filled on permanent and pensionable terms or where vacancies exist in non-pensionable establishments, candidates have normally been appointed to agreement terms and gratuity paid to them at the end of the agreement periods.

The rate of calculating gratuity paid within the public service has been 25% (twenty five percent) of the officer's basic salary drawn over the contract period. In view of fluctuating value of earnings from salaries, wages and superannuation benefits, it has been decided that the rate of calculating gratuity be reviewed.

It has been decided therefore, that gratuity on local agreements and contracts signed on or after 11th September, 2000, shall be calculated at the rate of 31% (thirty one percent) of officers' basic salary drawn over the agreement periods.

Necessary changes should be reflected in the agreement forms

**J. E. O. Ongwae, OGW.,
PERMANENT SECRETARY/DIRECTOR OF
PERSONNEL MANAGEMENT''**

It is not disputed that the Respondent had in the past applied the terms of this circular to the Petitioner. Indeed, this circular is applicable to all Public Officers in the civil service including lecturers in the public universities.

The terms of this circular are automatically implied and read into all local agreements and contracts signed on or after 11th September 2000. The court finds that the terms of this circular are automatically read into the fixed term contracts between the Petitioner and the Respondent. Indeed, this is the practice of the Public Service in Kenya across the board as from 11th September 2000.

The Respondent has no substantive defence to this straight forward claim of discrimination, unfair labour practice and unfair administrative action by

the Respondent against the Petitioner in violation of Articles 27(1) and (2); 41(1) and 47(1) of the constitution of Kenya 2010.


The court finds that the Petitioner has proved the case on a balance of probability and grants and order in the following terms:

(a) A declaration is issued that the withholding of the gratuity of the Petitioner by the Respondent violates Articles 27, 41 and 47 of the Constitution of Kenya 2010.

(b) An order of mandamus directed at the Respondents is issued directing them to pay the Petitioner terminal gratuity in the sum of Kshs. 4,270,672.53 with interest at court rates from the date the same became due and payable on 31st December 2024 until payment in full.

(c) Costs of the suit.

Dated at Nairobi this 27th day of April 2026



Mathews Nduma

JUDGE

Dated, signed and delivered in open court at Nairobi this 29th day of April 2026

Dr. Gakeri J.

JUDGE

Appearances:

Mr. Arodi for Petitioner

Mr. Okiyo for Respondents

Court Asstistant, Mr. Kemboi

ORIGINAL