



REPUBLIC OF KENYA



KENYA LAW
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**Kigaaru v Ministry of Works Sports Club (Cause E759 of 2022)
[2025] KEELRC 768 (KLR) (14 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 768 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E759 OF 2022
HS WASILWA, J
MARCH 14, 2025**

BETWEEN

JOSEPH MWANGA KIGAARU CLAIMANT

AND

MINISTRY OF WORKS SPORTS CLUB RESPONDENT

JUDGMENT

1. The matter before the court is a memorandum of claim dated 9th September 2022, filed by the Claimant, seeking relief against the Respondent, a sports club duly registered under the *Sports Act*, No. 25 of 2013. The Claimant was employed by the Respondent as a chef/cook for over twenty years until 25th September 2017, when he was issued with a retirement notice to take effect on 31st December 2017. The Claimant avers that the Respondent had notified him that he would be paid retirement gratuity of Kshs. 334,533.30, which remains unpaid. Additionally, the Respondent owed him Kshs. 53,930 for accumulated leave days and off days for the year 2016/2017.
2. Upon the lapse of the retirement notice, the Respondent entered into a verbal contract with the Claimant, allowing him to continue working until a replacement was found. The Claimant contends that he worked under the terms of the verbal contract until 15th July 2019, when he was issued a formal one-year contract. His employment ultimately ended sometime in 2020 due to the COVID-19 pandemic, which disrupted operations.
3. The Claimant further asserts that in 2019, the Respondent owed him Kshs. 11,625 in unpaid overtime. Additionally, in January 2016, he took a loan amounting to Kshs. 90,000 from Welfare Shares, with the Respondent deducting Kshs. 5,000 monthly from his salary for repayment. However, upon termination of his employment, the Claimant discovered that despite these deductions, the Respondent had not remitted the amounts to clear the loan, leaving it unpaid.



4. The Claimant further avers that throughout his employment, the Respondent deducted a total of Kshs. 100,000 as PAYE but failed to remit any of it to the Kenya Revenue Authority. Similarly, deductions for the National Health Insurance Fund were never remitted despite being withheld from his salary. The Claimant contends that these actions by the Respondent amount to abuse of power, are unlawful, and constitute unjust enrichment.
5. On 17th June 2022, the Claimant, through his advocates, demanded payment of his lawful dues, but the Respondent refused or ignored the demand, necessitating the filing of this suit. Despite the Claimant's numerous attempts to claim his retirement benefits, the Respondent has refused, neglected, and blatantly failed to pay his outstanding dues. The Claimant's claim against the Respondent is for the following sums: gratuity amounting to Kshs. 334,533.30, accumulated leave days amounting to Kshs. 53,930, unpaid overtime amounting to Kshs. 11,625, deductions made but never remitted to KRA amounting to Kshs. 100,000, and deductions made for the loan but never remitted to Welfare Shares amounting to Kshs. 90,000, bringing the total amount claimed to Kshs. 590,088.30, exclusive of the money deducted but never remitted to NHIF.
6. The Claimant prays for judgment against the Respondent as follows:
 - a) The sum of Kshs. 590,088.30 as particularized in the claim.
 - b) Reimbursement of the money never remitted to NHIF.
 - c) Costs of the suit.
 - d) Interests on (a), (b), and (c) above.
 - e) A duly executed certificate of service.
 - f) Any other relief that the court may deem fit.
7. The Claimant swore a verifying affidavit of even date, stating that he is the Claimant in the matter and is well versed with the facts of the claim, thus competent to swear the affidavit. He confirmed that he instructed the firm of M/S Isoe, Nyakwana & Co. Advocates to institute the suit on his behalf. He further stated that he read and understood the averments contained in the Memorandum of Claim filed and verified the same to be true. He affirmed that there is no other suit pending, nor have there been any previous proceedings between the parties based on the same cause of action. He deponed that the contents of the affidavit are true to the best of his knowledge, information, and belief.
8. The Claimant filed witness statement dated 9th September 2022, stating that he was an employee of the Respondent in the position of chef/cook at the Respondent's establishment in Nairobi until 25th September 2022, when he was issued with a retirement letter, which was to take effect on 31st December 2017. By a letter dated 18th December 2017, the Respondent notified him that he was entitled to retirement gratuity amounting to Kshs. 334,533.30, which remains unpaid to date.
9. The Respondent further owed him Kshs. 53,990 for accumulated leave and off days for the year 2016/2017, which also remains unpaid. After the retirement notice lapsed, he entered into a verbal contract with the Respondent to continue working until a replacement was found. He worked under this verbal agreement until 15th July 2019, when the Respondent offered him a formal contract for one year. His employment ended sometime in 2020 due to the COVID-19 pandemic, which disrupted operations.
10. In 2019, the Respondent owed the Claimant Kshs. 11,625 as payment for overtime, which remains unpaid. In January 2016, he took a loan of Kshs. 90,000 from Welfare Shares, with the Respondent



deducting Kshs. 5,000 from his salary monthly toward its repayment. However, upon checking his loan statement after his employment ended, he was shocked to learn that despite the deductions, the Respondent never remitted the payments, leaving the loan amount unpaid.

11. During his employment, the Respondent deducted a total of Kshs. 100,000 from his salary as PAYE, but upon visiting the Kenya Revenue Authority offices to confirm his tax status, he was informed that the Respondent had never remitted the said amounts. Further, upon checking with the National Health Insurance Fund offices, he was informed that no payments had been made to NHIF despite the deductions by the Respondent. Despite numerous attempts to claim his retirement gratuity, the Respondent blatantly failed, neglected, and refused to pay his outstanding dues.

Claimant's Written submissions

12. The Claimant filed written submissions dated 3rd February 2025, asserting that he was employed by the Respondent until his retirement. Upon retirement, the Respondent committed to paying him gratuity amounting to Kshs. 334,533.30, accumulated leave days, off days, and overtime pay, but despite this commitment, the Respondent failed, neglected, and refused to pay the Claimant his rightful dues. Additionally, the Respondent failed to remit Kshs. 90,000 deducted towards the repayment of the Claimant's welfare loan.
13. The Claimant sought full payment of his dues plus interest and costs. The Claimant submitted that the primary source of gratuity is the employment contract or the Respondent's policy. The Respondent informed the Claimant of his impending retirement vide a letter dated 25th September 2017, stating that the process for service gratuity would be initiated in accordance with the policies of the Respondent. Subsequently, a letter dated 18th December 2017 confirmed the calculation of the Claimant's gratuity using twenty-six days for every year worked.
14. During cross-examination, the Respondent's witness confirmed that gratuity was calculated using twenty-six days. The Respondent, however, later sought to reduce the gratuity calculation to twenty days, arguing that the Claimant was not a civil servant. The Respondent failed to provide any contractual or legal basis for this adjustment. There was no evidence produced in court to justify the reduction, and the Respondent's witness admitted that no formal revocation of the letter dated 18th December 2017 had been made.
15. The Claimant argued that the Respondent's attempt to alter the gratuity after it had been calculated, communicated, and relied upon was unlawful and contrary to the doctrine of legitimate expectation. In *Richard Erskine Leakey & 2 Others v Samson Kipkoech Chemai* [2019] eKLR, the court held that legitimate expectation arises when an individual has been permitted to enjoy a benefit or has received assurances that it will not be withdrawn without an opportunity to be heard.
16. The Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others* [2014] eKLR established that for legitimate expectation to arise, there must be an express and unambiguous promise by a public authority, the expectation must be reasonable, the representation must be lawful, and there cannot be legitimate expectation against clear legal provisions. The Claimant submits that the Respondent had expressly committed to paying gratuity based on twenty-six days and that the arbitrary deduction from the amount owed to him constitutes an abuse of power.
17. The Claimant further contended that the Respondent's failure to pay him for accumulated leave days, off days, and overtime was unlawful. The Claimant produced a memo dated 11th October 2019, confirming that he worked extra hours and on holidays, amounting to Kshs. 11,625. Another memo detailed that the Claimant had accrued leave days totalling eighty-four days for the year 2016/2017,



- with a payment of Kshs. 53,930. These documents originated from the Respondent, which did not dispute their authenticity.
18. The Claimant therefore discharged his burden of proof regarding overtime, holidays worked, and accrued leave and off days. The Respondent's argument that the employment contract did not provide for overtime is unfounded, as employment law mandates compensation for additional work hours. The Claimant submits that the Respondent's failure to remit statutory deductions and welfare loan deductions constitutes an unfair labour practice.
 19. The Respondent reimbursed Kshs. 92,706 to the Claimant in 2023 for statutory deductions not remitted, leading the Claimant to abandon that claim. However, the Respondent used to deduct Kshs. 5,000 monthly from the Claimant's salary for the repayment of his welfare loan but failed to remit the amount. The Claimant produced a payslip confirming these deductions. The Respondent claimed that payments were made via cheque through Absa Bank but did not produce any bank statement or copies of cheques to substantiate the claim.
 20. The Claimant confirmed that as of his last inquiry with the welfare association, the loan deductions had not been remitted. Since the deductions were made directly from payroll, the Respondent ought to have provided proof of remittance, but it failed to do so. The Claimant submits that this constituted a breach of contract and prays that the court finds the Respondent liable for the sum of Kshs. 90,000. The Claimant urged the court to find that his claim is merited and allow it with costs.

Respondent's Case

21. The Respondent filed a defence dated 19th March 2024, denying each and every allegation of fact and law in the Memorandum of Claim except where expressly admitted. The Respondent admitted the description of the parties but stated that its address for service is through the Hon. Attorney General, Office of the Attorney General and Department of Justice. The Respondent admitted that the Claimant was employed as a cook, vide a letter of appointment dated 12th February 1997, and that his terms were reviewed by a letter dated 25th March 2017, which maintained all other terms of engagement from the initial appointment letter.
22. The Respondent stated that the Claimant was notified by a letter dated 1st April 2018 that his retirement would take effect from 20th December 2018 and that his retirement benefits were outlined in a letter dated 25th September 2017. The Respondent further stated that in August 2021, all employees of the formerly Ministry of Works Sports Club were paid their gratuity, and the Claimant's dues were calculated to a total of Kshs. 303,123.20, comprising Kshs. 253,808.20 as gratuity, Kshs. 49,315.00 for leave days, and Kshs. 9,710.00 as PAYE refund not remitted to KRA, less statutory deductions of Kshs. 92,706.00, which was later paid directly into the Claimant's bank account. The total amount payable to the Claimant was therefore Kshs. 220,126.75.
23. The Respondent stated that in August 2021, it called the Claimant for a meeting and informed him that his gratuity had initially been calculated using twenty-six days per year, but after a review by the HR department, it was recommended that gratuity be calculated using twenty days, as the employees were not civil servants. In the same month, the Respondent called the Claimant to collect his cheque for Kshs. 220,126.75, dated 30th August 2021, but the Claimant declined to collect it, insisting that he should be paid as a civil servant.
24. The Respondent contended that the Claimant was not engaged by the Public Service and could not be paid terminal dues under civil service terms. The Respondent further stated that the Board of Management for the Ministry of Works Sports Club approved the refund of previous statutory deductions to all former employees, including the Claimant, who was paid Kshs. 92,706 through Absa



- Bank cheque number 105508. The Respondent admitted the averments in the Claimant's paragraphs concerning his continued employment but asserted that the Claimant's contract did not provide for overtime.
25. The Respondent acknowledged experiencing financial challenges during the COVID-19 period in 2019, which caused delays in remitting funds but stated that part payments were made in August 2021 and June 2023, with an undertaking to clear any outstanding dues. The Respondent asserted that the Claimant was not entitled to any reliefs sought except for Kshs. 220,126.75 and contended that the suit was frivolous, vexatious, and a waste of the court's time. The Respondent prayed that the Claimant's Memorandum of Claim be dismissed with costs.
 26. The Respondent filed a witness statement through Timothy Manyara Dated 11th July 2024, stating that he is the Club Manager for the Respondent, Ministry of Works Sports Club, and is duly competent and authorized to make the statement. He stated that the Claimant was employed as a cook through a letter of appointment dated 12th February 1997 with a salary of Kshs. 3,240 per month. The Claimant's terms of employment were later reviewed in a letter dated 25th March 2017, which noted that all other terms of engagement remained as per the initial appointment letter.
 27. The Claimant was notified that his retirement would take effect from 20th December 2018 through a letter dated 1st April 2018, and his retirement benefits were outlined in a letter dated 25th September 2017. In August 2021, all employees of the former Ministry of Works Sports Club were paid their gratuity, and the Claimant's dues were calculated to a total of Kshs. 303,123.20, comprising Kshs. 253,808.20 as gratuity, Kshs. 49,315.00 for leave days, and Kshs. 9,710.00 as PAYE refund not remitted to KRA, less statutory deductions of Kshs. 92,706.00, which was later paid directly into the Claimant's bank account, leaving a total amount payable of Kshs. 220,126.75.
 28. In August 2021, the Respondent called the Claimant for a meeting and informed him that the previous gratuity stated in the letter dated 18th December 2017 had been calculated using twenty-six days per year. However, after a review of the Club, the HR department recommended that gratuity should be calculated using twenty days, as the employees were not civil servants. In the same month, the Respondent called the Claimant to collect his cheque for Kshs. 220,126.75, dated 30th August 2021, but the Claimant declined to collect it, insisting that he should be paid as a civil servant.
 29. The Respondent stated that the Claimant was not engaged by the Public Service and was therefore not entitled to terminal dues based on civil service terms. The Board of Management for the Ministry of Works Sports Club approved a refund of previous statutory deductions to all former employees, including the Claimant, who was paid Kshs. 92,706 through Absa Bank cheque number 105508.
 30. The Respondent stated that the Claimant's contract did not provide for overtime. Due to financial challenges experienced during the COVID-19 period in 2019, the Respondent faced delays in remitting funds but had made part payments in August 2021 and June 2023 and undertook to clear any outstanding dues. The Respondent asserted that the Claimant was not entitled to any of the reliefs sought in his claim except for Kshs. 220,126.75.

Respondent's Submissions

31. The Respondent filed submissions dated 5th February 2025, opposing the Claimant's suit and addressing the prayers sought. The Claimant filed the suit seeking gratuity of Kshs. 334,533.30, accumulated leave days of Kshs. 53,930, overtime of Kshs. 11,625, an amount of Kshs. 100,000 deducted but not remitted to KRA, an amount of Kshs. 90,000 deducted for welfare loan repayment



but not remitted, and costs of the suit. The Respondent filed a defence dated 19th March 2024, a list of documents, and a witness statement dated 11th July 2024.

32. The Claimant was employed by the Respondent as a cook on 12th February 1997, with his employment subsequently renewed until his retirement. He claims gratuity, accumulated leave, overtime, welfare deductions, and PAYE remittances. The Respondent, however, asserted that the Ministry of Works Sports Club was not a government entity when the Claimant was employed, only becoming part of the State Department of Public Works, Housing, and Urban Development in June 2020. The Claimant's contract remained governed by the labour laws applicable at the time of employment and was not subject to civil service regulations.
33. The Respondent asserted that the Claimant's gratuity was calculated at Kshs. 303,123.20, not the Kshs. 334,533.30 he claims. A cheque for Kshs. 303,123.20 was prepared, but the Claimant declined to collect it, insisting he should be treated as a civil servant despite not being employed under the Public Service Commission. In August 2021, the Respondent met with the Claimant and explained that gratuity had been calculated using 20 days instead of 26 days as per the Respondent's policy. The Claimant still declined to take the cheque. The Respondent further states that it paid the Claimant Kshs. 92,706 as part of the refund for previous statutory deductions and remitted outstanding welfare deductions. Despite financial struggles during the COVID-19 pandemic, the Respondent committed to clearing any outstanding balance.
34. The Respondent submitted that the Claimant was not a civil servant and was therefore not entitled to terminal benefits based on civil service regulations. Article 260 of *the Constitution* defines a public officer as a state officer or a person holding a public office, which the Claimant was not, as the Ministry of Works Sports Club was initially a private entity. Since the Claimant was not employed by the Public Service Commission, his employment terms were governed by the entity that hired him.
35. The Respondent asserted that gratuity was properly calculated using 20 days, and this was communicated to the Claimant, who refused to accept the payment. Section 35 of the *Employment Act*, 2007, provides for the calculation of gratuity for employees under a contract of employment, stating that terminal benefits should be based on contractual terms or statutory entitlements.
36. The case of Catherine Nduta Ndungu v Kenya Commercial Bank Limited [2015] eKLR established that gratuity computation must follow contractual agreements unless altered for justifiable reasons. The Respondent presented a breakdown showing gratuity calculated at Kshs. 253,808.20 and leave days at Kshs. 49,315, with statutory deductions of Kshs. 82,996.25, bringing the total payable to Kshs. 220,126.75. The Claimant admitted to receiving Kshs. 92,706 from the Respondent as statutory deductions refunded, thereby negating his claim for Kshs. 100,000 as PAYE deductions. On the welfare deduction claim, the Respondent demonstrated that it remitted Kshs. 927,589.50 via bank transfer and committed to paying any outstanding amounts.
37. The Claimant failed to provide evidence that his welfare account remained in arrears, and awarding this claim would result in unjust enrichment. The burden of proof lies with the Claimant, as affirmed in Civil Appeal 521 of 2019 Alice Wanjiru Ruhiu v Messiac Assembly of Yahweh [2021] eKLR, which stated that a party must prove their claim under Sections 107 and 108 of the *Evidence Act*. The case of Muriungi Kanoru Jeremiah v Stephen Ungu M'mwarabua [2015] eKLR reinforced that a claimant must provide proof of their allegations, failing which the burden does not shift to the Respondent.
38. The Respondent also cited John Njue Nyaga v Nicholas Njiru Nyaga & Another [2013] eKLR, where the Court of Appeal held that equity requires a party seeking relief to come with clean hands, which the Claimant had failed to do. The Respondent maintains that it has acted in good faith, while the Claimant seeks to unjustly enrich himself by insisting on gratuity payments as though he were a civil



servant. The Respondent respectfully requests the Court to consider the evidence, testimony, and case law presented and award the Claimant the sum of Kshs. 220,126.75 as the total gratuity and leave days payable.

39. I have examined all the evidence and submissions filed herein. The claim by the claimant is for payment of his terminal dues. The claimant has proved that upon being notified of his retirement vide a letter of 25/9/2017, the respondent informed him that he would be paid his gratuity as per the respondents policies.
40. Vide a letter dated 18/12/2017 he was notified that his gratuity had been calculated and he would be paid at the rate of 26 days for each year worked which was kshs 334,533.30/-. Another letter of 11th October 2019 confirmed that overtime owed to him was kshs 11,625/-.
41. From the memo also submitted in court he was entitled to leave and off day dues amounting to kshs 53,930/- which was also due to him. From letter of 18/5/2017 produced in court from the respondent to his welfare club Kshs 5,000/- was to be deducted from his salary for payment of a loan. These are the claims the claimant has prayed against the respondents.
42. The respondents have admitted owing him gratuity but avers the same was to be calculated at a different rate. There is no evidence the original letter was altered or changed as the respondents are contesting. The gratuity remains unpaid to date and is therefore payable.
43. The overtime pay is also payable the same having been verified from the respondents own documents. The respondents having deducted kshs 5,000/- monthly towards a loan repayment of kshs 90,000/- and not remitted it, the claimant is also entitled to a refund of the money owed which is kshs 90,000/-.
44. The total owed to the claimant is therefore:
 1. Gratuity Kshs 334,533.30/-
 2. Leave dues Kshs 53,938/-
 3. Overtime pay kshs 11,625/-
 4. Loan deductions made and not remitted kshs 90,000/-Total Kshs 490,088.3/-
45. These amounts are payable in total as payee was already deducted. The respondent will also pay costs and interest at court rates with effect from the date of this judgement.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF MARCH, 2025.

HELLEN WASILWA

JUDGE

