



**Agalomba (Suing as Personal Representative and Administrator of Grace Muhatia)
v Board of Management Lions School (Employment and Labour Relations
Cause E027 of 2021) [2025] KEELRC 1893 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1893 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE E027 OF 2021**

MA ONYANGO, J

JUNE 27, 2025

BETWEEN

**ABSOLOM AGALOMBA CLAIMANT
SUING AS PERSONAL REPRESENTATIVE AND ADMINISTRATOR OF
GRACE MUHATIA**

AND

BOARD OF MANAGEMENT LIONS SCHOOL RESPONDENT

(Before Hon. Lady Justice Maureen Onyango)

JUDGMENT

1. The original claim herein was filed by Grace Muhatia (now deceased) on 22nd July 2021 against the Respondent. The Memorandum of Claim was amended on 19th October 2023. In the Amended Memorandum of Claim, the Claimant Absolom Agalomba, suing as personal representative and administrator of Grace Muhatia, averred that the Respondent employed the deceased as cleaner on 3rd January 2000 and she worked as such until 29th June 2020 when she was served with a retirement letter.
2. The Claimant stated that at all material times the deceased was employed by the Respondent to provide cleaning services pursuant to an appointment letter dated 3rd January 2000 with a starting salary of Kshs. 900 which was progressively increased to Kshs. 14,400 per month by the time of her retirement.
3. The deceased averred that at all times during her employment, she discharged her obligations and services to the Respondent diligently and professionally until on 29th April 2020, when the Respondent wrote to her informing her that due to the Covid-19 pandemic, the school had decided to implement 70% pay cuts for the month of April and May 2020. That further, on 12th June 2020, the Respondent sent her on unpaid leave until further notice.



4. The deceased termed the decision to effect salary cuts of 70% and sending her on unpaid leave as unfair and illegal as the decisions were made without her involvement.
5. The Claimant further contended that on 29th June 2020, the Respondent served her with a letter her informing her that the Board had decided to retire her on grounds that she had attained the age of 60 years and that she would be paid one month's salary in lieu of notice instead of the three months' notice stipulated in her employment contract.
6. It was the averment of the deceased that after serving the Respondent for 20 years, her employment was arbitrarily terminated and that she was not paid her terminal benefits. The deceased prayed for judgment against the Respondent for: -
 - i. Payment of her salary which was unlawfully deducted being Kshs. 30,324
 - ii. Payment of three months' salary in lieu of notice, Kshs. 43,320
 - iii. Payment of lump sum gratuity, Kshs. 144,000
 - iv. Payment of housing allowance, Kshs. 77,760
 - v. Payment of NHIF
 - vi. Damages for unfair termination
 - vii. Costs of this suit and interests
 - viii. Compensation for unfair termination, Kshs. 172,800
7. The Respondent filed an Amended Response to the Claim dated 21st November 2023 in which it averred that due to the Covid-19 pandemic, the government issued a directive for closure of all learning institutions and the Respondent in adherence to the guidelines, sent its staff on unpaid leave, the deceased included.
8. The Respondent maintained that the decision to send all its staff including the deceased on unpaid leave was because children had been withdrawn from school for an unspecified period and parents were not paying any school fees to the Respondent. That the decision was formally communicated to all the affected staff.
9. According to the Respondent, as a result of the closure of schools, there was lack of funds to run school activities which drastically affected the Respondent's obligations and forced it to reduce staff salary. The Respondent further avers that during this period, the deceased attained the age of retirement and the Respondent notified and paid her the terminal dues in line with the contract of employment.
10. It is the Respondent's case that the deceased was granted leave during her tenure and was paid all her dues, including house allowance which according to the Respondent, was part of the monthly remuneration the deceased received.
11. The Respondent contended that it followed due process in ending the employment relationship with the deceased. The Respondent averred that the instant claim was without merit and the court was urged to dismiss it with costs.

Claimant's Case

12. As already stated above, during the pendency of this suit, the Claimant passed on and was substituted with Absalom Agalomba, pursuant to the ruling of the court delivered on 21st September 2023.



13. Mr. Agalomba testified on 5th March 2024 as CW1 on behalf of his deceased wife. He adopted his witness statement recorded on 2nd February 2024 as his evidence in chief. He also relied on the list of documents filed in support of the Claimant's case. By and large, CW1 reiterated the contents of the Amended Memorandum of Claim.
14. During cross examination, CW1 stated that the deceased was not paid a house allowance and that as at June 2020, the deceased was earning a salary of Kshs. 14,400. It was his testimony that from the deceased pay slips, there was deduction of NHIF and NSSF dues but when he visited the NHIF offices, he was told the Respondent did not remit NHIF dues on behalf of the deceased.

Respondent's Case

15. The Respondent called its Board Chairman, Mr. Gurnam Singh Sabharwal who testified as RW1. RW1 adopted his witness statement recorded on 2nd March 2024 as part of his evidence in chief. He also relied on the documents filed by the Respondent in support of the defence case.
16. The Respondent's witness denied that the deceased was unfairly terminated from employment and maintained that she retired upon attaining the age of 60 years which position, RW1 stated, was communicated to the Claimant vide a letter dated 29th June 2020. RW1 stated that the Claimant was issued with one month's salary as pay in lieu of notice.
17. RW1 testified that there was a pay cut by 70% for all its employees during the Covid-19 pandemic and that this was done to mitigate the effects of Covid-19 as schools were closed and parents were not paying school fees. RW1 maintained that the closure of schools pursuant to the directive of the government lasted for over one year and since the Respondent's source of funds is from school fees paid by parents, the Respondent had to reduce salaries of its employees. RW1 stated that all staff members were issued with the letters dated 29th April 2020 notifying them of pay cut and that the deceased accepted the terms in the letter. In addition, RW1 stated that all staff members were sent on unpaid leave vide letters dated 12th June 2020 as the school could not sustain them any longer due to Covid-19 pandemic that resulted in the closure of schools.
18. Regarding the Claimant's prayer for 3 months' salary in lieu of notice, RW1 maintained that the deceased was paid one-month' salary in lieu of notice as per the parties' agreement. On the claim for gratuity, RW1 stated that the Claimant was a member of NSSF and was thus not entitled to this prayer. On the claim for house allowance, RW1 stated that employees were paid an all-inclusive salary and as such the claim for unpaid house allowance by the deceased is untenable. On the prayer for unlawful termination, the Respondent's witness maintained that the deceased was not unlawfully terminated but was retired upon attaining the age of 60 years.
19. On cross-examination, RW1 maintained that the deceased was retired upon attaining the age of 60 years as per the Respondent's policy. He also stated that as a result of the Covid Pandemic, schools closed in March 2020 and were re-opened in January 2021. RW1 stated that the deceased did not work during the period when the school was closed.

The Claimant's submissions

20. In the submissions the Claimant framed the issues for determination to be: -
 - i. Whether the deceased Claimant was unlawfully, unprocedurally and unfairly terminated from employment by the Respondent,
 - ii. Whether the deceased Claimant is entitled to reliefs sought,



- iii. Who should pay costs and interests of this suit.
21. On the first issue, the Claimant submitted that the Respondent's witness stated that it had to let go of the Claimant on grounds that she had attained 60 years which is the age of retirement. The Claimant however submitted that RW1 did not produce any policy where the age of retirement was stated. According to the Claimant, there is no constitutional or statutory provision prescribing the mandatory or normal retirement age for employees in the private sector. On this basis, the Claimant submitted that the Respondent cannot purport to presume that the age of retirement for public servants applies to its employees without enacting a policy that expressly makes those provisions.
22. It is the Claimant's submission that the Respondent cannot purport to selectively apply the age of retirement and not follow the procedure as articulated in the Public Service Act section 79, 80 and 81 as the Claimant was not given a three month notice and neither was she paid gratuity as is the procedure for retirement for civil servants.
23. The Claimant maintained that the reasons for termination of her employment were not justified and nowhere did the Respondent state the Claimant no longer had capacity to perform her duties. It was submitted that the termination of the Claimant's employment was unfair for want of both substantive justification and procedural fairness.
24. On whether the Claimant is entitled to the reliefs sought, the Claimant submitted that the Respondent's witness admitted that her salary for three months was reduced by 70% and that the Claimant was not paid a house allowance, which she sought to be awarded. The Claimant also submitted that regarding the prayer for payment of NHIF dues, she had proved that NHIF was deducted from her salary but was not remitted. On the claim for compensation for unfair termination, the Claimant submitted that she was unfairly and unlawfully terminated from employment by the Respondent and thus entitled to the maximum compensation.

The Respondent's submissions

25. On its part, the Respondent identified the issues for determination to be:-
- i. Whether the Respondent's action to deduct the Claimant's salary and to send her on unpaid leave was justified.
 - ii. Whether or not the Respondent unlawfully terminated the Claimant's employment
 - iii. Whether the Claimant is entitled to the reliefs sought
26. With regard to the issue whether the Respondent's action to deduct the Claimant's salary and to send her on unpaid leave was justified, the Respondent submitted that the outbreak of covid-19 pandemic plunged the country and the entire world into a state of uncertainty and affected the economy, people's livelihood and normal operations. According to the Respondent, being a private learning institution, it bore the heaviest brunt financially as the closure of the school meant that parents stopped paying school fees as no learning activities were taking place. That the Respondent had to rely on the little amount that parents had paid as fees before the school closed. The Respondent submitted that given that this was an unanticipated and unprecedented occurrence and no money was coming in, the Respondent was ill prepared to cushion itself against the financial effects. That the decision to implement a salary reduction and send its employees including the Claimant on unpaid leave was justified in the circumstances.
27. On the second issue, the Respondent submitted that there was no written contract between the Claimant and the Respondent setting out the retirement age and that as stated by RW1, the



Respondent's policy is that employees retire at the age of 60 years which position was notified to every employee upon appointment.

28. On whether the Claimant is entitled to the reliefs sought, the Respondent submitted that since the Claimant's employment was not unlawfully, unfairly or wrongfully terminated, the Claimant is not entitled to compensation. In addition, the Respondent submitted that the Claimant sought a number of reliefs stretching back to 2002, which claims cannot accrue beyond three years prior to filing of the claim. In support of this position, the Respondent cited the case of Charles Kariuki Mwangi v Intersecurity Services Limited (2018) eKLR.
29. The court was urged to dismiss the claim with costs.

Determination

30. From the above analysis, the issues that fall for this court's determination are: -
 - i. Whether the Claimant's retirement amounts to unfair termination,
 - ii. Whether the Claimant is entitled to the reliefs sought.
31. From the Claimant's pleadings, the Claimant's contention is that the Respondent retired her from employment unprocedurally as she was only paid one-month salary in lieu of notice and not three months' salary as stipulated in her contract of employment. The Claimant also took issue with the Respondent's decision to reduce her salary by 70% for the months of April and May 2020 and the decision to send her on unpaid leave as a result of the Covid-19 Pandemic without being consulted.
32. The Respondent on its part maintained that the Claimant was retired after she attained the age of 60 years as per the Respondent's policy and that she was paid one month's salary in lieu of notice as agreed between the parties.
33. It is not expressly disputed that the Claimant had attained the age of 60 years as at the time she was served with the retirement notice while she was on unpaid leave.
34. As submitted by the Claimant, the law does not set a retirement age and the same is supposed to be set by an employer through either the letter of appointment or contract of employment or in some other document that governs terms and conditions of employment. The Respondent did not produce any document or policy on the same. Neither does the Claimant's letter of appointment provide for retirement.
35. The Claimant was served with a retirement notice dated 29th June 2020 which reads:-

Dear Grace Muhadia

RE: Retirement

On behalf of board of management Lions school Eldoret, may I kindly bring to your attention that the Board has made a decision to retire you. By grace of the Lord, you have attained the age of 60 years. The month of July will be treated as notice period and if you so wish, you can apply for one-month cash payment in lieu of 30 days' notice.

On behalf of the B.O.M, I wish to congratulate and appreciate your effort and service you rendered to this institution.

Yours faithfully,

Signed G.S. Sabharwal



School B.o.m Chairman

36. The first paragraph of the letter is instructive. It states that “On behalf of board of management Lions school Eldoret, may I kindly bring to your attention that the Board has made a decision to retire you. By grace of the Lord, you have attained the age of 60 years.
37. The letter does not refer to a policy or to terms and conditions of employment. The letter refers specifically to a decision made by the Respondent’s board to retire the Claimant. It means it was not a policy of the Respondent to retire its employees at 60 years, and a decision had to be made by the Board to retire her at the age of 60 years. It further means that the Claimant was not aware that she would be required to retire upon attainment of the age of 60 years. It was a decision of the board to retire the Claimant and the reason was that she had attained the age of 60 years. No evidence was adduced by the Respondent to prove that this was the normal practice. No evidence was adduced of any other employee who had been retired upon attaining the age of 60 years. The Respondent did not even state when the Claimant attained the age of 60 years.
38. The letter from the Claimant in response to the retirement notice is also instructive. It reads:

Grace Muhadia

Box

Matunda

9th October, 2020

Attention: S. Sabharwal

Dear Sir,

REF: Retirement

I acknowledge receipt of your letter dated 29th June, 2020 which took me by surprise and especially during this Covid-19 pandemic difficulties.

As per the letter dated 29th June 2020 requesting me to retire without benefits, this I find it difficult since I have children who are still in school and I am the sole bread winner in the family.

Please do consider my humble request to retire at this moment and let me be paid by benefits for the period I have worked for

Yours faithfully,

Grace Mahadia

[Emphasis added]

39. The Claimant in the letter expresses surprise at the retirement notice, meaning that the Claimant was not aware of any policy on retirement at the age of 60 years.
40. Section 10 of the *Employment Act* provides for particulars that are supposed to be in an employment contract. Subsection 10(3) and (4) provide for employment particulars to be given to an employee as follows:
- (3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the instalment containing them, is given of—



- (a) any terms and conditions relating to any of the following—
 - (i) entitlement to annual leave, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee’s entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);
 - (ii) incapacity to work due to sickness or injury, including any provision for sick pay; and
 - (iii) pensions and pension schemes;
 - (b) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;
 - (c) where the employment is not intended to be for an indefinite period, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;
 - (d) either the place of work or, where the employee is required or permitted to work at various places, an indication of that place of work and of the address of the employer;
 - (e) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the person by whom they were made; and
 - (f) where the employee is required to work outside Kenya for a period of more than one month
- (4) Subsection (3)(a)(iii) does not apply to an employee of a body or authority if—
- (a) the employee’s pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act; and
 - (b) any such provision requires the body or authority to give to a new employee information concerning the employee’s pension rights or the determination of questions affecting those rights.

41. From the foregoing it is clear that the employer has an obligation to inform the employee as part of employment particulars to be given to an employee upon engagement, the terms under which employment would cease including the retirement age, if any.

42. The Claimant was sent on unpaid leave by letter dated 12th June, 2020. The retirement letter is dated 29th June, 2020 followed less than one month after sending the Claimant on unpaid leave. The letter does not state that the Claimant attained the age of 60 years after the letter sending her on unpaid leave had been issued. The letter further does not state when the Board made the decision to retire the Claimant.

43. This would infer that at the time the Respondent sent the Claimant on unpaid leave it did not have a policy on retirement as it would have issued to the Claimant the retirement letter instead of sending her on unpaid leave, as both letters are issued in June, 2020, only 16 days apart.

44. From the foregoing the termination of the Claimant’s employment was without valid reason as attaining the age of 60 per se without a policy on retirement age, is not a valid reason for termination of employment. The termination is thus unfair for want of valid reason, in terms of section 43 and



45(2) of the *Employment Act*. Section 41 would not be applicable as this was not a termination on disciplinary grounds, but in terms of section 45 (4) and (5) which provide as follows:

- (4) A termination of employment shall be unfair for the purposes of this Part where—
 - (a) the termination is for one of the reasons specified in section 46; or
 - (b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.
- (5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour officer, or the Industrial Court shall consider—
 - (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;
 - (b) the conduct and capability of the employee up to the date of termination;
 - (c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;
 - (d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and
 - (e) the existence of any previous warning letters issued to the employee.

45. It is my finding that the termination was unjust and inequitable based on the circumstances of the case. It was insensitive of the Respondent to send the Claimant on compulsory leave on 12th of June, 2020 and then follow it up on 29th June with a letter of retirement.

Whether the Claimant is entitled to the reliefs Sought

46. The Claimant sought a number of reliefs in the Amended Claim. I will consider each of the heads of prayers as hereunder:

i. Payment of salary which was unlawfully deducted, Kshs 30,324

47. The reduction of salary was by letter dated 29th April, 2020. The reasons for the reduction were given in the letter being the closure of schools due to Covid-19 Pandemic. The Claimant signed the letter accepting the cutback of salary by 70%. She cannot turn around to claim that the same was unlawful.

48. Further, the Respondent's witness in his testimony explained that the reduction of salary by 70% was done in mitigation of the effects of Covid-19 pandemic. The court takes judicial notice that the Respondent is a private learning institution dependent on payment of fees by parents for the running of its affairs. In view of the directive by the Government of Kenya regarding closure of schools during the pandemic, I find that the Respondent's action was justified and as such, this prayer cannot issue.

Payment of three months' salary in lieu of notice Kshs. 43,320

49. The Claimant did not justify the payment of 3 months' notice instead of the one month provided for in section 35 of the Act. The argument that the Government grants 3 months' notice for retirement, apart from not being supported by evidence, does not apply to the Claimant because the Claimant



was not a government employee and was not working under the government terms of service. The Claimant was given one month's notice as provided by law. This prayer therefore fails.

Payment of lump sum of gratuity Kshs. 144,000

50. As correctly submitted by the Respondent, the Claimant's terms of service did not provide for gratuity and neither was she entitled to service pay under section 35 of the Act as she was a contributor to NSSF. This prayer is therefore not due to the Claimant.

Payment of housing allowance Kshs. 77,760

51. The Claimant's salary was consolidated as is evident from the salary vouchers. No evidence has been adduced to show that the salary did not include house allowance or that she was underpaid based on consolidated statutory minimum wages.

Payment of NHIF

52. There is no statement from NHIF reflecting that deductions made from the Claimant's salary were not remitted by the Respondent to NHIF. There is thus no proof of non-remittance of NHIF. Further, NHIF is a statutory body with powers to recover unremitted dues from the Respondent if the same was deducted and not remitted. This claim, if valid, can still be pursued with NHIF. The court declines to award this claim.

Damages for unfair termination

53. As held above, the termination of the Claimant's employment was unfair in the circumstances of this case. She had worked for the Respondent for about 20 years and was let off during covid-19 pandemic with no salary and no terminal benefits. The Respondent had no policy on retirement. The Claimant had been on a reduced salary of 30% following reduction of the same by 70% in April, 2020 and had just received a letter that she would be on unpaid leave dated 12th June 2020. It was therefore not going to cost the Respondent anything anyway to keep the Claimant in its employment. It could therefore have waited until schools reopened to retire the Claimant after reinstating her salary and giving her adequate notice, taking into account the extra-ordinary situation posed by Covid-19 Pandemic. It is my view that under these circumstances compensation equivalent to 6 months salary would be reasonable and I award the Claimant the same at Kshs. 86,400.
54. The Claimant is awarded costs and interest from date of judgment.
55. In the final analysis I enter judgment for the Claimant against the Respondent for:-
- i. Compensation for unfair termination Kshs. 86,400.
 - ii. Costs of the suit and interest on the sum above at court rates from the date of judgment till payment in full.
56. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF JUNE 2025

MAUREEN ONYANGO

JUDGE

