



**Kenya Union of Domestic Hotels, Educational Institutions and Hospital Workers (KUDHEIHA)  
v Gonzales (Cause E032 of 2025) [2025] KEELRC 2324 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2324 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E032 OF 2025**

**M MBARÚ, J  
JULY 31, 2025**

**BETWEEN**  
**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITAL WORKERS (KUDHEIHA) ..... CLAIMANT**  
**AND**  
**BRUNO GONZALES ..... RESPONDENT**

**RULING**

1. The ruling relates to Notice of Preliminary Objections filed by the respondent, Bruno Gonzales, dated 26 May 2025, on the grounds:
  - a. The claimant's case is in violation of section 36 of the *Employment Act*,
  - b. The claimant's claim is time barred as it has been filed out of time contrary to section 90 of the *Employment Act* as it relates to a continuing injury which must be filed within 12 months after the act, neglect or default under section 90 of the *Employment Act* and hence the court lacks jurisdiction to hear and determine this claim.
  - c. The suit in its entirety ought to be struck out and all claims therein be dismissed with costs to the respondent.Both parties attended and filed written submissions.
2. The respondent submitted that the claimant alleges that the grievant, Idris Siamini, was employed as a gardener under an oral contract as of 2 January 2019, earning Ksh. 9,000 per month, which increased to Ksh. 10,000 in January 2023.
3. The claim is that there was underpayment, with no compensation for work during public holidays.



4. The grievant tendered his resignation on 12 September 2023 and therefore claimed terminal dues, including notice pay, compensation for annual leave, service pay, public holidays, and underpayments.
5. The grievant was last at work on 12 October 2023. He filed suit on 26 March 2025. The suit is time barred by application of section 90 of the *Employment Act* (the Act). In the case of *G4S Security Services (K) Limited v Joseph Kamau & 468 others* [2018] eKLR, the court held that where there is a continuing injury, section 90 of the *Employment Act* requires that the claim be filed within 12 months next after the cessation thereof. In the case of *The German School Society & another v Ohany & another* [2023] eKLR, the court held that where a claim arises from a continuing injury that occurs every month when the salary is paid, it must be addressed within 12 months from the date of cessation.
6. In this case, the claim is time-barred and should be struck out with costs.
7. The claimant filed Grounds of Opposition on the basis that section 36 of the Act provides for payment in lieu of notice and does not extinguish the right to payment of terminal dues.
8. The objections raised do not meet the threshold of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA as the objections are not purely on points of law and require a call of evidence. The claim is based on a justifiable cause, which should be heard on the merits. The claimant made a demand for payment of terminal dues to the grievant and is allowed to file suit within 90 days from the date employment terminated. In the case of *Banking Insurance & Finance Union (Kenya) v G N Muchemi & Another* [2013] eKLR, the court held that a continuing injury must be of a nature that persists and recurs beyond the act complained of. Terminal dues accrue once and are not a continuing injury. In *Peter Kimani Githinji v Kenya Power & Lighting Co Ltd* [2022] eKLR, the court held that claims for gratuity and terminal dues do not constitute continuing injury.
9. In addressing a preliminary objection, the principles are set out in the case of *Mukisa Biscuits Ltd v West End Distributors Ltd* (1969) EA 696 as follows;

So far as I am aware, a preliminary objection consists of a point of Law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

Therefore,

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessary increase costs and, on occasion, confuse the issues. This improper practice should stop.

10. The respondent asserts that the claims for terminal dues, including service pay, are time-barred and filed contrary to sections 36 and 90 of the Act.
11. The Claimant asserts that the grievant is entitled to his terminal dues, which remain unpaid and hence still a continuing injury.



Section 90 of the *Employment Act* provides as follows;

Notwithstanding the provisions of Section 4(1) of the *Limitation of Actions Act* (cap 22), 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 of or in the case of continuing injury or damage within twelve months next after the cessation thereof.

12. Indeed, there has been back-and-forth litigation regarding the application of Section 90 of the Act on the issue of what constitutes a continuing injury and when it should be filed. This then becomes a matter of fact that must be discerned from the evidence and nature of claims sought by a claimant or grievant. To analyse the allegations based on objections would deny the court crucial matters of evidence and analysis of what constitutes a continuous injury that should be addressed within 12 months from the date of cessation or a claim for a civil wrong that should be addressed within 3 years from the date of injury.

Such a determination requires a call to evidence.

13. The claimant has defined itself as a trade union and represents the grievant in this case. It will be necessary for the court to hear both parties on the merits.
14. Objections dated 26 May 2025 are without merit and are hereby dismissed. The respondent is to file a response to the claim within 14 days and serve it to enable the claimant to file a response thereto.

Pleadings to close within 28 days.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 31ST DAY OF JULY 2025**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

