



**Kenya Union of Domestic, Hotels, Educational Institutions and Hospitals  
Workers v University Council of Technical University of Mombasa (Cause  
E002 of 2021) [2023] KEELRC 1669 (KLR) (29 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1669 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E002 OF 2021**

**M MBARŪ, J**

**JUNE 29, 2023**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS  
AND HOSPITALS WORKERS ..... CLAIMANT**

**AND**

**THE UNIVERSITY COUNCIL OF TECHNICAL UNIVERSITY OF  
MOMBASA ..... RESPONDENT**

**JUDGMENT**

1. The issue in dispute is registered as the refusal by the respondent to pay terminal benefits to 67 grievants and members of the claimant.
2. Parties agreed that the only pending issue in dispute is article 25 of the CBA on payment of service gratuity and hence filed written submissions to address the same.
3. The claim is the claimant is recognised by the respondent and have a Recognition Agreement and several Collective Agreements (CBA) have been registered.
4. The 67 grievants were employed by the respondent from the year 2011 to 2018 when their contracts ended. The claimant filed ELRC Petition No 9 of 2017 and judgment was delivered on May 28, 2018 and the respondent filed an appeal, being Mombasa Civil Appeal No 108 of 2018. Following the filing of the petition, the respondent refused to renew the grievants' contracts and outsourced their services hence denying them employment and were therefore victimised for filing a petition seeking to be employed on permanent and pensionable terms.
5. The claim is for orders that;



- a. This court be pleased to declare the respondent's refusal to pay service gratuity to the grievants is unlawful and illegal;
- b. The court be pleased to issue an order directing the respondent to pay the grievants Ksh 25,910,285.80 for service gratuity
- c. The court be pleased to issue an order directing the respondent to issue certificate of service to the grievants.
- d. The respondent to meet the costs and interest at court rates from the date of termination.

The claimant filed statements and pursuant to Rule 9 of the Employment and Labour Relations Court (Procedure) Rules, 2016 filed the particulars of each grievant.

6. The claims are as follows;

1. Ali Rajab Suleman  
Date of Employment; July 1, 2011  
Occupation Accommodation Assistant  
Date of Termination January 10, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
2. Hamisi Mchombo Ndaro  
Date of Employment; July 1, 2011  
Occupation Catering Assistant  
Date of Termination January 10, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
3. Pili Mohamed Mangwaya  
Date of Employment; July 1, 2011  
Occupation Accommodation Assistant  
Date of Termination January 10, 2018  
Last salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
4. Eunice Achieng Mbuya  
Date of Employment; October 6, 2011  
Occupation Laundry Assistant  
Date of Termination January 10, 2018  
Last salary Kshs 15, 810.00  
Duration in Employment; 6 years and 4 months



5. Said Salim Yuga  
Date of Employment; July 1, 2011  
Occupation Environment Assistant  
Date of Termination January 10, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
6. Zainabu Uchi Abdu  
Date of Employment; July 1, 2011  
Occupation Accommodation Assistant  
Date of Termination January 10, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
7. Mwanaisha Ramadhan Mapengo  
Date of Employment; July 1, 2011  
Occupation Accommodation Assistant  
Date of Termination January 10, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
8. James Ngua George  
Date of Employment; January 1, 2011  
Occupation Office Assistant  
Date of Termination January 10, 2018  
Last salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
9. Changawa Kazungu Kapombe  
Date of Employment; July 1, 2011  
Occupation Sewerage Attendant  
Date of Termination January 10, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
10. Martin Ngoka Mazera  
Date of Employment; July 1, 2011  
Occupation Accommodation Assistant



- Date of Termination January 10, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
11. Wycliffe Enyangu  
Date of Employment; January 12, 2017  
Occupation Catering Assistant  
Date of Termination January 11, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 1 year.
12. Fatuma Mohamed Hamisi  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Catering Assistant  
Date of Termination 9<sup>th</sup> January, 2018  
Last Salary Kshs. 15, 810.00  
Duration in Employment; 6 years and 6 months
13. Ndaa Jefwa Kiringi  
Date of Employment; July 1, 2011  
Occupation Environmental Assistant  
Date of Termination January 10, 2018  
Last Salary Kshs 15,810.00  
Duration in Employment; 6 years and 6 months
14. Fatuma Cheshi Athumani  
Date of Employment; July 1, 2011  
Occupation Catering Assistant Date of Termination January 11, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
15. Zainabu Salim Vuga  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Secretary III  
Date of Termination 11<sup>th</sup> January, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
16. Rose Khaseke Makadia



- Date of Employment; 1<sup>st</sup> July, 2011 Occupation Catering Assistant  
Date of Termination 11<sup>th</sup> January, 2018  
Last Salary Kshs 29, 550.00  
Duration in Employment; 6 years and 6 months
17. Dhadho Kombo Jillo  
Date of Employment; 1<sup>st</sup> July, 2011 Occupation Catering Assistant  
Date of Termination 9<sup>th</sup> January, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months
18. Susan Atieno Mboya  
Date of Employment; 11<sup>th</sup> January, 2011  
Occupation Accommodation Assistant  
Date of Termination 11<sup>th</sup> January, 2018  
Last Salary Kshs 15,810.00  
Duration in Employment; 5 years and 6 month
19. Samwel Mwatsuma Onesmas  
Date of Employment; 11<sup>th</sup> January, 2017  
Occupation Office Assistant  
Last Salary Kshs 15, 810.00  
Date of Termination 10<sup>th</sup> January, 2018  
Duration in Employment; 1 year.
20. Lydia Kerubo Motachi  
Date of Employment; 11<sup>th</sup> January, 2017  
Occupation Office Assistant  
Date of Termination 1<sup>st</sup> July, 2011  
Last Salary Kshs 15, 810.00  
Duration in Employment; 6 years and 6 months.
21. Jackline Mnyazi Hausiku  
Date of Employment; 1<sup>st</sup> July, 2012  
Occupation Office Assistant Date of Termination 10<sup>th</sup> January, 2018  
Last Salary Kshs 15, 810.00  
Duration in Employment; 5 years and 6 months
22. Justine Lugo



- Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Environmental Assistant  
Last salary Kshs 15, 810.00  
Date of termination 10<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
23. Enos Alela Makutwah  
Date of Employment; 1st January, 2016  
Occupation Environmental Assistant  
Last salary Kshs 15,810.00  
Date of termination 31<sup>st</sup> December 2016  
Duration in Employment; 1 year
24. Beth Wachera Kamau  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Catering Assistant  
Last salary Kshs 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
25. Mahenzo Francis Kahindi  
Date of Employment; 1<sup>st</sup> July,2011  
Occupation Catering Assistant  
Last salary Kshs 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
26. Chai Baya Mganga  
Date of Employment; 1<sup>st</sup> July,2011  
Occupation Environmental Assistant  
Last Salary Kshs 15, 810.00  
Date of termination 10<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 month
27. Alice Chiku Justus  
Date of Employment; 1<sup>st</sup> October, 2011  
Occupation Accommodation Assistant  
Last salary Kshs 15, 810.00



- Date of termination 11<sup>th</sup> January 2018  
Duration in Employment; 6 years and 3 months
28. Dorothy Nechesa Indeché  
Date of Employment; 1<sup>st</sup> October, 2011  
Occupation Library Attendant  
Date of termination; 9<sup>th</sup> January 2018  
Duration in Employment; 6 years and 3 months
29. Rehema Suleiman Ali  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Catering Assistant.  
Date of Termination 10<sup>th</sup> January, 2018  
Duration in Service 6 years and 6 months
30. Bahati Juma Mwalimu  
Date of Employment; 1<sup>st</sup> October, 2011 Occupation Environmental Assistant.  
Date of termination; 9<sup>th</sup> January 2018  
Duration in Service 6 years and 6 months
31. Mwanamisi Suleiman Wendo  
Date of Employment; 1<sup>st</sup> May, 2013  
Occupation Accommodation Assistant  
Last salary Kshs 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 4 years and 6 months
32. Rama Ali Chama  
Date of Employment; 10<sup>th</sup> January, 2017  
Occupation Catering Assistant  
Last Salary Kshs 15, 810.00  
Date of termination 10<sup>th</sup> January, 2012  
Duration in Employment; 5 years and 9 months
33. Rehema Yusuf Faki  
Date of Employment; 1<sup>st</sup> May 2014  
Occupation Accommodation Assistant  
Last salary Kshs 15, 810.00  
Date of termination 10<sup>th</sup> January, 2018



- Duration in Employment; 3 years and 6 months
34. Ibrahim Said Mwafrika  
Date of Employment; 1<sup>st</sup> May 2014  
Occupation Catering Assistant  
Last salary Kshs 15, 810.00  
Date of termination 9<sup>th</sup> January, 2018  
Duration in Employment; 3 years and 6 months
35. Abdalla Said Mwamasare  
Date of Employment; 1<sup>st</sup> May, 2015  
Occupation Accommodation Assistant  
Last salary Kshs 15, 810.00  
Date of termination 9<sup>th</sup> January, 2018  
Duration in Employment; 2 years and 6 months
36. Popo Mohammed Kassim  
Date of Employment; 1<sup>st</sup> August, 2015  
Occupation Administrator Assistant  
Last Salary Kshs 21,330.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 3 years and 5 months
37. Jeremiah Mwaiwa Vuva  
Date of Employment; 1<sup>st</sup> October, 2011  
Occupation Welder Assistant  
Last Salary Kshs 29,500.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 2 months
38. Daniel Makosi  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Masonry Assistant  
Last Salary Kshs 29, 550.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
39. Zaituni Juma Swazuri  
Date of Employment; 11<sup>th</sup> June, 2011



- Occupation Accommodation Assistant  
Last salary Kshs 24, 330.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
40. Thomas Mwarashu Ngwale  
Date of Employment; 12<sup>th</sup> January, 2017  
Occupation Catering Assistant  
Last Salary Kshs 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 1 year
41. Mwanakombo Mwinyihaji Mpendakula  
Date of Employment; 6<sup>th</sup> December, 2011  
Occupation Environmental Assistant  
Last Salary Kshs 15, 810.00  
Date of Termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years
42. Emmanuel Masabo  
Date of Employment; 8<sup>th</sup> December, 2011  
Occupation Environmental Assistant  
Last Salary Kshs 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 1 month
43. Robert Fondo Karisa  
Date of Employment; 1<sup>st</sup> March, 2012  
Occupation Environmental Assistant  
Last Salary Kshs 15, 810.00  
Date of termination 10<sup>th</sup> January, 2018  
Duration in Employment; 5 years and 9 months
44. Anthony Kimani Ndichu  
Date of Employment; 1<sup>st</sup> March, 2012  
Occupation Environmental Assistant  
Last Salary Kshs 15,810.00  
Date of termination 11<sup>th</sup> January, 2018



- Duration in Employment; 5 years and 9 months
45. Rodges Kaingu Ziro  
Date of Employment; 13<sup>th</sup> December, 2011  
Occupation Environmental Assistant  
Last salary Kshs 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years
46. Sinangowa Abdulrahman Mlao  
Date of Employment; 1<sup>st</sup> December,2011  
Occupation Systems Data Officer Assistant  
Last Salary Kshs 35,700  
Date of Termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years
47. Riziki Ali Mwachela  
Date of Employment; 12<sup>th</sup> March, 2012  
Occupation Accommodation Assistant  
Last salary Kshs 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 5 years and 9 months
48. Kenga Sophia  
Date of Employment; 11<sup>th</sup> January, 2012  
Occupation Office Assistant  
Last Salary Kshs. 15, 810.00 -  
Date of termination 10<sup>th</sup> January, 2018  
Duration in Employment; 5 years 9 months
49. Valentine Mesi Mwaruta  
Employment; 1<sup>st</sup> July, 2011  
Occupation Accommodation Assistant  
Last Salary Kshs. 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
50. Pili Mohamed Buki  
Date of Employment; 1<sup>st</sup> May, 2013



- Occupation Sanitary Attendant  
Last salary Kshs. 15,810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 4 years and 6 months
51. Shadrack Mbithi Ndongye  
Date of Employment; 11<sup>th</sup> January, 2017  
Occupation System Data Officer  
Last Salary Kshs. 35,700.00  
Date of Termination 10<sup>th</sup> January, 2018  
Duration in Employment; 1 year
52. Sultan Ali Mwadzuya  
Date of Employment; 16<sup>th</sup> May, 2016  
Occupation Catering Assistant  
Last Salary Kshs. 15,810.00  
Date of termination 9<sup>th</sup> January, 2018  
Duration in Employment; 2 years
53. Stephen Ndegwa Mwanyoha  
Date of Employment; 1<sup>st</sup> May, 2014  
Occupation Administrative Assistant  
Last Salary Kshs. 35,700  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 3 years and 7 months
54. Julian Idza Chai  
Date of Employment; 1<sup>st</sup> May 2014  
Occupation Catering Assistant  
Last Salary Kshs. 15,810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 3 years and 6 months
55. Bernard Munga Mkomu  
Date of Employment; 22<sup>nd</sup> August, 2015  
Occupation Catering Assistant  
Last Salary Kshs. 15,810.00  
Date of termination 11<sup>th</sup> January, 2018



- Duration in Employment; 3 years and 4 months
56. Herman Mwaivugha Mwakudu  
Date of Employment; 1<sup>st</sup> August, 2015  
Occupation Catering Assistant  
Last Salary Kshs. 15,810.00  
Date of Termination 11<sup>th</sup> January, 2018  
Duration in Employment; 3 years and 4 years
57. Davis Mkwinyo Chiriba  
Date of Employment; 1<sup>st</sup> July,2011  
Occupation Environment Assistant  
Last Salary Kshs. 15,810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
58. Adelaide Akello Oloo  
Date of Employment; 12<sup>th</sup> January 2017  
Occupation Accommodation Assistant  
Last Salary Kshs. 15,810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 1 year
59. Edison Kaingu  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Catering Assistant.  
Last Salary Kshs. 15,810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years 6 Months
60. Elizabeth Wangari Njuhigu  
Date of Employment; 1<sup>st</sup> August 2015  
Occupation Secretary Assistant  
Last Salary Kshs. 21, 330.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 3 years.
61. Mariana Wangui Kamau  
Employment; 17<sup>th</sup> October 2013



- Occupation Accommodation Assistant  
Last Salary Kshs. 15, 810.00  
Date of Termination 11<sup>th</sup> January, 2018  
Duration in Employment; 4 years and 3 months
62. Patrick N. Lwambi  
Date of Employment; 1<sup>st</sup> October 2011  
Occupation Painter/decorator Assistant  
Last Salary Kshs. 29, 550.00  
Date of termination 11<sup>th</sup> January 2018  
Duration in Employment; 6 years and 2 months
63. Swaleh Shee Swaleh  
Date of Employment; 1<sup>st</sup> May, 2015  
Occupation Catering Assistant  
Last salary Kshs. 29,550.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 3 years 5 months
64. Ali Kibwana  
Date of Employment; 1<sup>st</sup> October, 2011  
Occupation Environmental Assistant  
Last Salary Kshs. 15,810  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
65. Dickson Mchura Mgongo  
Date of Employment; 1<sup>st</sup> October 2011  
Occupation Environmental Assistant  
Last Salary Kshs. 15,810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
66. Nancy Chelimo  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Catering Assistant  
Last Salary Kshs. 21,330.00  
Date of Termination 11<sup>th</sup> January, 2018



Duration in Employment; 6 years and 6 months

67. Name; James Taura  
Date of Employment; 1<sup>st</sup> July, 2011  
Occupation Accommodation Assistant  
Last salary Kshs. 15, 810.00  
Date of termination 11<sup>th</sup> January, 2018  
Duration in Employment; 6 years and 6 months
7. In response, the respondent's case is that the claimant lacks locus standi to represent 12 grievants who are not members of the union,
  1. Mwanaisha Ramadham Mpenko;
  2. Fatuma Chesi Athman;
  3. Rose Makadia Khaseke;
  4. Dhadho Rumbo Jilloh;
  5. Rehema Suleiman Ali;
  6. Rama Ali Rama;
  7. Popo Mohammed Kassim;
  8. Anthony Kimani Ndichu;
  9. Shadrack Mbithi Ndonye;
  10. Edison Kaingu;
  11. Elizabeth Wangari Njuhigu;
  12. Swaleh Shee Swaleh.
8. The 12 cannot be represented in these proceedings by the claimant under Section 73(3) of the [Labour Relations Act](#).
9. The claim contravenes Rule 5(b) (I) and (ii) of the Employment and Labour Relations Court Procedure Rules.
10. The response is also that there was no termination of employment as alleged since the contracts expired by effluxion of time. The respondent had no obligation to renew the employment contracts and no employee was victimised.
11. The only claim sought is that of gratuity which is not due. Gratuity is only payable if the employment contract provides for the same. In this case, the grievants contracts did not provide for payment of gratuity. The CBA, clause 25.0 provides for gratuity payment only to an employee who terminates employment or employment is terminated. There was no termination of employment to justify a claim for payment of gratuity in terms of clause 22.2 of the CBA.
12. In the written submissions, the respondent's case is that under clause 25.0 of the CBA the payment of gratuity is not automatic. It must result from termination of employment as held in *Pathfinder International Kenya Limited v Stephen Ndegwa Mwangi* [2019] eKLR. The CBA terms under clause



- 25.0 are that gratuity pay accrues where the employee terminates employment after one year of service, where an employee retires or where the employee dies while in service or there is termination of employment for reasons of gross misconduct and gratuity is paid at the rate of 31% of the employees monthly basic salary for the number of months worked. Such gratuity is then transferred to the Pension Scheme.
13. The grievants do not qualify for gratuity pay since they were under fixed term contract which lapsed and there was no termination of employment as required under clause 22.1 to warrant a claim for the same. The claims made should be dismissed with costs.
  14. The legal issues and objections with regard to the standing of the claimant to represent 12 grievants, whether the suit is res judicata and whether the respondent can be sued were all addressed by the court in the ruling delivered on 29 October 2021. these objections were dismissed and the claimant allowed to amend the Memorandum of Claim accordingly.
  15. In the written submissions, the respondent has reiterated that the 12 grievants not members of the claimant cannot benefit from this claim since they were not members of the claimant and in terms of Section 73(3) of the LRA, the claimant has no locus standi to act for these 12 grievant.
  16. In employment and labour relations, the concept of fair labour practices encompasses all employees at the shop floor without distinction of rank, standing or role. See *Elizabeth Washeke & 62 others v Airtel Networks (K) Limited & another* [2013] eKLR that;
 

... Fairness comprehends that regard must be given not only to the position and interests of the workers, but also those of the employer, in order to make a balanced and equitable assessment. ... The fairness required in the determination of an unfair labour practice must be fairness towards both employer and employee. Fairness to both means the absence of bias in favour of either. ... There are no underdogs.
  17. Where employees are the shop floor, whether unionised or not, whether unionisable or not, there is equal protection of the law without placing any employee to any disadvantage. In conferring employment benefits, no employee should be disadvantaged simply because they are unionisable but have not joined the union. Such would be discriminatory and contrary to Section 5 of the *Employment Act*, 2007 read together with Article 27 and 41 of *the Constitution*.
  18. A best practice in this regard is to be found under Section 40(1)(d) of the *Employment Act*, 2007 when declaring a redundancy. No employee, unionised or not should be placed at a disadvantage;
    - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
  19. The rationale is to be found under Section 49 of the LRA. There are protections with regard to employees who are not unionised so that they can benefit from a given CBA retroactively and proactive.
  20. The 12 cited grievants cannot stand disadvantaged and section 73(3) of the LRA cannot apply to negate the rights and benefits secured under the same law, where a trade union is allowed to represent its members in court but not by placing other employees at a disadvantage as such would go contrary to Sections 5 and 40 of the *Employment Act*, 2007 and negate the Constitutional principles against non-discrimination against any employee and to ensure fair labour practices.
  21. More fundamentally are the provisions of Section 26(2) of the *Employment Act*, 2007 which directs the court to apply terms and conditions of a contract of service as regulated under any CBA in a manner



that is favourable to the employee if the contract of service issued is less favourable. This is one such case where the 12 grievants should not be placed at a disadvantage.

2. Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Court are more favourable to an employee than the terms provided in this Part and Part VI, then such favourable terms and conditions of service shall apply.
22. What then constitutes termination of employment for the purpose of payment of gratuity in this case?
23. The claimant has relied on the provisions of clause 25.0 to claim payment of gratuity for the grievants which is challenged by the respondent on the grounds that employment contracts were fixed and they lapsed by effluxion of time and there was no termination of employment.
24. The *Employment Act*, 2007 or the LRA do not define the word *termination of employment*. This can only be discerned from the law.
25. Section 18 of the *Employment Act*, 2007 is addressing the various types of employment regimes contemplates casual employment which ends with each day and wages paid daily.
26. There is piece-work which completes are end of given task with payment of the agreed wages.
27. There is employment going beyond a given month with payment of wages monthly.
28. There is fixed term contract with a given start and end date.
29. All these types of employments start and end and are regulated in law. Such regulation is to ensure the accruing benefits arise at the end of each type of contract. There is a start and end. Such end is the date/time terminating each type of employment. It cannot therefore serve justice to assert that employment can only terminate where the employee exits employment upon death, dismissal due to gross misconduct, retirement of resignation. These, in my view are just but modes of various terminations of employment and which includes, termination by effluxion of time.
30. Under clause 25.0 of the CBA between the parties herein, it was agreed that;

#### Service gratuity

Subject to the provisions of this agreement, gratuity shall be payable to employees on temporary contact terms of service as follows:-

- a. Where an employee terminates his/her service after one year of service.
- b. Where an employee retires in accordance with the retirement clause of this Agreement.
- c. Where an employee retires or is retired on medical grounds after serving for one year.
- d. When an employee dies after serving for one year.
- e. When an employee has his/her services terminated for reasons other than gross misconduct and he/she has served for at least one year continuously.
- f. Gratuity payable under this agreement shall be at the rate of thirty one per cent (31%) of the employee's monthly basic salary for the number of months worked with the University.



g. ...

Under clause (e) above, parties agreed that an employee, whose employment is terminated for reasons other than gross misconduct, has served for at least one year continuously, gratuity is payable. In my humble review, the court reading of these provisions, employees on fixed term contract which go beyond one year, at the end of term, the benefit of gratuity accrue.

31. The grievants worked for the respondent for periods beyond one year as outlined above. Employment terminated. It was not as a result of gross misconduct so as to deny them the benefits under clause 25.0 of the CBA.
32. Accordingly, the grievants are all entitled to payment of gratuity for the entire period of service at the rate of 31% of the employee's monthly basic salary for the total number of months worked with the respondent in terms of clause 25.0 of the CBA.
33. The tabulation of the claims at Ksh.25,910,295.80 is hereby confirmed.
32. The claimant is also entitled to costs of this suit.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 29 DAY OF JUNE, 2023.**

**M. MBARŪ**

**JUDGE**

