



**Kenya Union of Commercial Food and Allied Workers v Murang'a  
Farmers Cooperative Union Limited (Cause E049 & E050 of 2022  
(Consolidated)) [2023] KEELRC 2160 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2160 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E049 & E050 OF 2022 (CONSOLIDATED)  
ON MAKAU, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**MURANG'A FARMERS COOPERATIVE UNION LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant trade union brought this suit on behalf of its members Ms. Agatha Nyambura Francis and Mr. David Muhoho Wagathika (hereinafter called 'The grievants') seeking following:-
  - a. Kshs. 4,801,301.40 and kshs. 3,740,211.04 respectively.
  - b. Interest at court rates from the date of retirement.
  - c. Costs of the suit.
2. The facts of the case are that the grievants were employed by the respondent as Salary Clerk and Store Keeper respectively until 20<sup>th</sup> January, 2020 when they retired. Thereafter the employer computed the terminal dues for Ms. Agatha Nyambura Francis at Kshs. 5,730,040.40 out of which she was paid Kshs. 928,739 leaving a balance of Kshs. 4,801,301.40. On the other hand, the employer computed terminal dues for Mr. David Muhoho Wagathika at Kshs. 4,542,861.54 out of which he was paid Kshs. 884,861.50 leaving a balance of kshs. 3,740,211.04.
3. The claimant's case is that the respondent has failed to pay the outstanding balances to the grievants and further declined to attend the conciliation proceedings. Hence the instant suit.



4. The respondent filed Response to the claimant's suit, denying all the allegations made against it. However, on without prejudice basis, the respondent admits the amounts sought but avers that the dues were to be settled by instalments for a period of 6 years which was to run up to 31<sup>st</sup> January 2026. Consequently, it averred that the suit herein is premature and prayed for it to be dismissed with costs.

#### DIVISION - Evidence

5. Ms. Agatha Nyambura Francis (first grievant) testified as CW1 while Mr. David Muhoho Wagathika (second grievant) testified as CW2. Their evidence basically repeated the facts set out above but added that they could not wait for 6 years before filing suit because the claims would become time barred after the lapse 3 years. Further, the 2<sup>nd</sup> grievant admitted that he was paid a further kshs. 50,000 on 2<sup>nd</sup> November, 2022 making the total payment Kshs. 884,650.50. They prayed for judgment in terms of the outstanding balances plus interest at court rates and costs.
6. The respondent was represented by its Chief Executive Officer Ms Irene Muthoni Kibochi who testified as RW1. She adopted her written statements dated 2<sup>nd</sup> March, 2023 as her evidence and backed it with 18 documents as exhibits. She confirmed that the grievants retired from the respondent and they were paid kshs 928,739 and Kshs. 834,650.50 respectively leaving outstanding balances.
7. She contended that an agreement was reached on 3<sup>rd</sup> February, 2023 between the respondent's board and the workers' representatives, to settle the said sum by instalments until January 2026. She admitted that the amount due to the CW1 and CW2 is Kshs. 4,801,301.40 and 3,740,211.04 respectively. She contended that had the claimant not rushed to court, the grievants would be receiving payment like other employees who never filed suit. However, she admitted that claims based on employment became statute barred after the lapse of three years.
8. After the hearing, both sides filed written submissions which basically reiterated the rival contentions as set out in the pleadings and evidence.

#### Analysis

9. Having carefully considered the pleadings, evidence and submissions the only issue for determination is whether the claimant is entitled to the reliefs sought. The answer to that question is in the affirmative. I say so because RW1 admitted under oath that the grievants are entitled to Kshs. 4,801,301.40 and 3,740,211.04 respectively as outstanding balances of their terminal dues.
10. Whether the said debt is to be paid by instalments until 2026 is a matter for another day. RW1 has confirmed that a claim based on employment contract lapses after three years if suit is not filed and therefore filing the suit was warranted.
11. As a consequence of the foregoing holding, I enter judgment for the claimant ordering the respondent to pay the following-
  - a. Ms. Agatha Nyambura Francis..... Kshs. 4,801,301.40.
  - b. Mr. David Muhoho Wagathika..... Kshs. 3,740,211.04.
  - c. Interest on (a) and (b) at court rate from date of filing the suit less statutory deductions.
  - d. Costs of the suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 22ND DAY OF SEPTEMBER, 2023.**

**ONESMUS N MAKAU**

**JUDGE**



## **Order**

**In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**ONESMUS N. MAKAU**

**JUDGE**

