



**Bosire & 3 others v Laikipia University (Cause 480, 481, 482 & 483 of 2017 (Consolidated)) [2022] KEELRC 13537 (KLR) (15 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13537 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 480, 481, 482 & 483 OF 2017 (CONSOLIDATED)**

**HS WASILWA, J  
DECEMBER 15, 2022**

**BETWEEN**

**PETER ONYANCHA BOSIRE ..... CLAIMANT**

**AND**

**LAIKIPIA UNIVERSITY ..... RESPONDENT**

**AS CONSOLIDATED WITH**

**CAUSE 481 OF 2017**

**BETWEEN**

**FRANCIS MALAKWEN KOECH ..... CLAIMANT**

**AND**

**LAIKIPIA UNIVERSITY ..... RESPONDENT**

**AS CONSOLIDATED WITH**

**CAUSE 482 OF 2017**

**BETWEEN**

**DAVID MWORIA MUGUNA ..... CLAIMANT**

**AND**

**LAIKIPIA UNIVERSITY ..... RESPONDENT**

**AS CONSOLIDATED WITH**

**CAUSE 483 OF 2017**



**BETWEEN**  
**MARY WAIRIMU GITHONGORI (BEING THE ADMINISTRATOR OF THE**  
**ESTATE OF FRANCIS NZIU MULI - DECEASED) ..... CLAIMANT**  
**AND**  
**LAIKIPIA UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This judgment is in respect of four suits being; ELRC Cause Number 480 of 2017, Cause Number 481 of 2017, Cause Number 482 of 2017 and Cause Number 483 of 2017 which were all consolidated on February 20, 2020 with ELRC Cause Number 480 of 2018 marked as the lead file.

**Cause No 480 Of 2017**

2. In the first suit, Peter Onyancha Bosire, by his claim of November 30, 2017 alleged that his employment was unfairly and unilaterally converted from continuous employment to several fixed term contracts that affected his retirement benefits. He prayed for the following reliefs; -
  - a. That the honourable court establish that the claimant was put into a long casualization without justifiable cause so the action was wrongful and unfair.
  - b. That the claimant had worked for the respondent on a prescribed term of fixed contract which now overshadows the claimant's right to honourably work and retire officially as described by the terms and conditions set out in the CBA from 2008 to 2010.
  - c. That the claimant was born in 1956 and by December 31, 2016 the claimant had clocked 60 years' age of retirement and could have retired him honourably without hiding fixed term contracts.
  - d. Being on casual employment for over 9 years 2 month, the respondent subjected the claimant to unfair payments contrary to terms and conditions in the CBA.
  - e. Gratuity claim of Kshs 191,985.50
  - f. Leave allowance 9 years of Kshs 308, 527.20
  - g. Arrears for July 2008 to June, 2010.
  - h. Arrears for July 2010 to June 30, 2012.
  - i. Respondent to pay costs of this suit and interest from December 31, 2016.
3. The summary of this case is that the claimant was employed by the respondent on April 8, 2002 as a casual security guard earning a salary of Kshs 4,000 per month. On June 3, 2008 his salary was increased to Kshs 5,000 per month and sometimes in 2010 his salary was further increased to Kshs 6500. He states that he served the respondent on the said terms till June 26, 2012 when his employment was unilaterally converted to short term renewable contracts that ranged from three months to one year.



4. He avers that his first short term contract began on June 26, 2012 till September 27, 2012. Another one began on November 13, 2013, while the last one expired on December 31, 2016 which was not renewed. It is his case that the contracts were against the provision of clause 3(a) of the CBA between the respondent and the claimant's union, Kenya Union of Domestic, Hotels Educational Institutions Hospitals and Allied Workers (KUDHEIHA), signed for the period between July 1, 2008 to July 1, 2010 which stated that short term contract should not exceed three months. A further CBA emphasizing on the said terms were further signed between the respondent and the union on February 15, 2016 for the period between July 1, 2012 up to August 1, 2014.
5. He avers that the fixed term contract which he was operating under is not recognized under their CBA. That the conversion of his employment from permanent basis to fixed short term contracts denied him benefits he would have received had he retired on initial terms. He added that having worked for the respondent from 2002 till December 31, 2016, he was due to enjoy all retirement benefits under paragraph 7 clause 14(1) of the CBA such as gratuity which he has now been denied due to the introduction of the short term contracts.
6. He stated also that he never went for leave for the 13 years worked for the respondent as such he is entitled for reimbursement for leave days not given. He added that he was not paid house allowance for the entire period worked for the respondent. He claimed also salary underpayment for the period worked.

#### **Response**

7. The respondent entered appearance and filed a response to claim dated October 11, 2018 denying the entire claim and specifically stated that the claimant entered into various fixed term contracts voluntarily which he was consulted before signing. That the pay given to the claimant was agreed upon by the parties as such no arrears are due.
8. He avers that the contract was not continues but depended on availability of work and upon expiry of the last contract, the claimant was duly paid all his terminal dues as admitted in the letter of December 14, 2016.
9. With regards to reliefs sought, the respondent stated that the claimant was paid all his dues of Kshs 268,520. It is contended that the respondent paid for NSSF as evidenced by the claimant's pay slips. With regard to leave, the respondent maintained that the claimant utilized all his leave days and in any case that the claim for leave is time barred by dint of section 90 of the *Employment Act*.

#### **Cause Number 481 Of 2017**

10. Francis Malakwen Koech filed his claim also on November 30, 2017 claiming to have been unfairly terminated and seeking compensation for the unfair termination, retirement benefits and salary arrears due to him, His reliefs were as follows; -
  - a. That the court finds that the claimant was unfairly discriminated against on issues of payments and his job classifications.
  - b. That the honourable court do find that having worked for the respondents for 7 years and 6 months and was born in 1956, the claimant was qualified to retire on December 31, 2016 as given in the CBA hence the termination of employment contract on conditions of expired contract does not arise. Therefore, the claimant should be honourably given a retirement after all, what does it mean to retire, as per the respondents CBA, a payment of gratuity at 21 days



per each year of service completed for those who worked for over 5 years and less than 10 years. The bracket period the claimant belonged in.

- c. That the claimant be paid all the arrears which he did not enjoy when working for the respondents starting August 1, 2009 up to December 31, 2016. A period of 7 years and 6 months. That the arrears in number (3) above shall include; -
    - (i) salary arrears;
    - (ii) Housing Allowances arrears;
    - (iii) commuter allowances;
    - (iv) hardship allowances;
    - (v) Medical allowances
    - (vi) annual leave from 1st August 2009 up to June 25, 2012.
  - d. Underpayment on basic salaries starting when the claimant was employed. The underpayments are segmented as per each of the CBA's then up to the last CBA 2016. Between July 1, 2008 and June 30, 2012 and between July 1, 2010 up to June 30, 2012.
  - e. That the payments to be made with interest at the court rates until payment is full.
  - f. That the respondents to pay the costs of the case annual leave, travelling allowances for 2009 up to 2016.
  - g. Gratuity of Kshs 167,976.90
  - h. Overtime claims of Kshs 318, 580.
11. The claimant in this cause was employed by the respondent on August 1, 2009 as security guard earning a monthly salary of Kshs 6500. That he worked for the respondent till June 26, 2012 when the respondent, without consultation, changed the employment terms to short fixed term contracts ranging from 3 months to one year with the last contract expiring on December 31, 2016.
  12. He states that the conversion of the employment contract was done contrary to the *Employment Act* and the CBA between the respondent and the claimant's union and the respondent did so to avoid paying him retirement benefits when he had attained the age of retirement at the time of termination.
  13. He avers that upon expiry of the said contract, he was paid Kshs 268, 520.45 as terminal dues which dues did not factor in the duration before the signing of the short term contracts.
  14. He also avers that he was not paid House allowance throughout his employment with the respondent. He added that the respondent did not grant them leave or pay in lieu as such leave pay is due and owing.
  15. It was his case that he was only paid basic salary without any allowances such as house allowance, travelling allowance, hardship allowance, overtime and medical allowance which his colleagues received and the reason was because the short term contract had a clause that expressly stated that the contract did not have any allowances attached to it. Additionally, that the respondent did not pay his NSSF deductions and therefore he is due for gratuity from the time of employment till retirement.
  16. Just like the first claimant, the claimant herein avers that he had attained the age of retirement at the time of expiry of the last contract and he ought to have been paid his retirement benefits which the respondent circumvented by forcing them to sign short term contracts.



## Response

17. In the memorandum of response dated October 11, 2018, the respondent denied the entire claim and in particular avers that the contracts and the terms therein entered into between the claimant and the respondent were mutually agreed upon by the parties and no issues were raised by the claimant during the pendency of the said contracts therefore the claimant should be estopped from turning around and claiming unfair terms of service.
18. The respondent stated that the claimant's contract expired and came to an end by effluxion of time and the claimant was paid all his terminal dues of Kshs 268,520.45 and the respondent does not owe him any dues.
19. On the claim for allowances, the respondent stated that the salary given to the claimant was a consolidated sum which included house allowances.
20. On leave pay sought, the respondent avers that the claim between August 1, 2009 to June 20, 2012 is time barred and with regard to underpayment, the respondent avers that the claimant was paid in accordance with the wage order applicable for the said period, the respondent situated under other arrears.

## Cause 482 Of 2017

21. David Mworira Muguna on the other hand complained about the conversion of his employment contract to short fixed term contract that avoided the payment of his retirement benefits as captioned under the CBA. In his claim dated November 30, 2017, he sought for the following reliefs; -
  - a. That the honourable court to find the casualization for 12 years was unlawful and therefore unfair.
  - b. That when the respondents stopped, the claimants work on December 31, 2016, the claimant should have been retired officially instead of terminating the claimant's employment on alleged expiry of the contract. The claimant was born on March 17, 1953 and as at December 31, 2016 a period of 63 years, this means that the claimant should have been allowed to retire honourably.
  - c. That the claimant had been working under a short term contract whose payment does not conform to the terms and conditions of service set out in the CBA or as per the terms set out in the Employment Act therefore there had been getting wrong payments contrary to the terms and conditions in the employment in CBA between the employer and the claimants union.
  - d. That after establishing as prayed for above the honourable court be pleased to order for a payment to the claimant as follows:
    - i. All wages paid below the set out terms and conditions of service as per the CBA for 16 years and 11 months when the claimant was a casual employee starting February 7, 2000 up to June 26, 2012 when the claimants working terms were converted to that of short term contracts.
    - ii. That the honourable court do find that the payment made during the short terms contracts were also made below the payments as provided for by the CBA so the honourable court be pleased to order for a payment of the difference between what was actually paid to the claimant and what was provided for in agreement CBA for 2012 up to 2016.



- iii. That given that the payments which were actually paid to the claimant during short term contract were based on a none existing terms and conditions of services the claimant be paid the arrears accruing from the agreed to payments as provided for in the CBA paid to other staff but the claimants was paid due to the alleged term contracts.
  - iv. That the claimant be paid appropriate gratuity for 16 years worked.
  - v. Refund of alleged 200 contributions deductions starting July, 2012 till December 31, 2016 of Kshs 10,800.
  - vi. Gratuity of Kshs 566,776 less Kshs 298,255.55 paid= 298,255.55.
22. The summary of the claimant's case herein is that the claimant was employed by the respondent on February 7, 2000 as a casual employee at a salary of Kshs 4,000 per month. That he worked in the maintenance department before being transferred to Security department. While on night shift he clocked in at 6pm daily and 6am while on day duty working for overtime which was never paid for.
23. According to this claimant, his employment contract was converted to fixed term contract on June 26, 2012 and served on various short-term contracts with the last one expiring in December, 2016.
24. He avers that during his tenure at the respondent's employ, the respondent was not paying for his NSSF statutory deduction. He also avers that he was not given any leave.
25. He states that he was paid Kshs 268, 520.45 as his terminal benefits upon termination which money did not cover the entire claim he has with the respondent. He stated in addition that the respondent deducted Kshs 200 each month from June, 2012 to December 31, 2016 without any explanation as such the said monies should be refunded.

**Response.**

26. The respondent in his response dated October 11, 2018 denied the entire claim and stated that the Claimant was employed on casual basis commencing February 7, 2000 at a salary of Kshs 4000 and deployed to security department after completing the 3 months' probation period.
27. It is stated that the entire claim by the claimant is based on the allegation that the cause of action arose between 2000 and 2012 which is statute barred by dint of section 90 of the *Employment Act*.
28. The respondent maintained that the claimant entered into the fixed term contract having understood the import and the terms stipulated therein and never raised any issue till the termination of the contract and therefore he ought to be stopped from making any further claim.
29. The respondent stated that the claimant was employed on fixed terms contract that expired and the claimant paid all his terminal dues of Kshs 268,520.45.
30. With regard to alleged unaccounted for deduction, the respondent avers that the 200 shilling deducted from the claimant salary was for NSSF statutory deduction which cannot be refunded.
31. In conclusion, the respondent maintained that the claimant's employment came to an end on expiry of contract which was not renewed and the respondent paid the claimant his terminal dues of Kshs 268,520. 45 and therefore there is nothing owing to the claimant.

**Cause 483 Of 2017**

32. The claimant herein, Francis Nziu Muli (deceased) claimed to have been placed on casual employment for a long time and the contract later converted to fixed term which took away his retirement benefits.



In his claim dated November 30, 2017 and amended on the March 31, 2022 the claimant herein prayed for the following reliefs; -

- a. That the honourable court to establish that the long casualization of the claimant's work was wrongful and unfair.
  - b. That the short term contract the respondent put the claimant on was wrongful and unfair also.
  - c. That the claimant having served the respondents for 14 years and 3 months could have been allowed to retire honourably as provided for by the CBA but not to be thrown out under the pretext that the contract expired because as at December 31, 2016 the claimant was actually 63 years old.
  - d. That after establishing all these malpractices, then the honourable court be pleased to order for the payment as follows;
    - i. That the claimant be paid annual leave for 10 years and 3 months he served under prolonged casualization without any justifiable cause.
    - ii. That the court be pleased to order the respondents to pay the claimant all the salaries arrears for the period the claimant served the respondents for 14 years and 3 months.
    - iii. That the respondents to pay the claimant all arrears accrued, the outstanding allowance, medical, house allowance etc which other staff benefited while the claimant was unfairly denied.
    - iv. That the respondent do pay the costs of this suit.
    - v. That the respondent to pay the claimant all wages claimed for together with the interested at court rates.
    - vi. That the respondent to pay the gratuity from 2002 upto June 2012 when he converted the claimant's work to fixed term contract of Kshs 255,660.90.
  - e. Salary arrears between July 1, 2008 and June, 2011 and arrears between July 1, 2011 and June 30, 2014 as per the CBA.
33. The summary of the claim is that the claimant was employed on the March 8, 2002 as a cleaner/ gardener at a fortnight salary of Kshs 1000 and monthly salary of Kshs 2,000 which salary he maintained till 2008 when his salary was increased to Kshs 4,000 per month, then to Kshs 6,000 in 2010.
34. On June 26, 2012, the claimant's employment was converted from casual employment and issued with various fixed term contracts that ran from 3 months to 1 year, with the last one expiring on December 31, 2016.
35. The claimant stated that the conversion of his contract to a fixed term contract disadvantaged him and short-changed him in the payment of terminal dues as he was not paid in accordance with the CBA applicable for retirees.

### **Response**

36. The respondent file a response to this claim dated October 11, 2018 on even date denying the claim and in addition stated that the claimant was employed on contractual basis from the get go and has always signed new fixed terms contract after being explained the terms therein. The respondent added



that the claimant was not engaged in continuous basis but on specific assignments as evidence by the various contracts exhibited by the claimant.

37. With regard to the reliefs sought, the respondent denied the claim for underpayment and avers that the claimant was paid per the contract he entered into freely at the time of employment. On House allowance he avers that the salary paid was a consolidated sum inclusive of house allowance. In any case that the claim of house allowance is statute barred as contemplated under section 90 of the *Employment Act*. On leave pay, the respondent avers that the claimant never worked continuously to earn leave and also that the claim is not specific as to what period he seeks for the said allowances. With regard to gratuity, it was averred that the claimant was paid for the duration governed and not from the time of engagement because he was not continuously on employment.

## Hearing

38. During hearing the Peter Onyancha Bosire and Francis Malakwen Koech testified as CW-1 and CW-2 respectively on their behalf and on behalf of the other respondent claimants. The respondent on the other hand called Mugo Mureithi, the officer in charge of registration and administration of Human Capital as its RW-1.
39. CW-1 adopted his witness statement of 10.3.2022 and produced the document dated November 30, 2017 which was marked at exhibit 1-20 respectively. In addition, he testified that save for Francis Muli (deceased) who was a messenger, the rest of the claimant were security guards.
40. Upon cross examination by Ndichu Advocate, he testified that he started working for the respondent on April 8, 2002 as evidenced by the voucher at page 12 of his documents. He testified that his employment contract was converted to short fixed term contract as from June 26, 2012 with the first contract running for three months at a salary of Kshs 11,730, then another one-year contract on similar terms, then two-year contract and the last one for 6 months which expired on December 31, 2016. He avers that at the expiry of the last contract he had attained 60 years and was to retire if he was not been placed on the said contract. He testified further that at expiry of the contract he received Kshs 268, 520 being his terminal dues and cleared from the respondent.
41. On re-examination, CW-1 testified that he always signed the said contracts without understanding their effect. He also avers that he raised the issue with the union but they did not help him informing his decision to file this suit in court.
42. CW-2, Francis Malakwen Koech, adopted his witness statement and produced the documents dated November 30, 2017 and testified that he was employed by the respondent on August 1, 2009 and urged this court to allow the claim as prayed. He admitted receiving gratuity pay but that he never understood how it was calculated.
43. In his testimony, he stated that the other claimants were his colleagues who had given him authority to testify on their behalf. He prayed for their claim to be allowed as well.
44. Upon cross examination by Ndichu Advocate he reiterated that he was employed on August 1, 2009 and evidenced it with statement to the police dated October 25, 2009. He avers further that his contract changed to fixed term contract commencing June 26, 2012 which contract were of various duration with the last one expiring on September 21, 2016 when he had just turned 60. He admitted that he never raised an issue with the university upon expiry of the said contract. He testified that his claim was for overtime as he was working from 6am to 6pm each day.



45. With regard to the other claimants, CW-2 testified that David and Francis had contracts with the university which expired and were not renewed. That they had all reached the retirement age. He admitted that none of the claimant wrote to the university seeking for any arrears.
46. On re-examination, the witness changed his statement and averred that they complained to the university that the terminal dues were less but that no one listened to them.
47. RW-1, Mugo Mureithi, adopted his consolidated witness statement dated June 25, 2021. He produced the documents dated March 5, 2020 together with the leave forms and personal data forms. In addition, he testified that all the claimants served the University on contractual terms which were not uniform. He testified that they paid the claimants 31% of the consolidated salary for the period served and that they don't owe them anything. Also that they all took their leave and evidence is on record to demonstrate as much.
48. Upon cross examination by Owuor Advocate, the witness testified that he was employed by the respondent on April 18, 2011 and that he was relying on the records at the respondent to defend their case. He testified that the records show that the 1<sup>st</sup> claimant was employed July 1, 2012 and that all of them were working on casual basis. He admitted that the claimants were members of the union. He also admitted that the fixed term contracts they placed the claimants on was not provided for under the CBA. He testified that the formula used in calculating claimants' gratuity pay is the 31% of consolidated salary provided for by PSC.

### **Claimants' Submissions**

49. The Claimant filed joined submission for all the cases herein. They submitted from the onset that a collective bargaining agreement (CBA) in addition to the Employment Act under section 10 provided for terms of employment which terms go to the roots of the contract which must be observed by both employer and employee. It was argued that the claimants' employment, though began as casual employment as pleaded by all the claimants, converted to permanent basis as contemplated under section 37 (1) of the Employment Act because the employment ran for more than one year. Additionally, that clause 1b (ii) & (iii) as read with clause (c) of the CBA provided for casual employment to ran for only Three (3) months.
50. With regard to the short term contracts entered by the claimants, it was submitted that the contracts have a clause at 3(1) and 3(3) which removed any benefits or allowances awardable to the claimants which is against the provisions of section 37(i)(a) &(b) are read with section 37(3) of the Employment Act and part 11 of the Employment Relations, specifically clause 7 & 8. It was argued that the said clause removed all the benefits the claimants are entitled to while other employees enjoyed better terms, an indication that the contracts violated on the rights of the employees and discriminated against the specific employees who were not entitled to such benefits as house allowance, medical allowance, contribution to welfare fund, bereavement fund among others.
51. With regard to salary arrears, it was submitted that all claimants were members of the CBA which was entered into on June 20, 2016 and registered in court on May 30, 2019 to run for one year from July 1, 2012, the time when the claimants were in active service. Therefore, that the claimants are entitled to the salary arrears that was due for the said period. It was argued that as per the CBA, employees who had worked for over 10 years were due for gratuity at the rate of 35 days pay in each year worked and not the 31% rate that the respondent used in their calculation. Furthermore, that all the claimants were paid equal pay without regard to the years of service an indication that the calculation was flawed.



52. In conclusion, the claimants submitted that they are owed salary arrears in form of gratuity and salary arrears that was paid under the CBA after their contracts expired together with other benefits pleaded in their respective claims and urged this court to allow the same as prayed.

### **Respondent's Submissions**

53. The respondent identified five issues for determination; whether the claimants were terminated from employment, whether the claimants were owed salary arrears and house allowance, whether the claimants were owed leave pay, whether the claimants were owed retirement gratuity and whether the 2<sup>nd</sup> claimant was owed overtime pay.
54. On the first issue, it was submitted that the claimants were employed on casual basis as admitted in their pleadings before being issued with the fixed term contracts which were renewed on their request from time to time with the last one expiring on December 31, 2016. It was argued that all the claimants were employed on need basis as evidenced by the first claimant who exhibited a letter of June 3, 2008 indicating that he was working on casual basis hence their employment was not continuous but on need basis and did not convert to permanent basis as contemplated under the *Employment Act*.
55. It was argued that all the claimants admitted in their pleadings and during hearing that the fixed term contracts were entered into voluntarily and they all understood the timelines of their contracts and at the time of expiry they had attained the retirement age of 60 years. It was argued that since the contracts were for a fixed term, the respondent was not obligated under the law to renew them but to only issue notice which they did by the letter dated September 21, 2016. To support this argument, the respondent cited the case of *Fatuma Abdi v Kenya School of Monetary Studies* at Nairobi ELRC Cause No 1261 of 2015 and the case of *David Kinuthia and Elijah Wanjala v Lakipia University*, Nakuru ELRC Cause No 496 and 497 of 2014 where the court held that an employer is empowered under section 10 as read with section 37 of the *Employment Act* to issue its employees with fixed term contracts. On that basis that the respondent was justified in issuing the fixed term contracts to its employees.
56. On whether the claimants were owed salary arrears and House allowance, it was submitted that the salaries that were given to the claimants were in accordance with the wage orders subsisting on various times and stated that the respondent being situated under other areas duly paid its employees in accordance with the wage order. It was further argued that all the claimants were paid terminal dues upon expiry of their contract which money they accepted without any protest and the claim raised thereafter is an afterthought. It was further argued with regard to house allowance pay that the sum paid to the claimants was a consolidated amount.
57. On leave pay, the respondent submitted that before the signing of the fixed term contracts, the claimants were employed on casual basis depending on availability of work and therefore did not in most occasions earn leave days. However, on being placed on fixed term contracts they were all granted leave days at the rate of 21/2 days per month which all the claimants had utilized and not owing. The respondent argued in any event that any claim for leave before the year 2012 is statute barred by dint of section 90 of the *Employment Act*.
58. On retirement gratuity pay, the respondent submitted that the contracts of employment which were issued to the claimants did not indicate payment of gratuity, further that the claimants herein were not graded and the payments under the CBA provided for gratuity pay for graded employees who were serving on permanent terms and not the claimants herein, however that the 31% gratuity paid to the claimants was done on humanitarian grounds. In any case that the claimants had worked less than 5 years each from the time the CBA came in force on July 1, 2012 and therefore were not entitled to any gratuity pay.



59. On overtime claim by the 2<sup>nd</sup> claimant, the respondent submitted that all security guard worked on shifts which never worked in excess of the time provided for under the law, this fact was admitted by the CW-1 & CW-2 during hearing. It was argued further that the contract expressly provided that the position will not attract any other benefits/allowances as such the claim for overtime is not justified in the circumstances.
60. On costs, the respondent submitted that the claimants did not serve them with demand notice before filling this case and thus costs should not issue.
61. In conclusion, the respondent submitted that the claimants have failed to substantiate their claims to warrant the issuance of the reliefs sought and therefore all the claims herein should be dismissed with costs.
62. I have examined all evidence and submissions of the parties herein. The four claimants herein content that their employment was converted from permanent to contract unfairly leading them to loose on their retirement benefits.
63. From the evidence submitted herein, the claimants indicated that they served as casual employees from their time of employment in 2002, 2000, 2009 and 2002 respectively until their employment was converted to short term contracts from 2012 to 2016 when they were no longer renewed.
64. The claimants content that they were also underpaid during the period of employment.
65. The respondents contend that the claimants were contract employees and submitted the periodic contracts as evidence. They aver that the claimants signed the contracts voluntarily and were also members of NSSF and NHIF and therefore all their retirement benefits were catered for.
66. From some of the letters submitted in court, the claimants even wrote to the respondents requesting for renewal of their contracts (See App 7) which was then done.
67. As per the contracts submitted, leave was provided at 2 ½ days for each month worked. The salaries payable were consolidated as per App 9.
68. What I gather from the evidence submitted before me is that the claimants may have initially served the respondents as casual employees.
69. The periods within which they served were sporadic and no evidence is submitted to show continuous casual service.
70. The claimants didn't produce any evidence that they ever requested for documents from the respondents if they exist to show how they served as casuals.
71. The respondents admit that they only served when work was available.
72. The only tangible evidence of service of the claimants are the short term contracts which the claimants requested for and signed their acceptance voluntarily.
73. The issue of long casualization of employment does not therefore exist. In the same vain, the issue of changing their permanent and pensionable employment to short term contracts is also not established.
74. Now from the time the claimants were subjected to the fixed term contracts, they signed the said contracts voluntarily and periodically.
75. It is true they were members of a union as per their payslips. They therefore qualified to get benefits as per the CBA between KUDHEIHA and the respondent. One notable benefit is gratuity provided for



- in the CBA where an employee who had completed 5 years but less than 10 years of continuous service was entitled to gratuity equivalent to three weeks pay for each completed year of service.
76. For those who served for over 10 years the rate of payment was a month's pay for each completed year of service. For an employee with less than 2 years of service, 6 months salary was payable.
  77. The claimants served on contracts from 2012 to 2016 which is a period of about 4 years. They fall under the category of the less than 5 years which was not provided for in the CBA.
  78. There is no provision for those who have served for over 2 years and less than 5 years. The claim for gratuity therefore fails.
  79. The claimant also averred that they were owed salary arrears. The claimants have indicated that they were in job group 1. It is not clear how the claimants concluded that this was their job group as the contracts they signed were silent on job groups only indicating their job position as security guards etc.
  80. The claimants have not demonstrated how the salary arrears came about. I find this prayer untenable.
  81. The same applies to house allowance as it is clear that the claimants salaries as per the contracts was a consolidated pay.
  82. After considering all prayers sought, it is my finding that the claimants are not entitled to any compensation as prayed.
  83. They all served on fixed term contracts voluntarily executed with acceptable terms which contracts expired at their term end.
  84. I find the entire claim fails and is dismissed accordingly.
  85. There will be no order of costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 15<sup>TH</sup> DAY OF DECEMBER, 2022.**

**HON LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Mrs Towett holding brief for Mwangi for respondent – present.

Claimants – absent.

Court Assistant - Fred.

