



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 32 OF 2013**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 9<sup>th</sup> March 2016)**

**KENYA UNION OF EMPLOYEES OF VOLUNTARY AND CHARITABLE ORGANIZATIONS  
(KUEVOKA).....CLAIMANT**

**VERSUS**

**BOARD OF GOVERNORS PUMWANI SECONDARY  
SCHOOL.....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant filed his Statement of Claim on 10.1.2013 on behalf of the Grievant David Lawrence Kionгаа. The issue in dispute is payment of the Grievant's retirement and terminal dues.
2. The Grievant told Court that he was employed by the Respondent – a public secondary school as a guard on 1.1.1993 vide a letter of appointment dated 12.1.1993 at a salary of 925/= per month. He was on probation for 1 month. This appointment was subject to terms of any agreement between the Ministry of Education and KUDHEIA Union in force and any other order establishing Board of Governing body of any institution established under the Education Act (Cap 211).
3. The Grievant avers that he served the Respondents successfully with clean record of employment upto 17<sup>th</sup> September 2001 when he was issued with a retirement notice to retire from employment by 31<sup>st</sup> December 2001 on grounds of age.
4. The Grievant appealed the retirement notice and sought an extension of service for 3 years given that he had a loan of 18,000/= but his appeal was rejected. The Grievant duly retired on 31.12.2001 but was never paid anything and had to travel to his remote home in Turkana County where he became stranded upto June 2007.
5. On 11.6.2007 the Claimant wrote a demand notice to Respondent demanding a total of 292,310.65 less 13,397 loan being Grievants overtime claims, underpayment/house allowance, 9 years traveling allowance and 9 years' service gratuity less loan recovery.
6. The Respondent acknowledged not paying the Grievant his terminal benefits (Appendix 14) but nothing was ever done on the same. The Claimant opted to report a trade dispute to the Minister of Education on 9.9.2008. The matter was never resolved hence this claim.

7. The Respondents filed their Memorandum of Reply on 7/2/2013 through Kimondo, Gachoka & Company Advocates. The Respondent admits they had employed the Grievant David Kiongaa as a watchman from 1.1.1993.

8. They deny the Grievant served the Respondent diligently but that he habitually absconded from work, was insubordinate and insolent and was even given a warning letter at one point – (Appendix 2). They also aver that the Grievant retired properly and lawfully with effect from 31.12.2001 upon attaining 44 years (Appendix 3).

9. They deny however that the Grievant is entitled to any prayers sought of overtime, house allowance, underpayment, travelling allowance and service gratuity. It is also the Respondents position that this claim is time barred. They want this claim dismissed accordingly.

10. Having considered the evidence and submissions from both parties, the issues for determination are as follows:

1. *Whether the claim is time bared.*
2. *Whether the Grievant is entitled to prayers sought.*

11. On the issue number 1, the Grievant retired on 31.12.2001. He however started pursuing this claim on 11.6.2007 through the Claimant, when the Claimant wrote to the Respondent demanding retirement benefits and dues of the Grievant.

12. On 9.9.2008, they reported a trade dispute to the Minister for Labour about 7 years later.

13. Under the repealed Employment Act, a claim founded on contract was to be instituted within 6 years as provided for under Cap 22. It is therefore apparent that the Claimant should have initiated their claim even through a report to the Minister by 1.1.2008 and so by reporting on 9.9.2008, the Claimants came late and they should have sought leave to institute their claim from this Court.

14. The claims therefore arising from this claim in relation to overtime, underpayment, leave and house allowance cannot stand for reasons that the same is time barred.

15. However on the claim of service gratuity, this was explicitly provided for in the Collective Bargaining Agreement annexed by the Claimant. This Collective Bargaining Agreement however is not clear who the parties were and when it was executed and this Court cannot therefore categorically state that it covered the Grievant.

16. The Collective Bargaining Agreement annexed covers only certain pages and the entire document is not annexed. The entire claim therefore fails.

17. This however is not a bar to the Grievant being paid any dues payable to him from the NSSF or the normal Pension Fund payable to all Government employees.

There are no orders to costs.

Read in open Court this 9<sup>th</sup> day of March, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Obi Otieno for Claimant – Present

No appearance for Respondent – Absent