



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 227 OF 2015**

**BENJAMIN NDERITU**

**NGUNJIRI.....1<sup>ST</sup>**  
**CLAIMANT**

**DUNCAN WAHOME**

**KIENYERE.....2<sup>ND</sup>**  
**CLAIMANT**

**SAMUEL MUTAHI**

**KARUOYA.....3<sup>RD</sup>**  
**CLAIMANT**

**RICHARD KURIA**

**MUGANE.....4<sup>TH</sup>**  
**CLAIMANT**

**PAUL KAMUNYA**

**MURATHA.....5<sup>TH</sup>**  
**CLAIMANT**

**PAUL NG'ERO**

**GUANDARU.....6<sup>TH</sup>**  
**CLAIMANT**

**MAINA**

**MATU.....7<sup>TH</sup>**  
**CLAIMANT**

**GITHU**

**NJUGUNA.....8<sup>TH</sup>**  
**CLAIMANT**

**JOHN WANJOHI**

**WAMBUGU.....9<sup>TH</sup>**  
**CLAIMANT**

**LINUS NDERITU**

**MUNUHE.....10<sup>TH</sup>**  
**CLAIMANT**

WANJII

KARIUKI.....11<sup>TH</sup> CLAIMANT

SAMUEL NDERITU

MWANIKI.....12<sup>TH</sup> CLAIMANT

JOHN THUITA

WANJOHI.....13<sup>TH</sup> CLAIMANT

VERSUS

**THE BOARD OF MANAGEMENT KAMWENJA TEACHERS  
COLLEGE.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 13<sup>th</sup> May, 2016)

**RULING**

The claimants filed on 11.12.2015 the statement of claim in person and subsequently appointed Warutere & Associates Advocates to act for them. They claim terminal dues following their retirement on diverse dates. The terminal dues include unpaid house allowance, underpayment, and NHIF contributions deducted but not remitted. They also claim medical allowance and house allowance for those who were not provided the relevant housing accommodation. They served either as cooks or as head cook in the respondent's kitchen department.

The respondent through A.M. Njagi, Litigation Counsel, for the Attorney General, filed on 04.02.2016 the notice of preliminary objection on the ground that the suit was time barred both under section 90 of the Employment Act, 2007 prescribing 3 years as time of limitation in employment contracts and was time barred under section 4 of the Limitation of Actions Act, Cap 22 prescribing 6 years as time of limitation for suits in contracts generally. The replying affidavit of Davidson Warutere Iregi was filed on 24.03.2016 to oppose the preliminary objection.

**First**, it is submitted for the claimants that the cause of action arose long before the coming into operation of the Employment Act, 2007 so that section 90 of the Act does not apply and the court finds as much by reason of the claimants' own submission.

**Second**, is the case time barred under section 4 of the Limitation of Actions Act, Cap 22 prescribing 6 years as time of limitation for suits in contracts generally? The claimants' submissions are that the respondent failed to comply with minutes of joint appeals committee of the meeting held on 26<sup>th</sup> and 27<sup>th</sup> September, 1994. The court finds that the cause of action as founded on the minutes is time barred under section 4 of the Act. Thus, the preliminary objection is upheld on the ground that the suit is time barred under section 4 of the Limitation of Actions Act, Cap 22. The court has taken into account the circumstances of this case including that the respondent had not filed a substantive statement of response to oppose the suit and it is the view of the court that each party shall bear own costs of the suit.

In conclusion, the claimants' suit is hereby dismissed with orders that each party shall bear own costs of the suit.

**Signed, dated and delivered** in court at Nyeri this **Friday, 13<sup>th</sup> May, 2016.**

**BYRAM ONGAYA**

**JUDGE**