



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA**

**AT MOMBASA**

**CAUSE NO. 165 OF 2014**

**TAILORS & TEXTILES WORKERS UNION .....CLAIMANT**

**VERSUS**

**KAMYN INDUSTRIES LTD .....RESPONDENT**

**J U D G M E N T**

**INTRODUCTION**

This is a claim about payment of gratuities upon retirements of Mwanaisha Salim, Kalama Gwilili and Mgeni Salim (grievants) who were formerly employed by the respondent. The case came up for hearing on 23/6/2013 when the parties agreed to dispose of the matter by written submissions.

The gist of the claimant's submissions is that after retirement the respondent used a wrong formula for calculating gratuities for the grievants. According to her, the formula should be  $22 \text{ days pay} \times \text{basic salary} \div 26 \text{ days per month} \times \text{years served}$ .

On the other hand the respondent has denied that formula and insisted that the correct formula is  $22 \times \text{basic salary} \div 30 \text{ days} \times \text{years served}$ .

**ANALYSIS AND DETERMINATION**

After perusing and considering the pleadings and the submissions filed, the court has not seen any dispute regarding each of the grievants monthly basic pay. There is also no dispute that each of the grievants is entitled to service gratuity or retirement at the rate of 22 days pay per year of service. The only issue for determination is what is the formula for calculating the basic pay per day for the grievants. The claimants has contended that the monthly basic pay should be divided by the 26 days one works per month. The respondent has on the other hand contended that the monthly basic pay is the average pay per month whether one works for less days or more days in some months depending on the length of each respective month.

The court agrees with the defence that basic pay for permanent staff cannot be calculated in the same manner as that of casual workers. The basic pay in this case shall be calculated on the basis of the grievants monthly basic salary divided by 30 days. The resulting basic daily pay shall be multiplied by 22 days per year of service to get the total service gratuity per grievant.

The claimant has based this claim on the Collective Bargaining Agreement dated 30/7/2012 but has not cited any clause that supports the formula she now wants the court to adopt. She has also not cited any judicial precedent or statutory law to support her case. Consequently the claimants case fails.

**DISPOSITION**

The case is dismissed with no order as to costs. However the grievants will be paid their dues as stated above.

**Dated, Signed and delivered this 26<sup>th</sup> September 2014**

**O. N. Makau**

**Judge**