



- with Notice of Summons and Pleadings. The Respondent despite the service did not file a Response.
- 12.The Cause was mentioned severally in Court in Nairobi but the Respondent did not attend any of the sessions.
  - 13.On 23 March 2015, Wasilwa J directed that the Cause be transferred to Nakuru.
  - 14.On 5 May 2015, the Cause was mentioned before me and because the parties were absent, I directed the Deputy Registrar to notify the parties to appear on 25 May 2015 for directions. KUDHEIHA appeared and sought a hearing date.
  - 15.The Court fixed the Cause for hearing on 28 October 2015 with a directive to KUDHEIHA to serve a hearing notice.
  - 16.According to an affidavit of service filed in Court on 15 October 2015, the Respondent was served and it acknowledged service of the hearing notice but it did not send a representative to Court on the date fixed for hearing.
  - 17.The Cause thus proceeded for hearing as undefended Cause (no Response was filed) and without participation of the Respondent.
  - 18.The Grievant testified and gave a narration of her employment and early retirement. The documents filed together with the Memorandum of Claim were produced as exhibits.
  - 19.Due to the fact that no Response was filed and that the Respondent failed to attend the hearing, there is no real dispute as to the facts as pleaded and testified to.
  - 20.The duty of the Court in the circumstances is to examine whether the reliefs sought by the Grievant are merited.
  - 21.The Grievant in the main had 3 heads of claims. Underpayments (acting allowance cum basic salary and house allowance), and service gratuity.
  - 22.The parties went through conciliation. They made submissions before the Conciliator who thereafter came up with recommendations.
  - 23.On service gratuity, the Grievant sought a total of Kshs 78,195/-. Clause 31 of the collective bargaining agreement in place provided for service gratuity and when it was payable. The Grievant served for more than 10 years and she qualified for the gratuity.
  24. On acting allowance, the Grievant sought a total of Kshs 216,812/-.
  - 25.The Court finds no merit on the claim, which is based on the civil service rates as the Grievant did not establish that the Circular from the Directorate of Personnel Management pleaded applied to her.
  - 26.Clause 21 of the collective bargaining agreement provided for a special duty allowance. The provision provided for the formula for calculating the same and the Conciliator recommended that the same be paid to the Grievant in consideration of the duties she performed over and above the agreed tasks.
  - 27.The Court will agree with the Conciliator that the Grievant is entitled to a special duty allowance instead of acting allowance. Because this was not computed, the Court directs the County Labour Officer to compute the special duty allowance and file a report within 10 days with the Court.
  28. The Grievant also sought Kshs 61,800/- on account of house allowance. There is no merit to this claim as substantively, the Grievant was only acting and the special duty allowance covered her contractual entitlements.

### **Conclusion and Orders**

29.The Court finds and holds that the Grievant is entitled to

- a. gratuity allowance of Kshs 78,195/- and
- b. special duty allowance for 25 months.

30.The County Labour Officer to compute the special duty allowance and file a report in Court within 10 days.

31.Mention on 14 December 2015 to confirm report from County Labour Officer and further orders.

32.Each party to bear own costs.

**Delivered, dated and signed in Nakuru on this 4<sup>th</sup> day of December 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant/Grievant  
KUDHEIHA

Mr. Ombima, Assistant Secretary General,

Respondent

did not appear

Court Assistant

Nixon