



**Mutuma v Winners Chapel International (Cause E028 of 2024)  
[2025] KEELRC 2426 (KLR) (12 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2426 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
CAUSE E028 OF 2024  
ON MAKAU, J  
SEPTEMBER 12, 2025**

**BETWEEN**

**GAVIN KOOME MUTUMA ..... CLAIMANT**

**AND**

**WINNERS CHAPEL INTERNATIONAL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant was employed by the Respondent as church accountant/key board player on 1<sup>st</sup> February 2013 and worked until 1<sup>st</sup> January 2024 when he resigned. His salary was Kshs. 95,450.64 as at October 2023 when the respondent issued a Memo of the intended restructuring of the church operations and reducing salaries to the amounts in place in the year 2021. The claimant accepted the salary cut by signing on the memo on 24<sup>th</sup> October 2023 and on 1<sup>st</sup> November 2023, he received a transferred to the Respondent's Mombasa branch.
2. He contended that whereas his net salary was previously Kshs. 66,541.36, he received Kshs. 47,976.09 at the end of October 2023. He averred that the reduction amounted to unfair labour practices and it forced him to resigned vide letter dated 1<sup>st</sup> January 2024. He averred that despite the Respondent's Administrative handbook providing that a staff who resigns is entitled to his terminal benefits, the respondent did not pay him the same. Therefore, he brought this suit seeking the following reliefs:
  - a. A declaration that the Respondent's failure to remit the Claimant's terminal dues is in contravention of the Administrative Handbook and a total disregard of the provisions of the [Employment Act](#) and amounts to unfair labour practices.
  - b. An order compelling the Respondent to remit the Claimant's terminal dues.
  - c. An order compelling the Respondent to pay the Claimant's salary arrears for the months of November and December 2023.



- d. A declaration that the Respondent do pay the Claimant leave allowance for 7 years.
  - e. The Respondent be directed to issue the Claimant with a certificate of service.
  - f. An order granting general damages to the Claimant for unfair labour practices.
  - g. Interest on the above at Court rates.
  - h. Costs of the suits and interest thereon.
  - i. Any other relief that this Honourable Court shall deem fit and just to grant in the circumstances.
3. The Respondent filed a Response dated 24<sup>th</sup> October 2024 and an Amended Response dated 3<sup>rd</sup> February 2025 admitting that it did a restructuring and proposed salary reductions of which the claimant accepted. It denied that the reduction of salaries amounted to unfair labour practices and averred that there were no salary arrears for November and December 2023. It also averred that the resignation by the claimant was not due to the salary reduction but his desire to pursue new assignment. It denied the claim for gratuity contending that its Staff handbook does not provide for payment of gratuity and as such his terminal dues were the salary he received in December 2023. Finally, it prayed for the suit to be dismissed for being premature as it had already assessed Kshs. 267,841 as the amount due to the claimant upon completion of clearance.
  4. The Claimant filed a Reply to the Amended Response contending that he signed the memo for reduction of salaries dated 24<sup>th</sup> October 2023 through coercion and therefore he was not bound by its contents. It was added that the Claimant never received the salary indicated in the said memo but more than what he was receiving in 2021. He reiterated that the reduction of salary was intended to force employees to resign and not a genuine move to prevent lay-offs. Therefore, he maintained that he is entitled to the reliefs sought in his Claim.

### **Evidence**

5. During the hearing, the Claimant testified as CW1 and basically adopted a written statement as his evidence and produced three bundles of 14 documents as exhibits. He confirmed that his duties included preparation of budgets, and payments among others. He stated that any documents for payment was approved by the senior auditor. He contended that he was entitled to travelling allowance, leave allowance and gratuity. He admitted that he took some leave days but was never paid leave allowance save for 2021-2023.
6. He confirmed that his gross salary in 2021 was Kshs. 50,976 but after the salary reduction memo in October 2023, he received Kshs. 66,021 as gross and Kshs. 47,976 as net salary. He admitted that he accepted the proposal for salary reduction but he received more than the proposed new salary. He contended that he tendered the resignation because he was not satisfied with the new salary. He further stated that as required he prepared handing over report on the respondent's books of accounts but he was never paid terminal benefits.
7. He stated that the Staff Handbook provided for payment of gratuity at the rate of one-month terminal salary times the number of years served, if the employee had served for over 5 years. He stated that he resigned on 1/1/2024 and the applicable salary was Kshs. 95,450.64 as the reduced salary was only paid in November and December 2023. However, he confirmed that he was on pensionable terms from June 2020- 1/1/2024. He stated that the Staff Handbook in his bundle was the only book he used in the office.



8. He denied being privy to the settlement agreement on the Kshs. 50,000/= for lawyers that was allegedly in his custody. He added that he learned that the same had been deducted from his terminal dues contending that the signatories in the letter had not filed witness statements. He confirmed that what he received was Kshs. 217,841/=.
9. In cross-exam, he reiterated that he agreed to the salary reduction to the 2021 scale affected November and December 2023. He maintained that the reason for his resignation was the reduction of salary but he never indicated the same in the resignation letter. He admitted that he gave 9 days' termination notice instead of 30 days but contended that his salary for January 2024 compensated for the notice period he owed to the employer.
10. He stated that the Staff Handbook he produced as exhibit was handed over to him when joined the respondent as incoming accountant. He denied having a similar copy to the one produced by the Respondent. He confirmed that the letter accepting his resignation laid a condition that the same was subject to handing over. He also confirmed that his handing over was only on accounts and nothing else.
11. He stated that the leave allowance was provided in his contract and which was also governed by the Staff Handbook. He stated that under clause 8.2.1 of the Staff Handbook leave was equal to employee's monthly gross pay. He further confirmed that he was on pension from 2020 as reflected in his payslip. He contended that he was entitled to leave allowance even if he never demanded for the same.
12. Patrick Lutta, an Advocate of the High Court of Kenya and the Respondent's secretary, testified as RW1. He adopted his written statement as his evidence and produced the bundle of 7 documents as exhibits. He stated that he has been the Respondent's Secretary for 30 years. From the onset, he clarified that the Respondent is a church and not a body corporate, and as such acts through its officials.
13. He further testified that the respondent's Administrative Policy Handbook dated 21<sup>st</sup> November 2012 at paragraph 11 provided for the disengagement policy and there was no provision for gratuity and leave, but leave allowance of one month's gross salary. He also testified that section 11.2 provided for termination through resignation with one month's notice or pay in lieu thereof and clarified that the reference to section 6.1 in section 11.2 was an error as it should have referred to section 11.1.
14. He stated that the Claimant was paid Kshs. 217,841 and contended that the church does not pay gratuity as the Claimant was subjected to NSSF and pension thereafter. He stated that the Claimant was just lucky that his salary was not reduced to 2021 salary scale. He confirmed that paragraph 8c of the amended response talked of gratuity at the rate of 15 days for every year worked. He stated that the paid amount was less the Kshs. 50,000/= in the Claimant's custody and having paid the said amount, nothing was owing to the Claimant.
15. In cross-exam, he stated that he could not see any provision on gratuity in the handbook and clarified that although paragraph 8c of the Amended Response pleaded the rate of gratuity, he had no supporting documents. He reiterated that the reference to section 6.1. of the handbook in section 11.2 of the hand book produced by the Claimant was an error. He clarified that the said book was a working document with proposed amendments but the operative handbook was the one produced by the respondent.
16. He stated that he was not signatory to the debt settlement agreement dated 12/11/2023 and that the signatories were not witnesses. He stated that the document showed that the Claimant was paid money in the agreement and by signing the agreement the Claimant admitted the Kshs. 50,000/= was given to him to pay lawyer and he could not account for the same. He stated that he heard the Claimant deny



the signature on the said document during his testimony, and stated that the Claimant ought to call expert witness to support his evidence against the contested signature.

17. He stated that since the staff hand book does not have provision for gratuity, they follow the law on 15 days pay for each year. He stated that the Claimant served for 10 years but in last 3 years he joined pension, thus they paid him the 15 days for the 7 years as gratuity. He added that the Claimant was paid one month's salary as leave allowance in the calculations.
18. He further testified that every year, the staff were paid a 13<sup>th</sup> salary which catered for leave and that the Claimant was paid his 13<sup>th</sup> salary between August-September every year. He stated that the change from gratuity to pension was in the best interest of the staff.
19. After the close of the hearing both sides filed written submissions. Having considered the pleadings, evidence and submissions, it is a fact that on 24<sup>th</sup> October 2023 the claimant consented to salary cut from the current scale to the 2021 scale. It is also a fact that after the filing of the suit, the respondent paid the claimant kshs 217,841 as terminal benefits. The main issues falling are for determination:
  - a. Which of the two staff handbooks produced was the authentic one?
  - b. Whether the claimant is entitled to the orders sought.

## Analysis

### The authentic Staff Handbook

20. The claimant produced a photocopy of staff handbook titled Administrative Policy Handbook 1<sup>st</sup> October 2012 Edition broken into 9 section while the respondent produced an original copy of the staff handbook being the 21<sup>st</sup> November 2012 Edition (Final Press Copy), with 14 sections.
21. I have carefully perused the two copies and without belabouring the point, it is clear that the copy produced by the claimant was an unfinished work in progress as evidenced by the comment ballons in pages 9, 11, 14, 15, 34, 35, 36, 37, 38, 44, 45, 47, 50, 51, 52, 53, 54, 86, 87, 88, 102, 103, 104, 105, 136, 144, 145, 150, 151, 152 and 162. The said comment ballons contains proposed editing of the various provisions in the document. There is also no endorsement on the document that it is the final press copy and it does not contain a Declaration of the effective date.
22. The opposite is true with respect to the copy produced by the respondent which is a bound book containing no proposed editing and bearing the words, "Final Press Copy". The copy is indicated as 21<sup>st</sup> November 2012 Edition and it contains a Declaration on page 148 that it is the authorised edition effective 21<sup>st</sup> November 2012. Consequently, I find that the copy produced by the respondent is the authentic staff handbook applicable in this case.

### Reliefs sought

23. The first prayer by the claimant was a declaration that the Respondent's failure to remit his terminal dues is in contravention of the Administrative Handbook and a total disregard of the provisions of the [Employment Act](#) and amounts to unfair labour practices. Section 11.2 of the Staff Handbook provides that:
  - i. ...
  - ii. Any employee resigning his appointment from the Church must hand over all property of the Church in his/her possession to his/her immediate superior."



24. The respondent's letter dated 6<sup>th</sup> January 2024, acknowledged the claimant's resignation and stated as follows:
- “... the Board deliberated on your intended resignation with acceptance based on your stated notice. You are therefore expected to clear with the Station Management and hand over any property in your possession to the Assistant Accountant in the presence of the District Auditor, to be witnessed by a member of the Audit Committee for ease of onward recommendation for the payment of your terminal dues.”
25. The claimant admitted in evidence that he completed clearance and signed a handing over report with respect to accounts. Although, there is no indication of what else was withheld by the claimant, he admitted in evidence that he did not complete clearance. On the basis of the said admission, I find that he is the one who caused the delay in the payment of his terminal dues and therefore he is not entitled to the declaration that the respondent violated the Staff Handbook by failing to remit his terminal dues.
26. The claimant further prayed for gratuity at the rate of one-month gross salary for every year served. He prayed for Kshs 954,506.40 calculated using the salary of Kshs.95450.64 x 10 years. However, the respondent pleaded in its Amended Response that it pays its employees gratuity at the rate of 15 days' pay for each full year of service and that it had already determined and paid the claimant Kshs. 267,841 being the net gratuity for the 7 years he was not on pensionable terms, plus leave allowance for 2023. The claimant admitted having received Kshs.217,841 which the respondent said was less PAYE tax and Kshs. 50,000 legal fees not accounted for by the claimant. The respondent showed that it computed and paid the claimant gratuity plus leave allowance for 2023 totalling to Kshs. 297,601.57 less PAYE and Kshs. 50,000 leaving a net pay of Kshs. 217,841.
27. Having carefully considered the rival contentions above, I find that the claimant was indeed entitled to gratuity at the rate of 15 days' salary for each completed year of service and he served 7 years before becoming pensionable. His salary as at the time of exit was  $Kshs.66,021 \times 7 \times 15/30 = Kshs.231,073.50$  but the respondent computed and paid the claimant 244,827.88 as gratuity for 7 years.
28. As regards claim for leave allowance, there is no dispute that the claimant was entitled to one-month gross salary every year. He contended that he was never paid the said sum but the respondent alleged that he was paid the said allowance every year between August and September in the form of 13<sup>th</sup> salary. No evidence was tendered to prove that the said leave allowance was paid. Therefore, I find that the claimant is entitled to the unpaid leave allowances and dismiss the allegation that the alleged 13<sup>th</sup> salary was the claimant's leave allowance. In reaching this conclusion, I take judicial notice that, 13<sup>th</sup> salary is normally a bonus pay and not leave allowance.
29. Having said that, I find no difficulty in assessing the amount due and owing as leave allowance since the claimant produced a demand letter dated 23<sup>rd</sup> February 2024 indicating the salaries, he was earning during 7 years under review. The salary rose from Kshs.9000 in 2014 to Kshs.36,017 in 2020. The respondent did not rebut that evidence. The letter clearly shows how the sum claimed was calculated being Kshs. 134,457 by adding one month's gross salary for each complete year served. Consequently, I award the claimant leave allowance of Kshs. 134,457 as prayed.
30. The respondent confirmed that the claimant was entitled to leave allowance for the year 2023. Although the claimant did not pray for leave allowance for 2023, the respondent introduced the issue in the amended Response, its evidence and submissions to show that the Kshs. 217,841 paid to the claimant as terminal dues, included leave allowance for the year 2023. Accordingly, by the said evidence the respondent invited the court to deal with the issue of 2023 leave allowance



31. Under the Staff Handbook, the allowance was equal to the gross salary as at January of the year in question. In this case the claimant's salary as at January 2023 was Kshs 95,450. This brings the total leave allowance payable to Kshs. 229,907.64.
32. As regards the claim for salary arrears of Kshs. 37,130.54 for the month of November and December 2023, I find no merits in the same since the claimant admitted in evidence that on 24<sup>th</sup> October 2023, he agreed to reduction of his salary from Kshs.95,450.64 to what he was earning in 2021. Therefore, I decline to award the said claim for salary arrears.
33. However, the claim for certificate of service is granted and the Respondent is directed to issue the same as it is a right under section 51 of the *Employment Act*.

### **Conclusion**

34. I have found that the copy of Staff Handbook dated 21<sup>st</sup> November 2012 produced by the respondent is the authentic one applicable to this case. I have further found that the claimant agreed to the reduction of his salary by signing a memo to that effect on 24<sup>th</sup> October 2024 and as such he is not entitled to any salary arrears for November and December 2023. I have also found that the claimant is entitled to gratuity and leave allowance for the period between 2013 and 2020 less kshs. 50,000 which was in his possession but he could not account for it at the time of his exit. Consequently, I enter judgment for the claimant as follows:
  - a. Gratuity for 7years Kshs. 244,827.88
  - b. Leave allowance for 2013 to 2020 Kshs. 229,907..64  
Total Kshs. 474,734.64
  - c. Less the gross amount paid Kshs. 297,601.57  
Net Kshs. 177,133.95
  - d. Since the suit was filed before the said partial settlement, the claimant is awarded costs plus interest at court rates from the date of filing the suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

