



**Osedo & 15 others v Ken-Knit (Kenya) Limited (Petition 12 of 2019)
[2024] KEELRC 2352 (KLR) (25 September 2024) (Quantum Judgment)**

Neutral citation: [2024] KEELRC 2352 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION 12 OF 2019
MA ONYANGO, J
SEPTEMBER 25, 2024**

BETWEEN

MICHAEL OKELLO OSEDO & 15 OTHERS & 15 OTHERS & 15 OTHERS & 15 OTHERS & 15 OTHERS APPELLANT

AND

KEN-KNIT (KENYA) LIMITED RESPONDENT

QUANTUM JUDGMENT

1. On 11th June 2021, this Court, albeit differently constituted, delivered judgment on this Petition and held as follows:

“In conclusion the petition will only be allowed to the extent that the 1st respondent shall recalculate and forward to the petitioner’s Counsel’s concurrence, the Petitioners’ terminal benefits taking into account all the concluded CBAs in force during the time the Petitioners were each in employment of the 1st Respondent.

The matter shall be mentioned after 60 days from the date of this judgement for the recording of final orders. That is to say on 20th September, 2021.”
2. The record reflects that the Respondent’s counsel filed its proposed payment schedule on 16th September 2021 while the Petitioner’s benefits schedule was filed on 5th July 2023.
3. On 19th March 2023, the court directed parties to make oral submissions on the respective tabulations. Counsel Kitiwa submitted on behalf of the Respondent while Counsel Angu submitted on behalf of the Petitioners.
4. The Petitioners have tabulated their benefits as follows :-



Employment Period	Employee No.	Employee Name	Annual Leave	Travelling Allowance	Gratuity
1986-2019	KP00096	Michael Okelo Osedo	530162	37541	352431
1984-2019	BKPR0089	Maurice Mbalaka Matunda	488040	42385	325360
1989-2019	BKPER00036	Immaculate Tanga Night	526680	351120	36330
1990-2019	BKRER00094	Vincent Anzelimo Waminila	383670	35119	255780
1987-2019	KNPER00140	Lydia Mary Onguko	277326	37572	184884
1992-2019	KNPER00337	Patrick Onyango Akach	252882	32724	168588
1977-2014	KNPER00176	Gabriel Situma Sambu	410256	44844	273504
2005-2018	SPPR00331	Rophad Masika	15756	95368	
1989-2019	BKPER00203	Albert Karani Ikwara	335227	35148	223300
1988-2019	BKPER00145	Joseph Nyaboki Mabira	280980	36360	187320
1989-2018	BKPER00171	John Zablon Nyopara	323764	33936	215843
2004-2019	BKPER00310	Wanjiku Beatrice Muriithi	161882	16968	107912



1993-2019	BKEPER0019	Allan M. Malesi	406250		
1982-2018	SPPER00128	Grace Masinde	309204	43632	206136
1983-2018	KNPER00025	Phylis Ombaya Aseka	383145	55430	42420
1979-2018	KNPER00094	Geoffrey M. Mwangi	413595	4719	275730

5. The Respondent on the other hand, filed its payment schedule for the Petitioners in which benefits were tabulated as hereunder:
1. Michael Okello Osedo. 32,146
 2. Grace Masinde. 16,426
 3. Geoffrey Muthua Mwangi. 21,341
 4. Hallan Mageni Malesi. 22,945
 5. Moris Mbalaka Matunda. 21,139
 6. Emmaculate Night Tanga. 32,994
 7. Beatrice Wanjiku Muriithi. 21,739
 8. Joseph Nyamboke Mabiraa. 25,574
 9. Vincent Anzelimo Waminila. 29,160
 10. Philis Ombaya Aseka. 21,142
 11. Albert Karani Ikwara. 28,915 (paid)
 12. Gabriel Situma Siambi. 33,459
 13. Lydia Mary Onguko 28,586
 14. Patrick Onyango 30,435
 15. Rophad Masika Maalemo 24,445
 16. John Zablun Nyapara 36,445
6. From what has been filed by the parties, it is apparent that no agreement has been reached on the tabulation.
7. In the oral submissions made by the parties in court, Counsel Kitiwa for the Respondent submitted that the claims by the Petitioners were not proved. Regarding the tabulation on leave dues, counsel submitted that the Respondent's tabulation shows that some of the Petitioners had already been paid their leave dues while those with pending leave days had a provision for leave dues made on the tabulation.
8. With regard to the issue of travelling allowance, counsel for the Respondent submitted that there is no basis upon which that amount should be awarded.



9. On the prayer for gratuity, Counsel Kitiwa submitted that the Respondent was contributing to NSSF the Petitioners they are not entitled to gratuity.
10. Counsel further submitted that the grant of gratuity is not provided for in the CBA between the parties herein.
11. For the Petitioners, Counsel Angu submitted that in the judgment delivered on 11th June 2021, the court at paragraph (c) allowed the Petition and directed the Respondent to recalculate the terminal benefits based on the Collective Bargaining Agreement in force.
12. According to Counsel, clause 22 of the CBA provides for gratuity and the accountant who did the Petitioners' tabulation limited his mandate to the parties CBA in coming up with the figures before court as the Petitioners tabulation. Counsel urged the court to make a determination on what is due to the Petitioners based on the Petitioners' tabulation.
13. I have read the judgment delivered on 11th June 2021. At page paragraph 5 of page 5 the court observed as follows:

“The Court further observes that whereas the petitioners have tabulated what they consider are their rightful terminal dues, no documents or factual background was presented before me to support them. For instance, nothing was laid before me to support the claim for overtime, for unpaid leave, severance pay and so on. These heads of claim therefore remain unproved and the court is unable to make any pronouncement over the same.”

14. My understanding of the paragraph is that the court was unable to make a determination on the allowances sought by the Petitioners for lack of proof. However, on the claim for unpaid leave dues, I have noted that the Respondent's counsel in his submissions in court stated that some Petitioners were paid their leave dues while others were not. In fact, from his submissions, it is clear that the Respondent's tabulation is basically on leave dues owed to some petitioners who had not been paid. The Petitioners whose leave dues have been paid have also been indicated in the Respondent's tabulation.
15. With regard to the pay for travelling allowance, I have looked at the 1st Petitioner's employment contract forming part of the Respondent's bundle of documents filed on 5th December 2019. From that contract of employment, there is no provision for payment of travelling allowance. The Petitioners did not make an effort to explain why they sought to be awarded travelling allowance. In view of the fact that no basis has been laid for grant of this relief, the court declines to make the award.
16. The last item for the court's determination is the issue of gratuity. The Petitioners submit that they are entitled to gratuity by virtue of clause 22 of the Collective Bargaining Agreement between the parties. The Respondent on the other hand has submitted that since the Petitioners were beneficiaries of NSSF and have since been paid their dues from NSSF, they are not entitled to gratuity.
17. Clause 22 of the Collective Bargaining Agreement that was entered into by the parties on 20th November 2018 provides for gratuity as follows:
 22. Gratuity
 - a) on completion of a year in service an employee shall be entitled fourteen days pay gratuity at the anniversary of annual leave with effect from 1st January 2005 based on the current basic rate of pay.

For the purpose of this clause the entitlement of gratuity shall be as follows:



- b) An employee who is summarily dismissed for lawful cause other than certified ill health or old age and at normal retirement age shall not be entitled to gratuity.
- i. where the employment is terminated on medical grounds and medical report is procured from an approved medical practitioner, one shall be entitled for gratuity.
 - ii. The retirement age for male employees shall be 60 years and 55 years for female employees, and accordingly, the employee shall be accorded retirement benefits as stipulated in the law.
18. In the case of *Board of Management Ng'araria Girls Secondary School v Kudheiba* (2017)eKLR (G.B.M. Kariuki, Sichale, & Kantai, JJ.A) the Court of Appeal pronounced itself on a similar issue as follows:-
- “Section 35(6) of the *Employment Act*, 2007 disentitles an employee from double payment of Social Security benefit from NSSF and a service pay scheme established under clause 31 of the CBA. However, be that as it may and as rightly held by the trial Judge “... section 35 of the *Employment Act* 2007 does not preclude parties from entering an agreement for retirement benefits or gratuity over and above the statutory NSSF arrangement”.
- But should an employee then benefit from a CBA as well as the NSSF contributions as decreed by the *Employment Act*?
- In the persuasive authority of the then Industrial Court Case No. 871 of 2012, Rika, J. held as follows:
- “This law is intended to ensure employees do not enter into retirement without social security. At the same time, the interest of employers is safeguarded, through the restriction on employees being paid double social security benefits. Service pay is therefore payable under Section 35(5) only to employees who are not covered under the different social security mechanisms elaborated under section 35(6).
- ”In that case the court found that the claimant was entitled to enter into a CBA and which agreement provided superior terms vis-à-vis the NSSF contributions and further that so as not to unnecessarily punish an employer, the NSSF deductions would be deducted from any benefits accruing in respect of the NSSF contribution.”
19. From the above, it is clear that the Petitioners are entitled to gratuity pay by virtue of the Collective Bargaining Agreement.
20. For these reasons, the court adopts the tabulation filed by the Petitioners on gratuity and the Respondents tabulation on leave dues as set out in the table below.



Employment Period	Employee No.	Employee Name	Annual Leave	Gratuity
1986-2019	KP00096	Michael Okelo Osedo	32,146	352431
1984-2019	BKPR0089	Maurice Mbalaka Matunda	21,139	325360
1989-2019	BKPER00036	Immaculate Tanga Night	32,994	36330
1990-2019	BKRER00094	Vincent Anzelimo Waminila	29,160	255780
1987-2019	KNPER00140	Lydia Mary Onguko	28,586	184884
1992-2019	KNPER00337	Patrick Onyango Akach	30,435	168588
1977-2014	KNPER00176	Gabriel Situma Sambu	33,459	273504
2005-2018	SPPR00331	Rophad Masika	-	95368
1989-2019	BKPER00203	Albert Karani Ikwara	-	223300
1988-2019	BKPER00145	Joseph Nyaboki Mabira	25,574	187320
1989-2018	BKPER00171	John Zablon Nyopara	-	215843
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1983-2018	KNPER00025	Phylis Ombaya Aseka	21,142	42420



1979-2018	KNPER00094	Geofrey M. Mwangi	21,341	275730
Total	320,660	2,950,906		

21. Final judgment is thus entered in favour of the Petitioners against the Respondent as particularly set out in respect of each Petitioner in the table at paragraph 20 above. The total sum awarded is Kshs. 3271566. I accordingly enter judgment in favour of the Petitioners in the said sum.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 25TH DAY OF SEPTEMBER, 2024

MAUREEN ONYANGO

JUDGE

