



Kigen & 3 others v Sabatia Farmers Co-operative Society Limited (Employment and Labour Relations Cause E059 of 2021) [2025] KEMC 75 (KLR) (29 April 2025) (Judgment)

Neutral citation: [2025] KEMC 75 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
EMPLOYMENT AND LABOUR RELATIONS CAUSE E059 OF 2021
PA NDEGE, SPM
APRIL 29, 2025**

BETWEEN

**RICHARD KIPKURUI KIGEN 1ST CLAIMANT
MARY JEPKEMBOI CHEBOI 2ND CLAIMANT
HOSEA KIPKORIR CHEBET 3RD CLAIMANT
DORIS JEPKORIR KIMOSOP 4TH CLAIMANT**

AND

SABATIA FARMERS CO-OPERATIVE SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The matter herein was instituted vide a Memorandum of Claim dated 3rd February, 2021 by the 1st, 2nd, 3rd and 4th Claimants herein for various claim as per the Memorandum. On the 15th March, 2021, the Respondent filed its Statement of Response dated 12th March, 2021 refuting the Claims by the Claimants therein and thus praying for dismissal of the suit herein with costs.

Background

2. The 1st Claimant, RICHARD KIPKURUI KIGEN, averred that he was employed by the Respondent as a dairy clerk in 1998 with a starting salary of Kshs.450 per month. He further claimed that he worked for the Respondent for 20 years where after the Respondent retired him sometime in the year 2018 and paid him a sum of Kshs.139,657.50 as gratuity without explanations as to how the sum was arrived at. He further averred that over the years the Respondent paid him a salary that was less than the recommended Government Scales for the rank of dairy clerk and Supervisor and further that he was never paid for the year 2000 annual leave that he never took.
3. The 1st Claimant thus prayed for judgement against the Respondent as follows: -



- i. Full disclosure of the gratuity payments year by year and documents relied on in calculating the gratuity.
 - ii. Confirmation of registration of gratuity calculations document by the Commissioner of Cooperatives in Kenya.
 - iii. Underpayments of salaries in respect of dairy supervisor, and store man, (legal salary Kshs.15,519.95/ 9,310/= =Kshs.6209/=x 36 months = Kshs. 223,524/=.
 - iv. Issuance of certificate of service as required by the Employment Act
4. The 2nd Claimant, MARY CHEPKEMBOI CHEBOI, averred that she was employed by the Respondent on the 30th July, 1998 as a dairy clerk at a salary of Kshs.1,100 per month and rose up the ranks to become a stores clerk as a permanent employee. She further claimed that, without any notice, her terms of appointment were changed from permanent to contractual terms and that she was demoted from being a dairy clerk to a tea girl. Additionally, she claimed that in the course of her employment, she developed a medical condition for which a medical doctor recommended that she be deployed in areas which could not aggravate her condition; but that instead, the Respondent forced her to proceed on a sick leave without any medical recommendation. The 2nd Claimant further claimed that she was never paid her February 2020 salary and further that her monthly salary was not commensurate with the Government Minimum Wage.
5. The 2nd Claimant thus prayed for judgement against the Respondent in the claims hereunder: -
- i. Deployment and allocation of light duties in strict compliance to the medical recommendations.
 - ii. Salary balances for the months of February 2020 and March 2020 amounting to Kshs.14,356.
 - iii. 3 months' pay in respect of non-issuance of notification of conversion of her permanent terms of employment into contract terms, that is, Kshs.16,295.45X3 months = 48,886.35 (as per the legal scale).
 - iv. Payment of service gratuity in respect of the 22 years served and full disclosure of the calculations and documents relied upon.
 - v. Underpayments of salaries for the 36 months, that is Kshs.7178/= x 36 months = Kshs.258,408.
6. The 3rd Claimant, HOSEA KIPKORIR CHEBET, claimed that she was employed by the Respondent in 1995 as a dairy clerk and supervisor at a salary of Kshs.1,000 per month which salary rose to Kshs.9,596 as at 2020. He further claimed that in 2016, he developed a medical condition for which a doctor at the Moi Teaching & Referral Hospital recommended that he be deployed on light duties. Additionally, he claimed that on the 28th August, 2019, the respondent sent him on sick leave without any medical recommendation as required by the Law and in total contravention of the provisions of the Employment Act and the Occupational Safety and Health Act. He further stated that he was never paid salary as per the Government minimum wage. He equally averred that while he stayed on the sick leave, he only received salary for the month of October, 2019 and a half salary for the month of January 2020 and no more.
7. The 3rd Claimant thus prayed for judgement against the Respondent for: -
- i. Full payment of salaries from February 2020 to June 2020, i.e. Kshs. 16,295.95x 5 months = Kshs.41,479.75



- ii. Balances of salaries for the months of October 2019 and January 2020, that is Kshs.8147.50 x 2 months = Kshs. 16,295/=.
 - iii. Withdrawal of the claimant's unauthorized medical sick leave and have him resume his duties.
 - iv. Underpayments of salaries totaling to Kshs. 256,308.
8. The 4th Claimant, DORIS JEPKORIR KIMOSOP, claimed that she was employed by the Respondent as a dairy clerk in 1998 and worked in various capacities until 2020. She claimed further that her starting salary was Kshs.1,000 per month. She claimed that in February, 2020, she (the 4th Claimant) started having health problems for which a doctor suggested that she could not handle milk, but that the respondent rejected the doctor's recommendation. She averred that on or about the 1st April, 2020, she was asked to proceed on an annual leave due to the Covid 19 pandemic and resumed in May, 2020. She further claimed that upon resumption, she was never allocated duties while in the Respondent's premises. She further pleaded that in June 2020 she was called to collect her gratuity payment without any notice of retirement. She claimed that in the course of her engagement with the Respondent, her terms of engagement were converted from permanent to contract without any prior notice. She further claimed that her salary was far below the Recommended Government Minimum Wage and that on the 29th January, 2020, she was demoted to a lower cadre to work as a parker in the yoghurt section.
9. The 4th Claimant thus prayed for judgement against the Respondent for the claims hereunder: -
- i. Deployment to light duties as recommended by the medical practitioner.
 - ii. Payment of 3 months' notice in lieu of changing the claimant's permanent terms into contract terms, that is Kshs.16,295/= x 3 months =Kshs.48,885.
 - iii. Balance of salaries for February 2020 and March 2020 that is Kshs.16,295.
 - iv. Official letter indicating persons alleging that the claimant was the one inciting farmers.
 - v. Underpayments of salaries totaling to Kshs.93,456.
 - vi. Full disclosure of the gratuity calculations for the years served prior to converting to contract terms, as well as the document used in the calculations of gratuity and further confirmation that the said document has been registered by the commissioner of cooperatives.

Issues Arising and Determination

- 10. The Claimant's case was heard on the 4th July, 2023 and 17th October, 2023. The 1st, 2nd, 3rd and 4th Claimants reiterated their statements as contained in their Memorandum of Claim, produced various documents in support of their claims and were cross examined.
- 11. The Respondent, on its part, called 3 witnesses, being RW1, FRANCIS N. KIGEN, its chairman, RW2, PETER KASAON, its current vice-chairman, RW3, WILSON K. CHELIMO, an employee who also relied on their witness statements and were duly cross-examined.
- 12. At the close of hearing, parties filed and I do believe, exchanged their written submissions, citing impressive authorities in support of their respective cases. This court has gone through the evidence both in the form of oral testimonies and documentary exhibits. The issue for determination is whether each of the claimant herein is entitled to the claims/ reliefs sought.



Whether the Claims Sought by the 1st Claimant are merited

13. Section 90 of the [Employment Act](#) provides as follows: -

Notwithstanding the provisions of Section 4(1) of the [Limitation of Actions Act](#), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.

14. The Court in *Gichuru vrs Emmanuel Trading* [2024] KEELRC 2758 (KLR) recently held that the forgoing provision limits the period within which a suit founded on an employment contract should be commenced. That the first category involves any claim other than continuing injury which are to be commenced within three years from the date when the cause of action arose. The second category involves continuing injuries which are to be commenced within 12 months from the time when the injury ceases.

15. The court in the case stated as follows: -

The several precedents cited above including *G4S Security Services (K) Limited vrs Joseph Kamau & 468 Others* [2018] eKLR, and *Oatta vrs Radar Limited* [2024] KEELRC 64 (KLR), the court held that the claim for salary underpayment, overtime, leave, public holidays worked and housing allowance were continuing injuries for purposes of limitation of actions and ought to have been commenced within twelve months from the time of cessation.

16. I thus do hereby agree with the learned counsel for the Respondents that the 1st Claimant's claims on any of the heads stated in the holding directly hereinabove is unmerited. The 1st Claimant herein, RICHARD KIPKURUI KIGEN, admits having ceased working for the Respondent on the 9th July, 2018. The Claim herein was however instituted on the 6th February, 2021, a period of two (2) years and seven (7) months after ceasing to work for the Respondent.

17. The statutory twelve-months period for instituting claims under the continuing injuries having long lapsed, and therefore the 1st Claimant's claim for underpayments of salaries is therefore, by dint of the foregoing and as pleaded under paragraph 48 of the Respondent's Response to Claim, is destined to fall.

18. As to his prayers relating to the gratuity payments, the Superior Court in *H. Young & Company EA Limited vrs Javan Were Mbango* [2016] eKLR, the Court of Appeal, held: -

This Court in *Central Bank of Kenya –vs- Davies Kivieko Muteti* [2009] eKLR emphasized that there is a difference between severance pay and gratuity. Gratuity as correctly enunciated by this Court in *Bamburi Cement Ltd –vs-Farid Aboud Mohammed* [2016] eKLR denotes a gratis payment by an employer in appreciation of service. There is no express provision for gratuity in the [Employment Act](#). It is usually payable under terms set out in a contract of service or collective bargaining agreement. Severance pay on the other hand, is only payable under Section 40 (g) of the [Employment Act](#) where an employee is terminated on account of redundancy. See *Hema Hospital –vs- Wilson Makongo Marwa* [2015] eKLR.



19. The letter of appointment dated 1st June, 1988 produced by the 1st Claimant as CEXH. NO. 1, clearly stipulated the terms of engagement. Clause 4 thereof specifically provided as follows on gratuity: -

Those employees who maintain a good record of service will be eligible for Gratuity at the rate of 15 days basic salary for each completed year of service. The minimum qualifying period of service is 5 continuous years. Dismissal cases shall not be eligible.
20. The Respondent as such paid the due gratuity payments amounting to Kshs.139,657.50 which payment the 1st Claimant duly acknowledges. However, a letter dated 10th January, 2019, REXH. NO 7, sent by the Respondent to the Claimant only informed him of the dues, but did not compute the same for his information.
21. On this claim therefore, I do agree with the learned counsel for the claimants submissions that the respondent has vide evidence, not addressed the issue of full disclosure of the gratuity payment and documents relied on in calculating the gratuity. Given that the letters of retirement dated 24/07/2018 and 10/01/2019, produced as REXH. NOs. 5 and 7, respectively, appreciated the Respondent's gratitude and appreciation for the services that the 1st claimant rendered to it for the past 30 years, I do believe that the Respondent was eligible for gratuity at the rate of 15 days basic salary for each of the completed year of service. The letters do not address the issue of computation and how the figure of Kshs. 139,657.50 was arrived at. To this extent, the first 1st Claimant's claim is found to have merit.
22. Finally, as regards issuance of Certificate of Service, the Respondent in its Response asserted having issued the Claimant with a Certificate of Service which was served upon his advocate on record on the 23rd February, 2022 in the course of negotiations. The said Certificate dated 24th June, 2018 was produced in court as REXH. NO. 6 and I thus do agree with the learned counsel for the Respondent that the 1st Claimant's claim for issuance of a Certificate of Service appears moot and thus unmerited.

Whether claims by the 2nd Claimant are merited

23. First, is the claim for underpayments. On this, I do agree with the learned counsel for the Respondent's submissions that the applicable wages regulation is the Regulations of Wages (Agricultural Industry) Order, 1982, and not the Regulation of Wages (General) Order, 1982.
24. The Court in *Baraza vrs Alice Dale Limited* [2023] KEELRC 2042 (KLR) held as follows: -

On the claim for underpayment, the trial Court found the appellant was employed as a farm worker and so the Legal notices applicable were Regulation of Wage in the Agricultural Industry being *Legal Notice No. 111 of 2017* and 3 of 2018 where the salary of a watchman was Kshs.7,409 and Kshs.7,779.45 respectively. The Court found that the legal notices relied upon by the appellant were not applicable to his employment. That the appellant was paid Ksh.8,500 and later to 9,000 and Kshs.10,000. That the salary satisfied the minimum wage for a watchman in the Agricultural Industry aforesaid and so the claim for underpayment had no merit and was dismissed.
25. The Respondent's Human Resource Policy dated 1st January, 2015 clearly provided in its introduction on page 3 thereof as follows:

Sabatia Farmers' Co-operative Society Ltd was registered in 1963 as number- CS/957 with the main objective of promoting the economic interests and living standards of its members.

More particularly the society's mission is to address issues related to livestock farming from production to marketing which involves:- processing, grading, packaging and



transportation of milk, purchase of agricultural inputs as a cooperative entity for its members; assist farmers in promoting good farming practices; assist members adopt measures to control pests and diseases in agricultural crops and livestock; promote co-operation between members and assist improve the economic and social status.

26. I thus do hereby agree that the foregoing demonstrates that the Respondent has at all material times and still carries its business in the Agricultural Industry. Consequently, the Regulation of Wages (General) Order would not be applicable in this present case. It is the Regulation of Wages (Agricultural Industry) Order that would be applicable in such a setup. The said order, vide Gazette Notice No.3 of 2019 provides for the minimum wages of unskilled employees as Kshs.6,736.30, which is equivalent to that of a subordinate held by the 2nd Claimant. Be that as it may, the salary that the 2nd Claimant still amounted to underpayment and I thus find that the 2nd Claimant has succeeded to prove or demonstrate that she was being underpaid which I hereby compute as follows: -

$Kshs. 5,636.30 \times 36 \text{ months} = 202,906.80$

27. As regards payment of service gratuity and full disclosure of the calculations and documents relied upon, this court is confused as to whether this relief is still being claimed or not. This is because all the parties herein seem to agree that the 2nd claimant is yet to be dismissed and that she is still deemed to be in employment. The Court of Appeal in *Bamburi Cement Ltd. v William Kilonzi* [2016] eKLR stated as follows: -

...gratuity is a gratuitous payment for services rendered. It is paid to an employee or his estate by an employer either at the end of a contract or upon resignation or retirement or upon death of the employee, as a lump sum amount... at the discretion of a gratuitous payment, the contract of employment may provide that the employer shall not pay gratuity if the termination of employment is through dismissal arising from gross or other misconduct...

28. I thus find, based on the fact that it is no clear whether the 2nd claimant is still in service or not, that she is not entitled to any gratuity payment.

29. As to the claim of salary balances for the months of February 2020 and March 2020, I find that it was upon the Respondent as the employer to prove that the same were paid. There was however no document or records presented to prove that they were paid. On that note alone, I do hereby find that the 2nd Claimants claim succeeds on this head and I do hereby use the minimum salary used in computing the underpayments as per the Regulation of Wages (General) Order, 2019, and compute the same as follows: -

$6,736.30 \times 2 = 13,472.60$

30. As to the prayer for deployment and allocation of lighter duties in strict compliance to the medical recommendations, I first have to define what is 'light duties'? In *Kenya Plantation and Agricultural Workers Union vrs REA Vipingo Plantations Limited & Dr. JJ Ashraph* [2015] KEELRC 27 (KLR) the Superior Court, the Employment and Labour Relations Court, held as follows: -

It is not easy to determine what is 'light duty' and the law does not define the term, leaving Parties to the employment relationship, to determine what this should mean, in their contractual instruments. The definition contained in the Employment [General] Rules 2014 is not a broad definition to be applied to all Persons; it is a definition specific to employment of Children who have not attained the age of 16 years, in the agricultural Sector.



31. The court went ahead to elaborate and state as follows: -

Light work is also referred to as limited duty or modified assignment. Where an Employee is injured or taken ill during employment, the Employer has the obligation to reasonably accommodate the Employee. This goes beyond the grant and exhaustion of sick leave. Reasonable accommodation calls on the Employer to genuinely explore ways through which the job performed by the stricken Employee can be temporarily modified to suit the medical restrictions of the Employee. The Employer could limit the working hours for the Employee in the same job, not necessarily to the 2 hours recommended for Children in the Employment [General] Rules. Thirdly the Employer may change the working environment through physical modification of the workplace to suit the affected Employee. This may involve the Employer acquiring special equipment to enable the injured or diseased but qualified Employee, continue being productively employed. Fourthly and lastly, reasonable accommodation requires the Employer explores the possibility of reassignment of the Employee, to a different job within the same enterprise. Alternative work is therefore in the view of this Court, not necessarily synonymous with light work. The term 'light duty' is very subjective. Some jobs are sedentary, yet require the Employee applies all his mental energy. Other jobs are physical, but do not task the brain. Dr. Kamau recommended the Grievant is assigned security duty, but no clear reason is given why such duty was thought to be light, compared to cutting sisal. Was it security duty involving mere collection of visitors' identity cards at the gates of Rea Vipingo, or Night Guard duty, requiring the Grievant to confront sisal thieves? The term 'light duty' should therefore be left to the Parties' negotiation and definition in their labour contracts. The law cannot be expected to define and regulate everything in an employment relationship. Alternative work should be understood as work which reasonably accommodates the medical restrictions of the affected Employee. Before the Employer takes the decision to retire on medical grounds, it should be demonstrated these steps to reasonably accommodate the Employee, have been attempted. Reasonable accommodation is not the simple act of extending sick leave to the Employee.

32. In this case, I do not find any conclusive medical report recommending light or alternate duties to the 2nd claimant. The only medical report presented by the 2nd claimant herein is CEXH. NO 4 being Eldama Ravine Sub-County Referral Hospital Medical SUPERINTENDENT'S Medical Report dated 06/05/2020, which generally requested the 2nd claimant to be assisted on account of her condition. It did not recommend any light or alternate duty for her.

33. It is worth noting that before then, on the 3rd February, 2020, the 2nd Claimant had written to the Respondent vide a letter produced herein as CEXH. NO. 31, where she inter alia stated that she would not be able to perform the activity assigned to her because of her health problem. She insisted that her health was not good. In response to the said correspondences, and further in absence of a comprehensive medical report from the 2nd Claimant, the Respondent vide its letter dated 3rd June, 2020, produced herein as CEXH NO. 33, wrote to the 2nd Claimant on its resolution to grant her a sick leave for further medical treatment. The respondent equally indicated in the said letter that the said sick leave was pursuant to Section 10.4 of the Human Resource Policy and Personal terms & conditions of services stating thus: -

...an employee who is unable to perform his/her duties due to illness shall be entitled to Thirty (30) days leave with half-pay; thereafter, he/she shall not be entitled to any salary, and instead regarded as being on unpaid leave pending recovery from illness.



34. I thus do hereby agree with the learned counsel for the Respondent that the claim for deployment and allocation of lighter duties could not be sustained for various reasons; firstly, considering the ambiguity of the doctor's recommendations; secondly, considering the fact that the 2nd claimant herself stated she could not do any work in her health condition, and that there was nothing 'lighter' for her to do considering her job classification; thirdly, considering the fact that the 2nd claimant health condition, being not termed as long term and/or terminal, warranted a belief that she would recover after some time and finally, considering the fact that the Respondent requested the 2nd Claimant to furnish its Management with her medical progress after one month, which medical progress report was not availed. In view of the foregoing, I do hereby find the prayer as to deployment and allocation of light duties is unfortunately, misguided, and legally untenable.
35. As to payments in lieu of non-issuance of notification of conversion of her permanent terms of employment into contract terms, the superior court in Emmanuel Wambua Muthusi & 6 Others vrs Khoja Shia Ithna Ashari Education Board T/A Jaffery Academy [2020] eKLR held that all that the Employer is required to do, in changing terms of the contract, is to consult the Employee; revise the contract to reflect the change; and notify the Employee about the change.
36. Further in Kenya County Government Workers Union V Wajir County Government and another [2020] KEELRC 1848 (KLR) the court held that:
- Further, in my view, the common law principle that a unilateral variation of an employment contract is unlawful and amounts to repudiation and breach of contract and the statutory requirement to consult with an employee where there is any variation to the employment contract and more specifically, to an essential term such as the duration of remuneration where the employee would be adversely affected are ingredients and are subsumed in the fair labour practices principles.
37. Clearly changing the terms of a contract of an employee to his disadvantage constitute unfair labour practice against article 41 of the 2010 Kenya Constitution as was held by A. Mwaure, J. in Nyabochwa v Maasai Mara University (Employment and Labour Relations Cause E024 of 2024) [2025] KEELRC 551 (KLR).
38. The respondent witnesses allege that the change in the terms were effected after extensive consultation in the form of intensive sensitization of the employees. There is however no evidence of the notice of invitation to the sensitization fora, the list of the attendees, the facilitators, or the minutes. I thus do hereby agree with the learned counsel for the Claimant that, in the absence of proof of the same by the presentation of the above records, there is no proof that the sensitization took place, or that the claimant herein participated. I thus do hereby find the 2nd Claimant claim meritorious as regard this head of her claim. I thus award her the claim.
39. To that end, the Claimant's claim for 3 months' salary in respect of non-issuance of notification is not only unfounded but also legally tenable. I thus do hereby compute the same as follows:

$$6,736.30 \times 3 \text{ months} = 20,208.90$$

Whether the Claims sought by the 3rd Claimant are merited

40. As per the legal analysis on the related issues hereinabove, I generally find the 3rd claimant's claims merited and awardable. His sickness and recommendation for light duties have been acknowledged by both sides to the dispute herein. Further, there were no records presented to dispute his claims for the salary arrears as claimed. The 4th claimant is therefore free to resume his duties since he had not been



terminated in the first place and I thus need not make an order to that effect. I compute his claims as follow:

- i. Full payment of salaries from the months from February 2020 to June 2020: Kshs 6,736.30 x 5 months = 33, 681.50
- ii. His claim for balances of salaries for the month of October 2019 has not been proved in his statement. However half salary for January 2020 has been proven and I hereby award the same at Kshs. 3,368.15
- iii. Underpayments of salaries: 36 months x 5,636.30 = 202,906.80

Whether the Claims sought by the 4th Claimant are merited

41. I also reiterate and adopt my analysis of the legal issue arising and relating to the claims herein. She is however yet to be terminated and therefore her claim which relates to payment of gratuity is not awardable.
42. As to deployment to light duties, for similar reasons as elaborated hereinabove, I find this claim not meritorious for not having been properly backed by any medical evidence. CEXH. NO. 64, the Medical Report from the Medical Superintendent of Eldama Ravine Sub-Cunty Referral Hospital and dated 06/05/2020 has no such recommendation. She was only advised to avoid certain products but not to be assigned lighter duties.
43. I however do find her claim for 3 months' notice in lieu of changing her permanent terms into contractual terms to be meritorious and also award the same at Kshs. 20, 208.90 as per the above computations. She is also entitled to the balance of salaries for February and March, 2020 (half salary), computed as follows: Kshs. 3368.15 x 2 months = 6,736. I also award her underpayments of salaries for 36 months multiplied by Kshs. 5636.30, giving a total of Kshs.202,906.80.
44. Finally, as to the prayer for an official letter indicating persons alleging the 4th claimant was the one inciting farmers, let me first state that the exercise by courts and tribunals of judicial authority pursuant to Article 159(1) and (2) of *the Constitution* is predicated on the principle that proceedings brought before them are founded on identifiable rights of claim that are justiciable at law, including the right to enforce corresponding obligations imposed on the State to facilitate the realization of those right. I am baffled at what kind of prayer or remedy this is all about? Courts of law do not handle trivial, meaningless matters. As correctly cited by the learned counsel for the Respondent, the Court of Appeal in *Arithi Self Help Grazing Group v Buuri & another (Civil Appeal 213 of 2019) [2022] KECA 665 (KLR)* stated on the issue as follows: -

With all due respect, courts of law cannot sit to try mere intentions of any person, including those of the 1st respondent. As the immutable age-old common law principle holds, *De Minimis Non Curat Lex* - the law does not govern trifles, matters of little or no value. Simply put, the law ignores insignificant details or trivial transgressions, such as the fears and suspicions that ran through the minds of some of the members of the appellants...

45. Some issues or simply stated, matters, do not merit judicial intervention. And courts will not sit in judgment or take notice of extremely minor transgressions or violations of the law or social convention, which are not justiciable. I therefore find this claim or prayer not warranting any judicial intervention and is accordingly dismissed.



Who to bear the costs

46. Section 27 of the *Civil Procedure Act*, 2010 provides that costs are discretionary and generally follow the event. The claimants herein have succeeded partly in their claims. I have however noted the extreme injustice that the respondents subjected them. Their pay were generally, extremely and embarrassingly low, averaging Kshs. 1,000/= per month and this court must exercise its discretion in their favour. I thus award them costs of this suit.

Conclusion

47. Each of the Claimant's claim is hereby allowed as follows:

- i. 1st Claimant:
 - a. Full disclosure of the gratuity payments year by year and documents relied on in calculating the gratuity.
- ii). 2nd Claimant:
 - a. Underpayments: Kshs. 202, 906.80
 - b. Salary balance: Kshs. 14, 472.60
 - c. Notice pay: Kshs. 20, 208.90
- iii) 3rd Claimant:
 - a. Unpaid salary: Kshs. 33, 681.50
 - b. Salary balance: Kshs. 3,368.15
 - c. Underpayments: Kshs. Kshs. 202, 906.80
- iv) 4th Claimant:
 - a. Notice pay: Kshs. 20, 208.90
 - b. Salary balance: Kshs. 6,736/=
 - c. Underpayments: Kshs. 202, 906.80

48. All the other claims area hereby dismissed.

49. The claimants to have costs of the suit.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 29th DAY OF April, 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Claimants' Counsel: N/a

Respondent's Counsel: Oyondi h/b Mukira

1st Claimant: n/a

2nd Claimant: n/a



3rd Claimant: n/a

4th Claimant: n/a

