



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Chepkemboi v East African Portland Cement PLC (Cause 457 of 2021)
[2025] KEELRC 2947 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2947 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 457 OF 2021
B ONGAYA, J
OCTOBER 30, 2025**

BETWEEN

KATHLEEN CHEPKEMBOI CLAIMANT

AND

EAST AFRICAN PORTLAND CEMENT PLC RESPONDENT

JUDGMENT

1. The claimant filed the amended memorandum of claim dated 28.05.2023 through Chege & Sang Advocates. The respondent filed a statement of response and counterclaim dated 14.11.2023 through Mwaniki Gachoka & Company Advocates. The parties recorded a partial consent judgment on 04.03.2025. By consent order on 29.07.2025 the parties agreed that the residual issues for determination were whether the claimant was entitled to gratuity and whether the respondent was entitled to the counterclaim. It was further consented that the residual issues be determined upon the pleadings, documents and final submissions.
2. The 1st issue for determination is whether the claimant is entitled to gratuity. The claim is for a gratuity of Kshs.792,000.00. In October 2019 the terms of service were changed from permanent to contract terms at a gross salary of Kshs.194,500.00. She worked until termination of her contract in October 2020. The letter of 23.10.2019 provided for gratuity in clause 14 at 31% of consolidated monthly salary for each year served. The gratuity would therefore be for the period 24.10.2019 until termination in October 2020 being Kshs.194,500.00 x 12 months x 31% = Kshs.723,540.00. It is awarded accordingly. While making the award the Court has noted that the respondent admits that the period was October 2019 to October 2020 but calculates only on a month, obviously outside the contractual provisions.
3. The respondent has counterclaimed as follows:
 - a. On 24.09.2018 the claimant applied and the respondent approved on the same day allocation of a house. The monthly rent was Kshs.30,000.00 deductible from her salary. her employment



was terminated on 23.10.2020. she was to vacate the house on 23.10.2020 but she remained in occupation until November 2021 and without paying rent amounting to Kshs.570,000.00 and electricity bills of Kshs.109,548.73. The respondent also counterclaimed Kshs.604,220.00 being value of irregular appropriation of cement.

- b. The counterclaims are in the nature of special damages. It is trite law that they are specifically pleaded with due particulars and then strictly proved. That was not done in the instant case. The respondent did not plead the particulars of the house that was allocated or particulars of the transactions about the cement whose value is counterclaimed. The particulars of the electricity bills claimed were as well not pleaded then strictly proved. The evidence that the claimant continued to occupy the house after termination was not provided. It also appears that the parties without calling witnesses and making elaborate pleadings invited the Court to reconcile their accounts about the housing and transactions about the cement. The Court returns that the counterclaim will fail in the circumstances.

in conclusion the suit is hereby determined with orders as follows:

- a. The counterclaim is dismissed.
- b. The respondent to pay the claimant gratuity of **Kshs.723,540.00**.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 30TH OCTOBER, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

Page 1 of 1

