

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT KERICHO  
CAUSE NUMBER E004 OF 2025**

**BETWEEN**

WILLY KIPLANGAT .....CLAIMANT

**VERSUS**

KOKCHAIK COOPERATIVE SOCIETY LIMITED .....  
RESPONDENT

*Rika J  
Court Assistant: Emmanuel Kiprono*

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*Yegon, Sang Associates, Advocates for the Claimant*

*E.K. Korir & Company Advocates for the Respondent*

**JUDGMENT**

1. The only issue for consideration in this dispute, is payment of gratuity by the Respondent, to the Claimant.
  
2. Parties have negotiated settlement for the better part of the year 2025, without success. The issue has remained intractable.
  
3. On 29th July 2025, they agreed that the issue is resolved by the Court, relying on documentation and submissions.
  
4. The Claim was last mentioned before the Court on 16th October 2025, when the Claimant confirmed filing and service of his submissions.

5. The facts are that the Claimant was employed on probation by the Respondent, as an accounts clerk on 1st July 2016. He completed probation and was offered employment on a contract of 1 year, commencing 1st January 2017. On 1st January 2018, at the end of the 1-year contract, he was employed on a permanent contract.
6. He resigned on 1st July 2023, after working for 5 years, on permanent and pensionable terms.
7. He claims gratuity under clause 7.8.1 of the Respondent's Human Resource Policy and Procedures Manual. The clause states:-  
  
*"...The Society may employ staff on contract for a period not exceeding 3 years, where each contract shall carry a service gratuity of 20% calculated on total salary earned during the contractual period..."*
8. He computes salary earned from the date he was employed on probation on 1st July 2016 to the time he resigned on 1st July 2023, added up at Kshs. 2,320, 435.
9. In his Statement of Claim, he computes gratuity at Kshs. 580,108.75. In his submissions, the figure is revised down to Kshs. 464,087.
10. The Respondent's position is that the Claimant was not entitled to gratuity while on probation and 1-year contract, between 2016 and

2017. He was entitled to gratuity from January 2018, when he was employed on term-indeterminate contract.

11. The Respondent states that the Claimant's salary was not static. It was Kshs. 20,150 in 2018; Kshs. 35,950 in 2019; and Kshs. 25,165 from December 2021 until he resigned in July 2023.
12. Taking into account these factors, the Respondent offered gratuity to the Claimant at Kshs. 208,080.

**The Court Finds: -**

13. Clause 7.8.1 of the Respondent's Human Resource Policy and Procedures Manual, does not include probationary service. The period 1st January 2016 to 31st December 2016 is excluded from the creditable period.
14. The 1 year period from 1st January 2017, to 31st December 2017, is not excluded. The clause states that the Respondent could offer contracts to Employees, not exceeding 3 years. It offered the Claimant 1 year contract, initially. Each contract, would earn gratuity at the rate of 20% of the total salary earned.
15. The 1-year contract of 2017, states that the Claimant would receive a salary of Kshs. 20,150 monthly. His annual salary was Kshs. 241,800. 20% of Kshs. 241,800 earned him gratuity at Kshs. 48,360.

16. Did he work under any other fixed term contract, not exceeding 3 years, so as to be considered for gratuity, under clause 7.8.1 of the Human Resource Policy and Procedures Manual?
17. The clause does not seem to the Court, to apply to Employees on permanent terms. The contract dated 1st January 2018, indicates that the Claimant was hence, on permanent terms. Clause 7.8.1 does not seem to the Court to extend gratuity to Employees on permanent terms, perhaps because such Employees ordinarily, have the benefit of other social security plans. He would have worked for over 5 years, between 1st January 2018 to 1st July 2023, and was not working under any limited term contract, not exceeding 3 years, by the time he resigned, so as to be eligible for gratuity under clause 7.8.1 of the Human Resource Policy and Procedures Manual.
18. The Respondent however offered gratuity to the Claimant, disputing only that he was entitled to gratuity dating back from the period he worked under probation, in 2016.
19. The Court does not take away a benefit which has voluntarily been conferred upon an Employee, by his Employer.
20. It would therefore, uphold gratuity payment, as last offered by the Respondent in its letter dated 28th July 2025, covering the period 2018-2023 at Kshs. 208,080. Added gratuity for the year 2017 at Kshs. 48,360, ***the Court awards gratuity to the Claimant, at Kshs. 256,440.***

21. ***No order on the costs.***

22. ***Interest granted at court rate, from the date of Judgment, till payment is made in full.***

**IT IS ORDERED: -**

a. ***The Respondent shall pay to the Claimant gratuity at Kshs. 256,440.***

b. ***No order on the costs.***

c. ***Interest granted at court rate from the date of Judgment, till payment is made in full.***

Dated, signed and delivered electronically at Kericho, pursuant to Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 28th day of November 2025.

James Rika  
Judge

A handwritten signature in blue ink, appearing to read 'James Rika', is written over a horizontal line.