



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

(ON Makau J on 12th March, 2026)

CAUSE NO. E256 OF 2024

TRACY
MUNENE.....CLAIMANT

GATHONI

-VERSUS-

XRX
LIMITED.....RESPONDENT

TECHNOLOGIES

JUDGMENT

Introduction

1. By a Statement of Claim dated 8th April 2024, the Claimant alleged that the Respondent partially paid her severance pay and withheld a balance of Kshs. 762,500. Therefore, she prayed for the following reliefs: -

a) Severance pay balance of Kshs. 762,500

b) Costs of the suit.

***c) Interest from date of accrued payment till
payment in full***

2. The respondent admitted that it employed the Claimant until she voluntarily resigned from employment. It averred that it paid all her terminal dues and denied the claim for severance pay. Therefore, it prayed for the suit to be dismissed with costs.

Facts of the case

3. The Claimant was employed by the Respondent on 1st February 2012 as a Help Desk Executive at a monthly salary of Kshs. 25,000 and rose through the ranks to become Customer Service Manager earning a monthly salary of Kshs. 175,000 plus other benefits.
4. She gave three months' resignation notice in November 2022, and it was accepted by the Respondent. From mid-February 2023 to she was admitted in hospital until the period of her resignation notice lapsed. She was paid Kshs.420, 901 comprising unpaid salary for the notice

period, commission earned and severance pay at the discretion of the Respondent.

5. Thereafter the Claimant sued the respondent claiming Kshs. 762,500 as her outstanding balance on severance pay after deducting the Kshs.420,901 paid to her after her resignation. The Respondent maintained that the claimant is not entitled to severance pay since she resigned from employment. Besides, throughout the Claimant's 11 years of service, it remitted National Social Security Fund (NSSF) contributions for her behalf and made additional contributions to a private pension scheme for her benefit.

Evidence

6. The Claimant testified as CW1 and adopted her witness statement dated the same date. She then produced the four documents listed in her List of Documents dated 8th April 2024 as exhibits 1 to 4 respectively.
7. In brief, the Claimant stated that her claim is for balance of severance pay which was due to her upon resignation from employment. She referred to an email dated 30th November

2023 by Diana Nkirote (Respondent's Human Resource Manager) which acknowledged her right to severance pay based on gross pay of Kshs. 175,000. She stated that the same was repeated in emails of 25th July 2023 and 24th March 2023.

8. The Claimant mentioned that her brother, Joseph Githu, wrote to Diana claiming her dues, salary and commission and she was she was paid Kshs. 200,000 as part of the gratuity pay, leaving a balance of Kshs. 762,500 which she now claims. She maintained that although the Respondent alleges that her contract does not provide for severance pay, all the Senior Managers confirmed through her demand that she was entitled to the same.
9. On cross examination, the Claimant admitted that her contract of employment never provided for gratuity and that her salary was subjected to National Social Security Fund (NSSF) deductions, which were remitted. She confirmed that she served three months' notice in December 2022 but she never worked the whole notice period since she was

admitted in hospital in February 2023. She contended that her contract entitled her to 15 days' sick leave.

10. She admitted that Lucy Njoroge signed all her contract letters and also the promotion letters. She confirmed that Diana Nkirote was not a Director of the Respondent. She demanded terminal dues by her email dated 15th May 2023 addressed to Diana Nkirote and Martin Kinyua and thereafter she received Kshs. 200,000 from the Respondent. The total amount she received from the Respondent was Kshs. 420,901.
11. On re-examination, the Claimant clarified that the Kshs. 420,901 received was for salary for January and February 2023, commission and part of gratuity. She stated that she was not issued with any payslip for the said payment. She maintained that Diana Nkirote was the Human Resource Manager and her communication was communication from the company. She referred to the Replying Affidavit dated 30th April 2024 sworn by Martin Kinyua with authority from Diana Nkirote, the Human Resource Manager.

12. The Respondent called Martin Kinyua as RW1 who adopted his witness statement dated 14th November 2024 as his evidence-in-chief. He testified that Diana Nkirote was not authorized to commit the company on financial matters. He acknowledged that both he and Nkirote wrote emails concerning the Claimant's benefits but maintained that the emails were not supported by the contract of employment.
13. On cross-examination, RW1 admitted that Diana Nkirote wrote an email indicating that the Claimant was entitled to payment of gratuity. However, he stated that such commitment can only be made by a director. He confirmed that Diana Nkirote authorized him to appear in court on behalf of the company.
14. He admitted that the Claimant was paid Kshs. 420,901 as terminal dues, comprising unpaid salary and part of severance pay. He stated that the severance pay was authorized by the Managing Director and paid out of goodwill. He further testified that if the company was doing

well, it would have paid Kshs. 962,500, but it paid only Kshs. 200,000 because of financial stress and other challenges.

15. On re-examination, RW1 clarified that the Claimant was paid Kshs. 289,707.42 on diverse dates in two installments. He reiterated that the payment of gratuity was out of goodwill because at the time the company had financial challenges and only paid what it could afford.
16. After the close of the hearing, both parties filed written submissions. Having considered the pleadings, evidence and the written submissions filed, the following issues fell for determination:-

- a) Whether the Claimant is entitled to severance pay from the Respondent.
- b) Who pay costs of the suit.

Analysis

Entitlement to severance pay

17. The Claimant's primary claim is for severance pay in the sum of Kshs. 762,500, which she contends is the balance of the

amount acknowledged by the Respondent through its Human Resource Manager, Diana Nkirote. The Respondent on its part contends that the Claimant is not entitled to severance pay as a matter of law or contract.

18. It is important to understand the legal framework governing payment of severance pay in Kenya. Section 40(1)(g) of the Employment Act, 2007 provides for payment of severance pay in cases of redundancy. The section states:-

"An employer shall not have the right to terminate a contract of service under this section, unless the employer complies with the following conditions-

(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service."

19. The above provision is clear that severance pay becomes payable under Section 40(1)(g) of the Employment Act, only where an employment contract is terminated on account of

redundancy. This position was affirmed in the case of **Hassanath Wanjiku vs Vanela House of Coffees (Cause 454(N) of 2009) [2018] KEELRC 663 (KLR) (9th November 2018)** where Onyango J held that severance pay is a benefit that becomes payable to an employee who is declared redundant as provided for under Section 40(1)(g) of the Employment Act.

20. The Claimant in this case does not allege that she was declared redundant. To the contrary, she admitted in her pleadings and in her testimony that she resigned from her employment by giving three months' notice in November 2022. This fact is also admitted by the Respondent in its pleadings.
21. In my understanding, a resignation is a voluntary act on the part of an employee and does not amount to redundancy. Consequently, I am satisfied that the claimant is not entitled to severance pay under Section 40(1) (g) of the Act as she voluntarily resigned from employment.

22. The Claimant in her written submissions cited the case of **Michael Wanjau Gatheru v Nakumatt Holdings Limited (Civil Case 58 of 2017) [2017] eKLR** where the court held that the employee was entitled to severance pay despite having resigned. However, the said case is distinguishable from the present case because in that case, the Collective Bargaining Agreement (CBA) governing the employment relationship provided for severance pay upon resignation at the rate of 20 days for every year worked. In the instant case, the Claimant's contract of employment produced as exhibit-1 did not provide for severance pay upon resignation.

23. Again, the Claimant relied on emails written by the respondent as proof that she was entitled to severance pay. Emphasis was placed on the email dated 24th March 2023 from Diana Nkirote to the Claimant which stated as follows:-

" February salaries are yet to be paid as only a few employees have been paid.

You will receive your 11 years of severance pay but this will be distributed as finances come in or paid in full once our financial situation has become better. You can advise us which option works for you.

Martin Kinyua will do the commission report and communicate.

Regards

Diana”

24. The above correspondence came after Diana was asked by Johnson Githu to confirm whether the claimant was eligible for payment of gratuity and if yes, to compute the amount due. Diana’s response was positive that the claimant was eligible to payment of terminal dues but then referred to it as severance pay. She further deposed in her Affidavit sworn on 2nd July 2024 that an amount of Kshs.962,00 was agreed as the Claimant’s severance pay. Evidently, therefore the term severance pay and gratuity have been used interchangeably in the correspondences and evidence.

25. The court notes that the claimant applied for summary judgment alleging that the respondent had admitted her claim and in a ruling, delivered on 17th October 2024, Ndolo J held that:-

“Further, in their pleadings and submissions, the parties refer to the benefits of severance pay and gratuity interchangeably, meaning that the benefit giving rise to the case is unclear. As held in Cassam v Sachania [1982] KLR 191, the discretionary power to enter judgment on admission is to be exercised sparingly in plain cases where the admission is clear and unequivocal.”

26. The judge was clear that the word severance and gratuity was used interchangeably making the correct relief unclear. In my view, the Claimant squandered a good opportunity to seek leave to amend her pleadings before closing her case to pray for gratuity as opposed to severance pay. I say so

because both the employment Act and the claimant's contract did not provide for severance pay upon resignation.

27. I really sympathize with the claimant, but that is all I can do for now because parties are bound by their pleadings, and the court cannot, on its own motion, amend the same to aid one of the parties. This more so where the party is represented by counsel.
28. In view of the foregoing conclusion the Claimant has not established any legal or contractual basis for her claim of severance pay, the prayer for severance pay balance of Kshs. 762,500 must fail.
29. The Claimant also prays for costs of the suit and interest but costs follow the events. Since the Claimant's suit has failed, she cannot get costs.
30. In the final analysis, I find no merits in the suit before the court and consequently, dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 12TH DAY OF MARCH, 2026.

ONESMUS MAKAU

JUDGE.

Appearance

Ojienda for the Claimant

Kimathi for the Respondent