

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

**CAUSE NO. E907 OF 2022**

**BEATRICE NGINA ATIENO OKEYO.....PETITIONER**

**VERSUS**

**MFS TECHNOLOGIES LIMITED.....RESPONDENT**

**JUDGMENT**

The suit by the Claimant against the Respondent was filed on 6/12/2022. The Claimant seeks payment of a sum of Kshs. 2,950,000.00 being service gratuity having served the Respondent for a period of 9 years which tenure ended on 8<sup>th</sup> August 2022, upon the Claimant tendering a letter of resignation dated 8<sup>th</sup> July 2022. The Claimant worked in the position of senior manager Commercial and projects.

The Respondent accepted the resignation of the Claimant vide a letter of acceptance of resignation dated 13/7/2022 written by the Managing Director Mr. Fred Chege. The letter is before court. The key highlights in the letter of acceptance of resignation written by the Managing Director are:-

- (i) The Respondent accepted the letter of resignation vide the letter by the Claimant dated 8/7/2022.

- (ii) The Respondent required the Claimant to serve two months' notice in line with her employment contract and utilize 165 days of her outstanding leave within the two months' notice period.
- (iii) The Claimant was to then contact the Human Resource Department for payment of her final dues less any amount owed to the company.
- (iv) The Managing Director tabulated in the letter, the final terminal dues payable to the Claimant to include:
  - (a) Proposed salary earned but not paid for the month of August 2022 (8 days).
  - (b) Gratuity in line with the Employment Act (Part 10; section 35(5) on service pay for 9 years calculated at one month's salary for every year worked in the sum of Kshs. 2,925,000.00 in lieu of a company provident fund, which is not yet operational. The amount was to be paid when funds became available due to the 'unfortunate financial situation the company finds itself in.'
  - (c) Staff welfare benefit amounting to Kshs. 15,000.00 payable in July 2022 in line with staff welfare fund policy.
  - (d) The amounts aforesaid were payable upon full clearance and subject to statutory deductions and any outstanding liabilities.

The Claimant testified as CW1 and adopted her witness statement dated 16/11/2022 as her evidence in chief. The Claimant adduced evidence confirming the facts aforesaid and produced the letter of resignation dated 8/7/2022 and the letter written to her by the Managing Director accepting

her resignation and stating the terms of separation aforesaid dated 13/7/2022.

The Claimant also produced a letter of demand written by her Advocates Acorn Law Advocates dated 19/10/2022 in which the Claimant demands payment of the unpaid gratuity in the sum of Kshs. 2,925,000.00 offered to her by the Respondent which had not been paid as at that date and remains unpaid to date hence the suit before court.

The Claimant was cross examined by Advocate Kiiru for the Respondent in which the Claimant confirmed that the Respondent paid NSSF contributions on her behalf during her tenure of over 9 years in the Respondent's employment. The Claimant admitted that the contract did not provide for terminal gratuity but insisted that it was the practice of the Respondent to pay terminal gratuity to all exiting employees because the company had no provident fund or pension scheme for its employees other than the meagre sum payable under NSSF.

The Claimant said that she was not a union member but added that the gratuity was offered even to non-union members as the Managing Director had done upon her resignation. The Claimant said that she earned Kshs. 300,000.00 monthly salary at the time of her resignation and confirmed she had been offered the equivalent of one-month salary for each completed year of service in line with the past practice of the company. The Claimant added the unpaid gratuity was calculated by the Respondent and was due and payable.

The Claimant called one Basil Gumbo as CW2 in support of her claim. CW2 adopted a witness statement dated 2/5/2023 as his evidence in chief. CW2 said that he worked for the Respondent but had since left the employment of the Respondent. That while he worked for the Respondent, the Respondent contributed and paid NSSF dues. CW2 said he had resigned from his employment just like Claimant had done and that he was paid service gratuity upon his resignation by the Respondent. CW2 told the court that this was the practice and custom of the company and that payment of service gratuity was not an express term in his contract of employment. CW2 said service gratuity was applied to every employee who had left the Respondent before him. CW2 denied that the Managing Director offered to pay the Claimant gratuity in error. Under cross-examination the CW2 said he served under a different position from the Claimant.

The Claimant also called Extus Mutanda, to testify in support of her case as CW3. CW3 adopted a witness statement dated 23/5/2023 as his evidence in chief. CW3 testified that he worked with the Claimant at the Respondent's company. That he had resigned his services before the Claimant did and was paid service gratuity even though service gratuity was not an express term of his contract. CW3 produced a letter dated 23/1/2021 through which the Respondent had promised to pay service gratuity to him. CW3 said that a similar letter was given to the Claimant upon resignation. CW3 said this was the practice of the Respondent and

the offer made by the Respondent was not done by mistake. CW3 said he served in a different position from the Claimant under cross-examination.

The Respondent called one Hildah Gaciuki in defence of the case. RW1 adopted a witness statement dated 12/1/2023 as her evidence in chief.

RW1 confirmed that the Claimant had voluntarily resigned from service by a letter dated 8/7/2022 and that she served under a contract dated 23/1/2019. She said that the contract did not provide for payment of service gratuity. RW1 said the Managing Director erroneously indicated in the letter dated 13/7/2022 that the Claimant was entitled to payment of service gratuity amounting to Kshs. 2,925,000.00. She said this was done in error because service pay was not contractual and the Claimant was a member of the National Social Security Fund. RW1 said that the claim was without merit.

RW1 produced three other letters of acceptance of resignation dated 15/9/2022, 2/9/2022 and 28/9/2022 written by the same Managing Director to three other employees of the Respondent who had resigned after the Claimant had left the employment of the Respondent and were not offered gratuity by the Respondent.

Under cross-examination by Advocate Nyboma for the Claimant, RW1 confirmed that the Managing Director wrote a letter of acceptance of Claimant's resignation in which he offered the Claimant payment of terminal gratuity in the sum of Kshs. 2,925,000 upon clearance calculated

at one month salary for every year worked in lieu with the company policy since the provident fund was not yet operational.

RW1 confirmed that this was an equivocal offer to pay gratuity to the Claimant. RW1, admitted that CW2 and CW3 were paid service gratuity upon resigning from service. RW1 admitted also that other employees who had earlier resigned from the company had been paid service gratuity.

RW1 admitted that the letters she produced in which gratuity was not offered upon resignation were written after the Claimant had left the employment of the Respondent.

## **DETERMINATION**

Upon a careful evaluation of the evidence adduced by the Claimant, CW2 and CW3 in support of the claim vis a vis the evidence adduced by RW1, the court has made the following findings.

That the Respondent had written a letter accepting the voluntary resignation of the Claimant in which letter the Respondent vide the Managing Director, the highest officer in the company, unequivocally and without any condition, accepted the resignation by the Claimant and offered to pay the Claimant terminal gratuity at the rates of one month salary for the nine (9) years served by the Claimant in the sum of Kshs. 2,925,000.00. The Respondent did not produce before court any letter subsequently written to the Claimant to revoke that offer. The Claimant was

promised that the gratuity would be paid as soon as the Respondent was in a position to do so.

It is the court's finding that the offer by the Respondent constituted a legitimate promise upon which the Claimant had a legitimate right vested on her. The Claimant had therefore a legitimate expectation to be paid her terminal gratuity within a reasonable time.

The Respondent did not respond to the letter of demand nor did it explain why the author of the letter that offered payment of gratuity was not called before court to explain the alleged error.

RW1 was unable to debunk the testimony by CW2 and CW3 that it was the custom and practice of the Respondent to pay service gratuity to all employees upon voluntary resignation. RW1 did not deny that CW2 and CW3 had resigned from the employment of the Respondent earlier than the Claimant and were both given similar letters to that which was given to the Claimant and were subsequently paid the terminal gratuity offered in those letters of acceptance.

It is the finding of this court that the letter of offer to pay gratuity created a contractual obligation to pay gratuity to the Claimant in the sum of Kshs. 2,925,000.00. That in addition, the Claimant had a legitimate expectation that she would be paid the said gratuity within a reasonable time absent any written revocation of the offer. Failure to respond to the letter of demand, crystalized the breach of obligation to pay the gratuity.

The court in affirming this position has considered the case of **Republic v Kenyatta International Convention Centre (KICC) Exparte Kenyatta International LTD (2006) eKLR** in which it was held that three conditions must be met to found the doctrine of legitimate expectation; that the expectation must be legitimate; induced by lawful action of the Respondent and must be reasonable for the Plaintiff to have held the expectation. This case ticks all the three boxes. This expectation is greater where as in this case the promise has been reduced to writing.

Indeed, legitimate expectation arises in contractual disputes and is closely tied to promissory estoppel like in this case where an offer in writing has been made to the Claimant by the Respondent. See the case of **National Bank of Kenya Ltd v Gatere Trading Company Ltd (2002) 1 EA 82**.

The respondent is estopped from renegeing on its express promise to the Claimant

**In the final analysis judgment is entered in favour of the Claimant as against the Respondent as follows: -**

- (a)The Respondent is to pay the Claimant terminal gratuity in the sum of Kshs. 2,925,000.00**
- (b)Interest at court rates from date of judgment till payment in full.**
- (c)Costs of the suit.**

**Dated at Nairobi this 2nd day of April 2026**



**Mathews Nduma**

**JUDGE**

**Dated, signed and delivered in open court at Nairobi this 9<sup>th</sup> day of  
April 2026**

**Dr. Jacob Gakeri**

**JUDGE**

**In presence of:**

Mr. Nyabona for Claimant

Mr. Kiiru for Respondent

Mr. Kemboi – Court Assistant