



Gichuki v Board of Management Gachatha High School (Employment and Labour Relations Cause E023 of 2024) [2025] KEELRC 231 (KLR) (4 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 231 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E023 OF 2024
ON MAKAU, J
FEBRUARY 4, 2025**

BETWEEN

JANE WAMUCII GICHUKI CLAIMANT

AND

THE BOARD OF MANAGEMENT GACHATHA HIGH SCHOOL RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 23rd May, 2024 the claimant alleged that the respondent had refused to pay her retirement benefits. She further averred that the failure to pay her the said dues was discriminatory and contrary to the respondent's practice. Therefore, she prayed for the following reliefs: -
 - a. That the Honourable Court do adapt the conciliator's recommendation certificate dated 28th February, 2024.
 - b. That the Honourable court do order the respondent to pay the retirement benefits i.e.
 - a. Service gratuity 38 years x Kshs.18,947 total of Kshs.719,986
 - b. 1-month notice
 - c. Terminal leave
 - c. Cost of the suit.
2. The respondent was served with summons and pleadings but did not enter appearance.



Background

3. The claimant was employed by the respondent as a Bookkeeper from 4th June 1984. Her starting salary was Kshs.800 per month.
4. On 1st September 2022, she was summoned before the BOM to state her exact age and she confirmed that she attained the retirement age of 60 years on 1st June 2022. By a letter dated 21st October 2022 she was to retire effectively from 22nd December 2022. As at the time of her retirement she was earning a basic salary of Kshs.18,947, house allowance of Kshs.2000 and medical allowance of Kshs.495.
5. Upon retirement, the claimant fully handed over but when she demanded for her terminal benefits, the respondent informed her that she was not eligible for service gratuity and was referred to the National Social Security Fund (NSSF) to get her retirement dues.
6. She contended that the action by the respondent amounted to discrimination against her and produced documentary evidence to prove that his colleague, Mr.Moses Muchiri Wandeto retired on 1st November 2017 and he was paid service gratuity. She further averred that NSSF benefits were too little for 38 years' service.
7. As a result of the foregoing matters, her trade union reported a trade dispute to the Labour Cabinet Secretary and a conciliator was appointed. The respondent failed to participate in the conciliation process. Nevertheless, the conciliator confirmed that the claimant was covered by the Collective Bargaining Agreement (CBA) between her trade union and the Ministry of Education which entitled her to service gratuity. Further, the circular from the Ministry of Education dated 27th June 1996 provided guidance on how BOM employees were to be paid service gratuity.
8. In the end the conciliator made recommendation that the respondent should pay the claimant service gratuity for 38 years she served the school. The conciliator further recommended that the respondent should pay the claimant house allowance and underpayment of salary for the years she worked.
9. The respondent failed to comply with the recommendation and the claimant filed this suit. The above facts were not controverted by pleading or rebutted by evidence.

Determination

10. I have considered the facts of the case as contained in the Memorandum of Claim and written statements which were adopted by the claimant during the hearing of the suit. The issue for determination is whether the claimant is entitled to the reliefs sought in the claim.

Notice

11. There is evidence that the claimant was given a notice of retirement on 21st October 2022 to take effect on 22nd December 2022, about two months prior notice. Consequently, the claim for salary in lieu of notice must fail.

Terminal leave

12. The claim for terminal leave lacks particulars and there is no evidence to support it. The claimant has not anchored the said claim on her contract of employment and therefore the claim also fails.



Service gratuity

13. The claim for service gratuity is anchored on the CBA between the claimant's trade union and circulars from the Ministry of Education. A copy of the CBA has not been filed but the claimant has produced a copy of circular on payment of service gratuity from the Ministry of Education dated 10th January 2005 which I have copied below: -

“Payment Of Service Gratuity To Non-teaching Staff In Public Secondary Schools.

Ministerial Legal Notice No.263 of Education Act Cap 211 Laws of Kenya which made transfer of power from the Ministry to individual BOGs refers:

In these changes BOGs of Educational Institutions are required to note the following:-

1. Service Gratuity is payable to employees who have worked for ten (10) years continuously and have attained the age of fifty (50) years and above i.e. Fifty-five (55) years.
2. Must have a National ID Card.
3. First appointment letter and retirement letter showing the actual date of retirement.

The formula for payment is as follows:-

Basic salary at the time of retirement, times the number of years served, divided by 12 (i.e. one month's salary for each year served).

Example:

Basic salary Kshs.3015 x 165 (months) x 1/12 =41,456.00

Please note that those who were employed before 1992 and are in possession of G.P. 33 qualify for service gratuity and are paid by the Ministry Headquarters since their records are held by the office.

N.e Okwatsa

For: Permanent SecretARY”

14. The above circular confirms that the claimant was entitled to service gratuity at the rate of one month's basic salary for each year served. Consequently, I find that the claimant is entitled to service gratuity and proceed to enter judgment for her as prayed being Kshs.18947 x 38 years =Kshs.719,986. She will also have costs at the Lower court scale and interest at court rates from the date of filing suit. The award is subject to statutory deductions.

DATED, SIGNED AND DELIVERED AT NYERI THIS 4TH DAY OF FEBRUARY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

