



Munyi v S.A Manyatta Secondary School (Employment and Labour Relations Cause E010 of 2024) [2025] KEELRC 228 (KLR) (4 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 228 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E010 OF 2024
ON MAKAU, J
FEBRUARY 4, 2025**

BETWEEN

LUCY KARIMI MUNYI CLAIMANT

AND

S.A MANYATTA SECONDARY SCHOOL RESPONDENT

JUDGMENT

1. By a Statement of claim dated 12th March 2024 the claimant accused the respondent of refusal to pay her employment terminal dues. Therefore, she prayed for the following reliefs: -
 - a. Gratuity = $11.500 \text{ (monthly basic salary)} \times 11.58 \text{ (number of years worked)} = 133,170.$
 - b. House Allowance = $(15\% \times 15652.30) \text{ (basic minimum)} \times 12 \text{ (months)} \times 3 \text{ (years)} = 84,522.42$
 - c. Underpayment = $(15652.30 - 11.500) \times 12 \times 3 = 99,655.2$
TOTAL = 317,347.62
 - d. Certificate of service.
 - e. Any other cost that the court will deem fit against the respondent.
2. The respondent filed a Response to the claim dated 16th July 2024 confirming that it employed the claimant as a secretary on 20th May 2010 for an agreed monthly salary of Kshs.4,700 per month which was later increased to Kshs.11,500. It averred that the computation of dues by the claimant was erroneous as she used the Regulation of Wages (General) (Amendment) Order, 2022 instead of one for 2018 which was in force before she exited employment. Therefore, it prayed for the suit to be dismissed with costs for being frivolous, vexatious and an abuse of the court process.



Evidence

3. The claimant testified as CW1 and basically adopted her written statement dated 12th March 2024. She also produced 12 documents as exhibits to support her case.
4. In brief, the claimant's evidence was that she was employed by the respondent on 20th May 2010 as a secretary earning a basic salary of Kshs.4700. The salary was gradually increased to Kshs.11,500 over the years. She served diligently with a clean record of discipline until in January 2022 when she resigned from the employment to pursue further education. She forfeited her salary for December 2021 in lieu one-month termination notice. She had served for 11 years, seven months before her resignation.
5. When she demanded for her terminal dues, the principal declined prompting her to forward the matter to her trade union (KUDHEIHA) workers to pursue her benefits from the respondent. She prayed for the reliefs sought in her claim including her unpaid salary, terminal dues and underpayment of salary.
6. On cross examination, she admitted that she was employed by Embu County Government after resigning from the respondent. She contended that she was entitled to gratuity according to the Labour Laws and DPM Circular which are applicable to civil servants. She confirmed that she was employed by the respondent and not the PSC. Finally, she admitted that her appointment letter did not provide for house allowance.
7. RW1 Ms Alice Kaburi Mwiandi was the respondent's principal/secretary BOM. She adopted her written statement dated 19th July 2024 as her evidence in chief. She also produced 3 documents as exhibits.
8. In brief, her evidence was that she is the custodian of all the school and staff documents; that the claimant was employed by the school as a secretary with a starting salary of Kshs.4700 which was later increased to Kshs.11,500; that she was not a civil servant and as such the DPM circulars of 2018 on payment of salaries did not apply to her; that she resigned without prior notice and prejudiced the respondent's operations; and that she was paid all her dues and nothing more is pending.
9. On cross examination, RW1 admitted being aware of CBA but averred that the claimant was issued with a letter of appointment. She found the claimant in the school and she never complained to her (RW1) about her terms of service.
10. She further admitted that the claimant was neither provided with a house by the school nor was she paid house allowance. She denied knowledge whether the claimant's salary of Kshs.11,500 was an underpayment.
11. She further admitted that the school is guided by circulars issued by the government but denied being aware of any circular requiring schools to open an account for depositing gratuity.

Submissions

12. It was submitted for the Claimant that she voluntarily resigned from service on 11th January 2022 and paid one month salary in lieu of notice by forfeiting her salary for December 2021. Therefore, it was submitted that she was entitled to the relief sought.
13. As regards the claim for salary underpayment, it was submitted that whereas Regulation 19 of the Basic Education Act mandates school Boards to determine the terms and conditions of service for its employees, section 7 and 26 (1) of the Employment Act prohibit the employment of any person below the minimum terms and conditions of service prescribed by the said Act.



14. It was further submitted that section 48 (1) of the [Labour Institutions Act](#) provides that the minimum rates of remuneration or conditions of employment established in a Wages Order constitute a term of employment of any employee to whom the Wages Order apply. Based on the pay roll and Wages Order produced as exhibits, it was submitted that the claimant was paid below the Basic minimum wages, and therefore she deserves to be paid the difference.
15. It was further submitted that the claimant was never housed or paid any house allowance throughout her employment by the respondent contrary to section 31 (1) of the [Employment Act](#). It was argued that the failure to comply with the above provision or housing violated Article 41 of [the Constitution](#) which guarantees the right to fair labour practices. Consequently, the court was urged to award house allowance at the rate of 15% of the basic salary.
16. For emphasis, reliance was placed on the case of Cotec Security Group Ltd (formerly known as [Bedrock Holdings Ltd](#)) v [Kenya National Private Security Workers Union \(Appeal E023 of 2023\)](#) (2024) KEELRC 610 (KLR) (19 March 2024) (Judgment).
17. As regards the prayer for gratuity it was submitted that, the claimant is entitled to the said benefit for the 11 years served based on the Ministry of Education Circulars. While admitting that the claimant's appointment letter did not provide for payment of gratuity, it was submitted that the Ministry of Education had better and more favourable terms to the employees.
18. It was further submitted that the respondent did not produce NSSF statement to prove that it contributed dues to the social security fund for the claimant. Consequently, it was submitted that the claimant is entitled to payment of service pay under section 35 (5) of [Employment Act](#). For emphasis, reliance was placed on the case of Elijah Kipkoros Tanui v Ngari Opticians t/a Bright Eyes Ltd (2014) eKLR where the court held that registration of an employee to the NSSF is not a bar to claiming service pay, unless there is evidence of actual remittance of monthly contributions to the fund.
19. Finally, the claim for the terminal dues were quantified at the total sum of Kshs.318,305.72.
20. On the other hand, it was submitted for the respondent that by dint of section 35 (6) of the [Employment Act](#) the claimant was disqualified from payment of service gratuity because she was enrolled with the NSSF and the respondent faithfully remitted contributions to the fund. It was further submitted that the claimant has not demonstrated by evidence that there are arrears of unremitted NSSF contribution. Reliance was placed on Kennedy Nyanguncha Omanga v Bob Morgan Services Limited (2013) eKLR.
21. As regards the Ministry of Education Circulars cited by the claimant, it was submitted that the same did not apply to her since she was an employee within the meaning of section 59 (p) of the [Basic Education Act](#) which mandated school Boards to recruit, employ, remunerate, promote, demote and terminate the services of any of its employees.
22. It was further submitted that the claimant was employed by the respondent under a contract with terms and she never raised any complaint about underpayment of her salary during her employment. Reliance was placed on BOM Nyeri Primary School v Dadson Maina & 33 others (Civil Appeal No.81 of 2017) (2021) KECA 63 (KLR) (8 October 2021) (Judgment).
23. Finally, the court was urged to find that the claimant has not proved her case as required under the [Evidence Act](#) and dismiss the suit with costs.



Determination

24. Having considered the pleadings, evidence and submissions presented to this court, the main issue for determination is whether the claimant is entitled to payment of the dues sought in her suit.

Housing Allowance

25. RW1 admitted that the claimant was neither housed by the school nor was she paid any house allowance. Section 31 of the *Employment Act* requires an employer, in mandatory terms, to provide reasonable housing to his employees or pay them sufficient allowance to cater for house rent. Since the respondent did not comply with the said law, I find that the claimant is entitled to house allowance. She only prayed for 3 years' house allowance at the rate of 15% of her basic salary.
26. The claimant assessed the said claim using the minimum basic salary prescribed by the Wages Order of 2018 being Kshs.13,975 and I agree with her based on the mandatory provisions of section 3, 7 and 26 of the *Employment Act* and section 48 (1) of the *Labour Institutions Act*. No employer in Kenya, including a School Board of Management has the liberty of employing any person under a contract of service below the minimum terms and conditions prescribed under the said statutes.
27. In view of the foregoing conclusion, I award the claimant Kshs.13,975.30 x 15/100 x 12 x 3 years = Kshs.75,466.62.

Service gratuity

28. It is now trite, that a right to gratuity must be anchored in the contract of employment as opposed to service pay which is anchored on section 35 (5) of the *Employment Act*. In this case, the claimant admitted that the letter of appointment did not provide for payment of gratuity.
29. Her claim was grounded on Government circulars but my perusal of all the documents produced by her as exhibits none is about gratuity to employees of School Boards. Consequently, I find that the claim for gratuity has not been substantiated and it is declined.

Underpayment

30. There is no dispute that the claimant was receiving a basic monthly salary of Kshs.11,500 while the 2018 Wage Order entitled her to a minimum of Kshs.13,975.30. It follows that her salary was under paid by Kshs.2,475.30 x 12 x 3 years =Kshs.89,110.80.

Disposition

31. For all the reasons stated above, I now enter judgment for the claimant against the respondent in the following terms: -
- a. Salary underpayment.....Kshs.89,110.80
 - b. House Allowance.....Kshs.75,466.62
- Kshs.164,577.42

The claimant is also awarded costs at the Lower court rates because of the quantum of damages awarded. 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.

