



Murage v St Ursula Nguviu Girls Boarding Primary School (Cause E009 of 2024) [2025] KEELRC 2256 (KLR) (29 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2256 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E009 OF 2024
ON MAKAU, J
JULY 29, 2025

BETWEEN

PETER GICOVI MURAGE CLAIMANT

AND

ST URSULA NGUVIU GIRLS BOARDING PRIMARY SCHOOL RESPONDENT

JUDGMENT

Introduction

1. By a memorandum of claim dated 11th March 2024, the claimant prayed for the following: -
 - a. Payment of retirement benefits of the claimant.
Gratuity = 14,620 (basic pay) x 28 (No. of years worked) = 399,280
One month's pay that was in arrears = Kshs.15,135 (gross pay)
 - b. Certificate of service
 - c. Costs of this suit be borne by the Respondent.
 - d. Any other or further relief that this Honourable court may deem fit and just to grant
2. The Respondent denied liability and averred that the claimant's contract of employment did not provide for payment of gratuities. It further averred that it faithfully remitted NSSF contribution for the claimant as his retirement scheme. Consequently, it prayed for the suit to be dismissed with costs.

Factual background

3. The claimant was employed by the respondent as a cook from 1st November 1993 to 30th April 2021 when he was retired by the respondent. The decision to retire him was communicated vide a letter



dated 30th April 2021 which also offered to pay him gratuity for his 28 years of service based on his basic salary of Kshs.14,260 for each year served. The gratuity was Kshs.399,280 and the letter indicated that the payment was approved by the Board. By another letter of even date, the respondent acknowledged salary arrears of Kshs.15,135 for April 2021.

4. The respondent never paid the said gratuity plus salary arrears despite demand by the claimant. As a result, the claimant's trade union reported a trade dispute to the Ministry of Labour but the respondent declined to attend conciliation proceedings and the matter was referred to this court. Therefore, he maintained that the amount claimed is payable to him.
5. The respondent admitted that it employed the claimant from 1993 to 30th April 2021 when he retired. It averred that as at the time of retirement his gross salary was Kshs.15,135. It further averred that the appointment letter dated 14th October 1993 never incorporated gratuity as a term in the claimant's contract. It also averred that during his employment, it remitted NSSF contribution as the retirement scheme and the claimant benefited from the same after retirement. Therefore, the respondent denied the claim for gratuity since it was not expressly provided for, in the contract of employment.
6. As regards the retirement letter dated 30th April 2021, the respondent averred that it was erroneous and an honest mistake which should be disregarded and the suit dismissed.
7. The suit was not heard orally as the parties agreed to adopt the witness statements and bundles of documents and filed written submissions.
8. Having considered the pleadings, evidence and written submissions filed, there is no dispute that the claimant was employed by the respondent as a cook for 28 years until 30th April 2021 when he was retired by the respondent vide the letter dated the same date. It is also a fact that the said letter offered to pay him Kshs.399,280 being gratuity for his services to the school for 28 years. The issue for determination is whether the claimant is entitled to the relief sought.

Gratuity

9. The retirement letter dated 30th April 2021 stated that: -

“Peter Gichovi James Murage

O Box 194

Embu.

Dear Sir,

RE: Retirement

Having worked for this school for the last twenty eight years (28yrs) the Executive Board of Management Members meeting held on 4th March 2021, approved your retirement from the position of a school cook of St.Ursula-Nguviu Boarding Primary School with effect from 1/05/2021.

They also approved your gratuity of twenty-eight years.

Total Amount As at year 2021

Kshs.14,260.00 (1-month Basic salary per year) x 28 (No. of years worked)
=Kshs.399,280.00



We at St. Ursula-Nguviu Boarding Primary School wish to thank you very sincerely for your selfless contribution to this school and having walked with it to this far.

We wish you all the best in your future endeavors.

Yours Sincerely,

Violet W. Njeru (mrs)

Headteacher

Cc.

1. The Chairman,
Board Of Management,
St. Ursula-nguviu.
2. The Education Secretary,
Catholic Sponsored Schools,
Embu.”

10. The letter was voluntarily written and the gratuitous pay was offered in appreciation for the claimant’s selfless contribution to the school. The letter did not cite the basis of the gratuitous pay as the contract of employment but rather an approval by the school Board.
11. In general parlance, gratuity refers to money paid in lumpsum to an employee by his employer in recognition and appreciation for his services. It can be awarded during or after the separation as a show of appreciation and in Kenya it is at the discretion of the employer unless it is provided for in the contract of employment. Unlike service pay and severance pay, gratuity is not provided for in the *Employment Act* but in some Wage regulations.
12. In the instant case, the claimant did not produce any documentary evidence to prove that his contract of employment provided for gratuity. Contract of employment is not limited to an appointment letter, but can be constituted by a mosaic of documents including appointment letters, promotion letter, CBA, Human Resource Manual, Internal Memos, Constitution, Statutes, Regulations and even Government circulars.
13. The foregoing notwithstanding, the respondent admits that it offered to pay the claimant gratuity in the sum of Kshs.399,280 vide the letter dated 30th April 2021 which retired the claimant from service. The claimant accepted the gratuitous award and left service without a fight.
14. The respondent has not demonstrated that the author of the letter lacked capacity to write it or that she did not voluntarily write the letter. It follows that without existence of any vitiating factors, the respondent is bound to honour the promise to pay the claimant gratuity in the sum of Kshs.399,280. Whereas an employer is not bound to pay any employee gratuity in appreciation of service rendered, once the employer voluntarily promises an employee payment of gratuity, in writing, the court ought to enforce that promise in favour of the employee.

Salary arrears

15. The respondent acknowledged salary arrears for April 2021 for Kshs.15,315, payable to the claimant. The acknowledgment was through another letter dated 30th April 2021. The respondent has not



proved that the money was paid. Consequently, I find that the claimant is entitled to the salary arrears of Kshs.15,135.

16. The other prayer was for certificate of service which I find to be obvious under section 51 of the *Employment Act*.

Conclusion

17. I have found that the claimant is entitled to the reliefs sought. Consequently, I enter judgment in his favour by ordering the respondent to issue him with certificate of service and pay him the following: -
- a. GratuityKshs.399,280
 - b. Salary arrears.....Kshs.15,135
 - c. Costs and interest at court rate from the date of filing suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 29TH DAY OF JULY, 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.

