



**Nzoka v Kenya County Government Workers Union (Cause
E046 of 2023) [2024] KEELRC 1439 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1439 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E046 OF 2023**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

JOSEPH MUUO NZOKA CLAIMANT

AND

KENYA COUNTY GOVERNMENT WORKERS UNION RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, dated 25th January 2023.
2. He states that he was employed by the Respondent Union, as an Area Secretary, on 3rd January 1983.
3. He issued a notice of retirement dated 2nd January 2007 to the Respondent. Notice was for 2 months, taking effect on 1st March 2007. It was issued pursuant to Rule 15 [e] of the Respondent's terms and conditions of service. He states that he had attained the retirement age of 68 years.
4. He does not seem to have retired in 2007 however. Documents filed by the Parties, show that another notice of retirement issued in 2015, 8 years after the first notice.
5. In the letter dated 30th July 2015, accepting retirement, the Respondent computed the Claimant's gratuity at Kshs. 9,008,429.
6. On 12th January 2016, the Respondent committed in writing to pay the Claimant's gratuity. A first instalment of Kshs. 308,429 was to be paid immediately, and an instalment of Kshs. 100,000 paid monthly thereafter, until completion of payment, of the full amount.
7. The Respondent honoured its obligation, paying a total sum of Kshs. 1,957,769. A balance of Kshs. 7,100,660 has not been paid.
8. He prays for: -
 - a. Declaration that the he is entitled to payment of gratuity as agreed between the Parties.



- b. Payment of the balance of Kshs. 7,100,660.
 - c. Costs.
 - d. Interest.
9. The Respondent filed its Statement of Response dated 11th April 2023. It is conceded that the Claimant worked for the Respondent until he retired. It is denied that he is entitled to gratuity at the sum of Kshs. 9,008,429. He colluded to with the Respondent's former treasurer, to have the letter dated 12th January 2016 acknowledging outstanding gratuity obligation, written. He had been overpaid gratuity and nothing is outstanding. The Respondent prays for dismissal of the Claim.
 10. The Claimant gave evidence, and closed his case, on 17th November 2023. The Respondent's National Treasurer, Tom Kang'ethe, gave evidence and closed the Respondent's case, on 14th February 2024.
 11. The Claim was last mentioned on 4th April 2024, when the Parties confirmed filing and exchange of their closing submissions.
 12. The Claimant adopted his witness statement and documents on record, as his evidence-in-chief. He stated that he retired on 31st December 2015. He was paid gratuity in part, and not paid the balance claimed. He restated that the Respondent acknowledged debt, and undertook to pay up. The Respondent's General Secretary approved payment.
 13. Cross-examined, he told the Court that payment of gratuity to Area Secretaries, was confirmed in meetings of the Respondent's NEC, as shown in the exhibited minutes. The minutes exhibited by the Claimant were however, not signed. The minutes exhibited by the Respondent on the same meeting are signed and stamped. His name and the amount payable, was not included in the minutes exhibited by the Respondent. The resolution of the NEC meeting he relies on, was in the unsigned minutes. He did not recall what formula was adopted in computation of gratuity. He was not aware of a circular issued out by the Treasurer, stopping gratuity payments and calling for re-computation.
 14. Redirected, he told the Court that he attended the meeting where payment of gratuity was approved. The minutes exhibited by the Respondent were stamped in 2023. The Respondent had already started making payments. He did not see any circular on re-computation.
 15. Tom Kang'ethe, the Treasurer, relied on his witness statement and documents filed by the Respondent. The General Secretary, on advice of NEC, could vary gratuity. The Respondent's constitution was silent on computation of gratuity.
 16. The former Treasurer Michael Kariuki computed the Claimant's gratuity. Kang'ethe did not understand the computation made by his predecessor. The monthly gross rate kept changing. The Claimant's salary was Kshs. 113,000 monthly, when he exited. He was overpaid gratuity. Gratuity is a token of gratitude.
 17. The Treasurer highlighted that the total gratuity owed by the Respondent to former Employees was Kshs. 19 million. It was not possible that the Claimant was owed 50% of the total gratuity debt. Computation by the Claimant was not in accordance with the law.
 18. Cross-examined, Kang'ethe told the Court that he joined the Respondent in 2021. He conceded that the Claimant was entitled to gratuity. There was a letter from the Respondent's National Treasurer, communicating gratuity to the Claimant, in the amount claimed by him. Payment was made based on the Treasurer's computation. The General Secretary, who was and still is Hon. Roba Duba, signed the cheques on part -payment of gratuity. Kang'ethe was not in employment when NEC discussed and



resolved to pay gratuity in 2014. Kang'ethe found the documents exhibited before the Court, when he joined the Respondent. The General Secretary raised the issue of anomalies in 2021. He called for investigations on gratuity payments. Kang'ethe does not know if investigations took place. He did not have the investigations report. An audit was carried out. He did not have any audit report. In his witness statement, Kang'ethe states that the Claimant was entitled to Kshs. 2.2 million in gratuity. He based this figure on the audit report, which he did not have. In his view the Claimant is not entitled to gratuity.

19. Redirected, he told the Court that computation by the former Treasurer was erroneous. It changed from 15% of the basic salary to 25%. It ought to have been consistent. The Claimant left employment in 2015. The former Treasurer left in 2021. The General Secretary did not commit to pay Kshs. 9 million in gratuity to the Claimant.
20. The only issue in this dispute is whether the Claimant is owed by the Respondent, the amount claimed as gratuity.

The Court Finds:

21. It is not disputed that the Claimant was employed by the Respondent Union as an Area Secretary, Machakos County Branch, on 3rd January 1983.
22. There is a notice of retirement dated 2nd January 2007 issued by the Claimant to the Respondent. It would seem that this notice was recalled, because on 2nd June 2015, the Claimant issued another notice of retirement, effective 31st December 2015. He explained that he was now 76 years, and hoped that the Respondent would approve his retirement.
23. The Respondent accepted retirement, and through the letter of its General Secretary, Hon. Roba Duba, dated 30th July 2015, advised that the Claimant's terminal benefits, would be computed by the Treasurer.
24. Following this, the Treasurer calculated the Claimant's gratuity, in the total sum of Kshs. 9,008,429, as of 31st December 2015.
25. The National Treasurer, in a letter copied to the General Secretary, dated 11th January 2016 wrote to the Claimant, advising that the gratuity would be paid in instalments of Kshs. 308,429 first, and Kshs. 100,000 monthly, thereafter.
26. The Respondent went on to pay the first instalment on 12th January 2016, and instalments of Kshs. 100,000 monthly, until 15th March 2019. From April 2019, there was a reduced instalment of Kshs. 50,000 paid, contrary to the commitment made by the Respondent. The payment ceased altogether in November 2020.
27. By the time of stoppage, the Respondent had paid the Claimant at total amount of Kshs. 1,957,769. The balance stood at Kshs. 7,100,660.
28. There is no acceptable reason given by the current Treasurer Kang'ethe, why the payment stopped, and why the balance should not be paid.
29. It is preposterous, in light of the documents originating from the Respondent's Treasurer on the subject of gratuity, to tell the Court that gratuity was overpaid to the Claimant. There is no evidence of overpayment, and no excess payment is counterclaimed by the Respondent.
30. Gratuity was payable, and had been approved by NEC. The General Secretary accepted the Claimant's retirement and asked his Treasurer, to compute the Claimant's gratuity. The Treasurer obliged, computed gratuity, copying the letter communicating computation to the General Secretary. Payment



was made in instalments as advised by the Respondent, and the Claimant had no problem with that. The General Secretary signed the cheques.

31. The arguments advanced by the Respondent on non-payment are devoid of merit. There was no overpayment. The computation cannot have been erroneous. It was made by the Treasurer on the advice of the General Secretary. Kang'ethe faulted computation by his predecessor, while acknowledging that there was no existing formula on computation of gratuity. It was left to the discretion of the General Secretary, and the National Treasurer. Once the Treasurer acted on the advice of the General Secretary, and computed gratuity, it was binding on the Respondent. It was not for Kang'ethe or the General Secretary, to rework the figures years later, or decline payment to the Claimant, a septuagenarian, who is solely dependent on this payment, in his golden years. The Claimant had no role in computation of gratuity. He relied entirely on computation made by the Respondent, through its National Treasurer, on advice of the General Secretary. The gratuity he claims was generated entirely by the Respondent's top echelons, not by him. Issues, such the rate adopted in computation of gratuity; the meetings held on approval of payment; whether gratuity was merely a token of the Respondent's appreciation; and, whether minutes were signed and stamped, are completely dilatory. They are solely aimed at justifying non-payment of gratuity benefit, that is contractually due to the Claimant and which was computed by the Respondent.
32. The bottom line is that gratuity was payable, not only to the Claimant, but to other retirees; resolution was made by NEC to pay; the General Secretary instructed the Treasurer to compute the Claimant's gratuity; the Treasurer computed; the Respondent paid part of what was computed in instalments; the amount claimed was computed by the Respondent and is not of the Claimant's own making; and lastly, the Respondent reneged on payments, warranting this unnecessary litigation.

It Is Ordered: -

- a. The Respondent shall pay to the Claimant balance of gratuity at Kshs. 7,100,660.
- b. Interest on the principal sum is granted at court rate, from the date of default, 20th November 2020 till payment is made in full.
- c. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

