



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipkurui v AIC Litein Hospital (Cause E059 of 2023)  
[2024] KEELRC 13210 (KLR) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13210 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E059 OF 2023  
J RIKA, J  
NOVEMBER 26, 2024**

**BETWEEN**

**ANDREW KIPKURUI ..... CLAIMANT**

**AND**

**AIC LITEIN HOSPITAL ..... RESPONDENT**

**RULING**

1. In its Judgment delivered on 25<sup>th</sup> July 2024, the Court granted Judgment in favour of the Claimant, for the total sum of Kshs 522,081, costs and interest.
2. The sum comprised equivalent of 6 months' salary in compensation for unfair termination, calculated at Kshs. 356,487, adopting a monthly salary of Kshs. 68,997. The Court also granted the Claimant gratuity based on 2 years of service, at 10% of a monthly salary of Kshs. 68,097, amounting to Kshs. 165,594. Compensation and gratuity reflect the total amount of Kshs. 522,081 awarded.
3. The Claimant filed an application dated 23<sup>rd</sup> September 2024, founded on his affidavit sworn on the same date, seeking review of the Judgment.
4. He states that his gross monthly salary was Kshs. 85,997, as shown in his pay slip for the month of October 2023.
5. He states that the Trial Court erred, by adopting the sum of Kshs. 68,997 as his basic monthly salary, instead of Kshs. 85,997.
6. Compensation ought to have been calculated at Kshs. 515,985, not Kshs. 356,487, while gratuity over a period of 2 years, ought to have been calculated at Kshs. 206,394, not Kshs. 165,594.
7. The total award ought to have been Kshs. 722,397, not Kshs. 522,081.



8. The Respondent filed a replying affidavit, sworn by its Head of Finance and Administration, Richard Koech, on 28<sup>th</sup> September 2024.
9. Koech states that the Claimant's contract of employment, provided for gratuity at 7% of basic salary.
10. The basic monthly salary earned by the Claimant, was Kshs. 57,598.
11. 7% of Kshs. 57,598 over a period of 2 years, translated to gratuity at Kshs. 96,596.
12. The prayer for gratuity, and award, at 10% of the gross salary is not founded on the contract.
13. Parties agreed that the application is considered and determined on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions at the last mention before the Court, on 18<sup>th</sup> October 2024.

**The Court Finds: -**

14. Review of decisions made by the Court, is governed by Rule 74 of the E&LRC [Procedure] Rules, 2024. Previously the applicable Rule, was Rule 33 of the E&LRC [Procedure] Rules, 2016.
15. Order Orders 45 and 51 of the Civil Procedure Rules, cited by the Claimant in his application have no application to the review jurisdiction of the E&LRC.
16. The Respondent, through its replying affidavit, does not appear to dispute that there was an error in calculation of 6 months' salary, awarded as compensation for unfair termination.
17. Section 49 [1][c] of the *Employment Act*, prescribes compensation for unfair termination, up to a ceiling of 12 months' gross salary.
18. The Claimant's pay slip for the month of October 2023, presented before the Court, indicates his gross monthly salary was Kshs. 85,997.60.
19. The correct compensatory award ought therefore, to have been Kshs. 85,997.60 x 6 = Kshs. 515,985.60.
20. The order for compensation for unfair termination is reviewed, and compensation awarded at Kshs. 515,985.60.
21. The letter of appointment issued to the Claimant dated 11<sup>th</sup> September 2020, granted to him gratuity, at the rate of 10% of his basic salary.
22. The contract was renewed on 31<sup>st</sup> October 2022, granting gratuity at the rate of 7% of the basic salary.
23. The basic salary in the renewal letter dated 31<sup>st</sup> October 2022, remained Kshs. 57,498 monthly.
24. 7% of Kshs. 57,498 amounts to Kshs. 96,596.64.
25. The order on gratuity is reviewed, and gratuity awarded at Kshs. 96,596.64.
26. In total the amount payable to the Claimant by the Respondent, is reviewed and awarded at Kshs. 612,582.24.

It is ordered: -

- a. The Judgment of the Court delivered on 25<sup>th</sup> July 2024, is reviewed and varied as follows-
  - I. Compensation for unfair termination is awarded at Kshs. 515,985. 60.
  - II. Gratuity is awarded at Kshs. 96,596.64.



III. Total award is corrected to Kshs. 612,582. 24.

b. No order on the costs of the application.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU,  
UNDER PRACTICE DIRECTION 6 [2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, 2020 THIS 26<sup>TH</sup> DAY OF NOVEMBER 2024.**

**JAMES RIKA**

**JUDGE**

