



**Karimi v Katheri Farmers Co-operative Society Limited (Cause E022 of 2023) [2024] KEELRC 2718 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2718 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
CAUSE E022 OF 2023  
ON MAKAU, J  
NOVEMBER 5, 2024**

**BETWEEN**

**WINFRED KARIMI ..... CLAIMANT**

**AND**

**KATHERI FARMERS CO-OPERATIVE SOCIETY LIMITED ..... RESPONDENT**

**RULING**

1. On 12th September 2024, I delivered judgment in this matter in which I made the following orders: -
  - a. Declaration that the respondent has constructively dismissed the claimant.
  - b. Award of Kshs.270,100.00 for the unlawful dismissal.
  - c. Terminal dues under clause 18 of the CBA.
  - d. Costs and interest at court rates from the date of this judgment.
  - e. The award is subject to statutory deductions.
2. I further directed the respondent to compute the said terminal dues payable to the claimant as per Clause 18 of the CBA and file in court within 30 days of the judgment for adoption as part of the judgment. The respondent computed the same vide its Advocates' letter 30<sup>th</sup> October, 2024, thus pension of Kshs. 359,568 plus 60 days salary for every year completed in service being Kshs. 920,208 totalling to Kshs. 1,279,776. The said computation was based on the basic monthly salary.
3. The claimant agreed with the computation of the pension but disputed the use of basic salary for computation of the additional two months salary under clause 19 of the CBA. He contended that the gross salary of Kshs 27,010 should be used in the computation which equals to Kshs. 1,296,480 plus pension of Kshs. 359,568 totalling to Kshs.1,656,048.



4. Clause 18 of the CBA provides for what is to be paid to a graded employee whose employment is terminated by the respondent, thus:

“(ii) Graded staff will be paid their full retirement benefits if one has completed serving the Co-operative society for more than 10 years and has attained the age of 40 years.”

5. The retirement benefits are provided in Clause 19 of the CBA as follows:

“... graded staff will be paid retirement benefits as follows

- i. Provident fund plus
- ii. 60 days salary for every year completed in service.”

6. Salary has not been defined in the CBA, but I believe that the parties intended it to mean basic salary otherwise, nothing prevented them from expressly using the gross salary if they intended to include allowances. In the case of *Postal Corporation of Kenya vs. Andrew K. Tanui* [2019] eKLR the Court of Appeal defined gross salary as follows: -

“Gross salary would then be the amount calculated by adding up one’s basic salary and allowances, before deduction of taxes and other deductions. Each case must be examined to identify the nature of the allowances given and whether they form part of the gross salary.”

7. In view of the matters stated above, I agree with the computation by the respondent of Kshs 1,279,776. Consequently, the final orders in the judgment are as follows: -

- a. Declaration that the respondent has constructively dismissed the claimant.
- b. Award of Kshs.270,100.00 for the unlawful dismissal.
- c. Terminal dues under clause 18 of the CBA assessed at Kshs.1,279,776.
- d. Costs and interest at court rates from the date of the judgment.
- e. The award is subject to statutory deductions.

**DATED, SIGNED AND DELIVERED AT MERU THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

This ruling has been delivered to the parties via Teams video conferencing with their consent.

**ONESMUS N MAKAU**

**JUDGE**

