



**Karonji v Guardian Bank Limited (Cause E6560 of 2020)  
[2023] KEELRC 1337 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1337 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6560 OF 2020**

**L NDOLO, J**

**MAY 25, 2023**

**BETWEEN**

**DANIEL GATIMU KARONJI ..... CLAIMANT**

**AND**

**GUARDIAN BANK LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant in this case, Daniel Gatimu Karonji, was employed by Guilders International Bank, which was subsequently taken over by the Respondent, Guardian Bank Limited, upon which the Claimant's service was duly transferred.
2. The Claimant brings this claim against the Respondent, seeking payment of the sum of Kshs 1,787,500, which he refers to as unpaid service pay.

The Respondent filed a Memorandum of Response dated March 12, 2021.

3. At the trial, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, Joseph Wachira. Both parties further filed written submissions.

**The Claimant's Case**

4. The Claimant began his career with Guilders International Bank on 18<sup>th</sup> January 1993. Upon a takeover by Guardian Bank Limited, the Claimant's service was duly transferred.
5. The Claimant alleges that due to lack of a comprehensive and sustainable Retirement Benefits Scheme, it was the Respondent's custom to pay its retiring employees service pay at 15 days' salary for every year served.



6. According to the Claimant, in terms of the law applicable at the time of his employment and as later codified in the *Employment Act, 2007* service pay upon retirement is provided for at 15 days' salary for every completed year of service.
7. The claimant states by a circular dated July 25, 2018, the Respondent's Managing Director, while introducing a Pension Benefits Scheme, unilaterally capped service pay at 12 years of service, irrespective of the number of years served.
8. The Claimant states that he had served the Respondent for a period of 25 years from January 1, 1993 to December 31, 2018.
9. He therefore claims the sum of Kshs 1,787,500 being service pay for 13 years plus costs and interest.

### **The Respondent's Case**

10. In its Memorandum of Response dated March 12, 2021, the Respondent admits having employed the Claimant as pleaded in the Memorandum of Claim.
11. The Respondent denies the existence of a custom by which service pay was paid to retiring employees. The Respondent states that all its employees are contributing members of the National Social Security Fund and that the allegation of lack of a sustainable Retirement Benefits Scheme is misconceived.
12. The Respondent further denies that its internal circular dated July 25, 2018 addressed the issue of service pay or its capping. According to the Respondent, the circular merely communicated that notwithstanding the introduction of a Pension Benefits Scheme, employees who as at 31 July 2018, had served for a minimum of 5 continuous years after confirmation, would, at the sole discretion of the Respondent's HR Committee, be entitled to compensation under the gratuitous Retirement Benefit Scheme, subject to the applicable ceiling.
13. The respondent states that as at the date of the internal circular, the capping of the gratuitous payment at a maximum of 12 years, had been incorporated into the Human Resources Manual.
14. The Respondent avers that the Claimant's terminal dues were tabulated as made up of; leave pay for 22 days, salary for his last month in employment and a gratuity at the rate of 15 days' salary for every completed year of service, subject to a maximum of 12 years, pursuant to Clause 9.1 of the Human Resource Policy and internal circular dated July 25, 2018.

### **Findings and determination**

15. This is a single issue claim being whether the Claimant is entitled to service pay for 13 years, in the sum of Kshs 1,787,500.
16. The Claimant bases his claim on the following paragraph in an internal memo dated July 25, 2018:

“Those employees who have put in more than 5 continuous years after confirmation as at August 31, 2018, may at the sole discretion of the HR Committee, be paid compensation as per the existing scheme only at the time of leaving employment of the bank and the amount so payable will be as per the Approved Scheme subject to deduction of income tax at the applicable rate at the time of payment. The amount will be at the rate of 15 days Basic Salary paid to the employee as at July 31, 2018 for each completed number of years of service, subject to ceiling on such payments as per the scheme. Such amount will not accrue interest and will be paid at the time of the employee retiring or leaving the employment of the bank.”



17. According to the Claimant, the foregoing paragraph constitutes a unilateral decision by the Respondent to diminish his terminal benefits to his detriment.
18. In countering the Claimant's assertion, the Respondent states that the contentious paragraph was no more than a restatement of the existing policy by which retiring employees were paid a gratuity at the rate of 15 days' salary for every completed year of service, up to a maximum of 12 years.
19. The Respondent referred the Court to Clause 9.1 of the Human Resources Policy which provides inter alia:

“Employees who have put in 5 years of continuous service after confirmation will be paid an amount upon leaving the bank's service, at the rate of 15 days of last drawn salary for each completed year of service counted from the date of joining, with such payment subject to a maximum 6 months last drawn salary. The requirement of 5 years of continuous service and/or maximum 6 months salary may be varied by the HR Committee on case to case basis based on the performance of the employee during the tenure of service.”
20. Upon perusal of the internal memo dated July 25, 2018 and Clause 9.1 of the Human Resources Policy, I have come to the conclusion that the relevant paragraph in the internal memo is indeed a restatement of Clause 9.1 of the Policy.
21. In his testimony before the Court, the Claimant stated that he was aware of this policy. He also confirmed that his gratuity payment was made in accordance with the policy.
22. I therefore find no basis for the Claimant's claim that he was not paid all his terminal benefits.
23. The final conclusion is that this claim is without basis and is disallowed.
24. Each party will bear their own costs.
25. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY MAY 2023**

**LINNET NDOLO**

**JUDGE**

**Appearance**

**Mr. Namada for the Claimant**

**Mr. Mutua for the Respondent**

