



**Kenya Union of Commercial Food and Allied Workers v Iriaini Farmers Co-operative Society Ltd (Cause E039 of 2021) [2023] KEELRC 2132 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2132 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E039 OF 2021  
ON MAKAU, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**IRIAINI FARMERS CO-OPERATIVE SOCIETY LTD ..... RESPONDENT**

**RULING**

1. The application before me is the claimant's Notice of Motion dated April 20, 2023. It is brought under section 12 of the *Employment and Labour Relations Court Act* and Rule 33 of the *ELRC Procedure Rules* and basically seeks the following orders:-
  - a. Review of the Judgment delivered on October 31, 2022 to include the amount awarded as service gratuity for 9 years.
  - b. Costs of the application.
2. The Application is premised on the grounds set out on the body of the motion and in the Supporting Affidavit sworn on April 20, 2023 by Helina Macharia. In brief the applicants case is that on October 31, 2022, the court entered judgment for payment of terminal benefits for the grievant, Mr Fredrick Maina Ithiru; that though the court gave the formula for assessing service gratuity, it failed to indicate the sum awarded; and that the Kshs 608,724.00 awarded in the judgment did not include the item of service gratuity.
3. The applicant prays, therefore that the judgment be reviewed and varied to correct the error apparent on the record. The application is not opposed.
4. I have carefully considered the application and the impugned judgment. It is true that on page 5 of the judgment, Marete J awarded the claimant service gratuity. He gave the formula as Kshs 46,439 x



15/30 x 9 years=Kshs 208,975.50. The claimant had prayed for Kshs 29,891 x 30% x 12 x 9 years= Kshs 968,468.40.

5. I have considered Clause 15 of the Collective Bargaining Agreement (CBA) which provides that:-

“...terminal benefits shall be calculated at the rate of 30% for each completed year of service based on wages at the time of retirement or termination and any other legal entitlement.”

6. The above Clause does not resonate with the pleadings by the claimant. The clause has also not stated whether the rate of 30% is the annual wages or just 30% of the monthly wages for each completed year of service. The applicant has not shown why the formula in its pleadings should be followed. The court cannot rewrite the contract for the parties.

7. It seems that the trial court (Marete J) faced the above challenge and decided to award service gratuity based on section 35 of the *Employment Act* being 15 days' pay per year of service. Hence Kshs 46,439 x 15/30 x 9 years =Kshs208,975.50. In that regard, I will not interfere with the said award and the impugned judgment. Consequently, I dismiss the Notice of Motion dated April 20, 2023 with no order as to costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 22ND DAY OF SEPTEMBER, 2023.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

**In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> April 2020, this ruling has been delivered to the parties online with their consent, the parties 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.**

**ONESMUS N. MAKAU**

**JUDGE**

