



Rotiken v Olekina (Cause E165 of 2021) [2023] KEELRC 2723 (KLR) (31 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2723 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E165 OF 2021
JK GAKERI, J
OCTOBER 31, 2023**

BETWEEN

ZAKAYO ROTIKEN CLAIMANT

AND

LEDAMA OLEKINA RESPONDENT

RULING

Adoption of computations of gratuity payable to the Claimant.

1. By its judgement delivered on 26th September, 2023, the court awarded the Claimant gratuity at 31% of the actual amount paid to the Claimant for the duration served in accordance with the terms of Clause 7 of the contract of employment dated 1st September, 2017, as no documentary evidence had been provided to enable the court determine the amount due as gratuity.
2. Bank statements availed by the Claimant's counsel show that the Claimant's bank account at the Equity Bank received the sum of Kshs.1,474,146.45 from 1st January, 2017 to 31st December, 2020.
3. Salary payment commenced on 1st November, 2017 and the last salary was paid on 8th September, 2020.
4. Initially, the salary amounted to Kshs.36,937.00 but from 2nd March 2018, it rose to Kshs.37,491.00 per month, fell to 37,490.75 from 11th November, 2019, rose to Kshs.40,373.35 from 4th May, 2020 but fell to Kshs.28,030.00 per month till the end of the contract.
5. The two sets of statements under the name Zakayo Rotiken, Account No. xxxx show the amounts deposited by the Narok County Senator save for four deposits of Kshs.21,000/=, Kshs.16,491/=, Kshs.12,000/= and Kshs.31,320/= amounting to Kshs.80,811/= whose source is unclear.
6. However, counsel submitted that the account in question was exclusively a salary account and there is no evidence to the contrary.
7. Counsel assessed the amount payable at Kshs.456,985.39 being 31% of the gross of Kshs.1,474,146.45.



8. Despite service of the suit, the Respondent neither filed a response nor participate in the proceedings.
9. Consequently, the Claimant's claim for gratuity computed by the Claimant's counsel is hereby adopted as the order of the court for purposes of execution, Kshs.456,985.39.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 31ST DAY OF OCTOBER 2023

DR. JACOB GAKERI

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 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

