



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO.18 OF 2020**

***(Before D.K.N.Marete)***

**EUNICE MUTHONI GITHINJI.....CLAIMANT**

**VERSUS**

**KIAMA FARMERS CO-OPERATIVE SOCIETY through Chairman**

**CHARLES N.NGURE.....RESPONDENT**

**J U D G M E N T**

This matter was originated by a Memorandum of Claim dated 10th July, 2020. The issue in dispute is;

*Whether the Claimant is entitled to payment of employment benefits from the Respondent.*

The Respondent in a Respondent's Response to Claim dated 9th October, 2020 admits part of the claim and prays that the grievant be awarded an amount of Kshs.40,482.00.

The Claimant's case is that at all material times to this suit, she has been an employee of the Respondent as Secretary Manager from 2003 to 30th May, 2018 when she resigned at a salary point of Kshs.80,898.00.

The Claimant's further case is that her resignation was normal and regular thus she is entitled to 15 years' service and terminal benefits for such period amounting to Kshs.974,572.00. She admits owing Kshs.70,000.00 and Kshs.143,632.00 being salary advance and remission to pension leaving a balance of Kshs.761,310.00. This is inclusive of payment for outstanding leave amounting to Kshs.94,451.00 all totalling Ksh.855,761.00.

Her other case is that other employees who resigned were given their dues as per the tabulation of 4th August 2015 without delay and the respondent is thus discriminating her for no justifiable reason.

She prays as follows;

- 1. The Respondent be ordered to pay the Claimant gratuity benefits amounting to Kshs.855,761.*
- 2. Cost of this suit.*
- 3. Interest in (1) above at court rates from 30th May 2018 and date of judgment respectively.*

The Respondent denies various aspects of the claim but admits the claimant's employment as a Secretary Manager. Her pay as at 2015 was Kshs.53,231.00.

Her further case is as follows;

- 4. The respondent avers that though the claimant is entitled to terminal benefits for the period between 2003 to 2015 when employees were enrolled in a pension scheme, the tabulation can only be in terms of the Collective Bargaining agreement which the claimant signed and which provided that;*

*“Where an employee is terminated or retires his/her benefits shall be calculated at the rate of 25% of one’s basic pay for each year of service based on the wages at the time of termination.”*

5. *The respondent avers that the calculation by the claimant is based on an illegal tabulation which did not adhere to the Collective Bargaining agreement which the claimant had signed in her capacity of secretary manager of the Respondent.*

6. *That a proper tabulation of the claimant shows that the claimant is only owed the sum of Kshs.40,882 made up as follows;-*

*25% x Kshs.53,231 x 12 years - Kshs.159,693*

*Less amount submitted to pension scheme - Kshs.143,262*

*Balance Kshs. 16,431*

*Add leave pay for 35 days - Kshs.94,451*

*Total Kshs.110,882*

*Less salary advance - Kshs. 70,000*

*Balance due - Kshs. 40,882*

The issues for determination therefore are;

1. Whether the Claimant is entitled to the relief sought?
2. Who bears the costs of this cause?

The 1st issue for determination is whether the Claimant is entitled to the relief sought. The Claimant in her written submissions dated 22nd June, 2021 reiterates her case for due payments on resignation.

The Respondent on the other hand submits a reiteration of her case in opposition to the claim.

The Claimant in reply to the Respondent’s submissions submits as follows;

1. a) *The pension scheme came into force in the year 2015. The 25% of each year worked was tabulated as per schedule filed in the list of documents as document No.2.*
- b) *Out of the tabulated amount, the employer submitted (Kshs.20,466) for 7 months amounting to Kshs.143,262.*
2. *From May 2015, the employer was submitting 25% of the basic pay each month to the pension scheme.*

*The Personal Retirement Benefit Scheme Statement listed as document No.2 in the claimant’s further list of documents filed on 9th February 2021 (copy attached for ease of reference) clearly shows the amount submitted each month in 2017 and 2018. Therefore, there is no problem of interpretation as alleged by the respondents or at all.*

This matter tilts in favour of the Claimant. She has overwhelmingly demonstrated a case in favour of the claim. The Respondent’s case is a mere denial of the claim. It is not substantial. I therefore find that the Claimant is entitled to the relief sought. And this answers the 1st issue for determination.

I am therefore inclined to allow the claim and order relief as follows;

- i) The Respondent be and is hereby ordered to pay Kshs. 855,761.00 being the Claimant’s gratuity benefits.
- ii) Interest in (1) above at court rates from the date of these orders of court.
- iii) The cost of the claim shall be borne by the Respondent.

**Dated and delivered at Nyeri this 9th day of March, 2022.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mrs.Wahome instructed by Mercy Kabethi & Company Advocates for the Claimant.
2. Mr.Karingithi instructed by Maina Karingithi & Company Advocates for the Respondent.