



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

**CAUSE NO. 943 OF 2018**

(Before Hon. Lady Justice Maureen Onyango)

**STEPHEN GACHAU MURAGE..... CLAIMANT**

**VERSUS**

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

**JUDGMENT**

Vide memorandum of claim dated 4<sup>th</sup> June and filed on 13<sup>th</sup> June 2018, the claimant avers that the respondent miscalculated his terminal dues. He prays for payment of the same at Kshs.1,150,000/- together with interest thereon and costs of the suit.

The respondent filed a response to the memorandum of claim in which it denies owing the claimant the amount claimed.

**Facts of the Case**

The claimant was employed by the respondent, a commercial bank incorporated in Kenya under the Companies Act, on 2<sup>nd</sup> May 1996. He worked for the respondent until 30<sup>th</sup> January 2018, when he gave the respondent three month' notice of resignation. Upon leaving the bank on 30<sup>th</sup> April 2018, after serving notice, he was paid Kshs.1,050,000/- as gratuity together with his gross salary for the month in the sum of Kshs.200,000/-. The net paid into his account after deduction of PAYE was Kshs.1,013,071/- which he signed for on 30<sup>th</sup> April 2018.

**Claimant's Case**

The claimant avers that he was underpaid as he was entitled to gratuity of Kshs.2,200,000/- at the rate of 15 days salary per year worked having worked for 22 years with a final salary of Kshs.200,000/-.

**Respondent's Case**

The respondent's case is that the claimant was paid according to its Manual on Human Resource Clause 10.0 which provides that–

**“10.0 Terminal Benefit Scheme**

The Bank has informally floated a compensation scheme to encourage and reward employees who choose to remain with the bank for long number of years to be paid at time of their leaving the bank. The Board of Directors have absolute right to vary the scheme and/or withdraw the scheme at any time, without assigning any reason,

It is not a registered Superannuation scheme and it is administered on 'cash basis' and hence no prior provisions are required to be made.

The salient features of the scheme are:

- 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 of 6 months last drawn salary. The requirements of 5 years of continuous service and/or maximum 6 months' salary may be varied by the HR Committee on case to case basis.

- The payment to be paid on the last date of service of the employee,
- The payments are subject to deduction of Payee at the appropriate rate at the time of payment.”

### **Determination**

When this case came up for directions on 2<sup>nd</sup> May 2019, I directed that parties proceed by way of documents and written submissions as the only issue contested was the amount of gratuity payable to the claimant following his voluntary resignation. All other facts were not contested.

I have considered the provisions of Clause 10.0 of the respondent’s Manual on Human Resources. The provisions thereof are explicit, that an employee who leaves service after serving for a minimum of 5 years is entitled to gratuity at 15 days based on the last salary subject to a cap of 6 months’ salary. At a salary of Kshs.200,000/- per month, the claimant’s 6 months’ salary was Kshs.1,200,000/- which is what he was paid.

I thus find no merit in the claim herein with the result that the same is dismissed.

There shall be no orders for costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23<sup>RD</sup> DAY OF APRIL 2020**

**MAUREEN ONYANGO**

**JUDGE**

### **ORDER**

In view of the declaration of measures restricting court of 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> March 2020 and subsequent directions of 21<sup>st</sup> 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.

**MAUREEN ONYANGO**

**JUDGE**