



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE 874 OF 2018**

*(Before Hon. Lady Justice Maureen Onyango)*

**GEORGE NGUGI KIARIE AND CHARITY WANGUI KIARIE**

**(Suing as the Administrators of the Estate of**

**MARY NJERI KIARIE).....CLAIMANTS**

**VERSUS**

**THE BOARD OF MANAGEMENT**

**MUNG'ARIA SECONDARY SCHOOL.....RESPONDENT**

**JUDGMENT**

The Claimants are the personal representatives of the estate of Mary Njeri Kiarie (deceased) with the authority to commence this suit on behalf of the estate of Mary Njeri Kiarie (deceased). The deceased was employed at Mung'aria Secondary School on 17<sup>th</sup> May 1983, as a secretary for a monthly salary of Kshs.400.00 which was increased over the years. She worked for the school until her demise on 5<sup>th</sup> September 2015.

The claimants aver that Respondent has refused to pay the administrators of the deceased's estate her salary for the month of August 2015 and the benefits due to her as at the time of her demise. As such, they are seeking the following reliefs-

- a. Kshs.990,662.00 being the salary for August 2015 in the sum of Kshs.29,572.00 and Benefits amounting to Kshs.961,090.00 (Kshs.29,572.00 x 32.5).
- b. Costs of this suit.
- c. Interest on (a) and (b) above at court rates from the date of filing this suit until payment thereof in full.
- d. Any other or such further relief as this Court may deem just.

The Claimants aver that the salary of the deceased at the time of her demise, was Kshs.29,572.00. The Claimants also aver that they made demands to the Respondent and informed the respondent of the intention to sue, but the Respondent denied the claim.

There was no appearance on behalf of the Respondent and no response was filed.

The matter proceeded to trial where GEORGE NGUGI KIARIE, the 1<sup>st</sup> Claimant adopted his witness statement dated 5<sup>th</sup> June 2018 and relied on the documents filed, as his evidence. It was his testimony that before instructing a lawyer, the local chief had engaged the Respondent who promised to pay but never did. He urged this Court to grant the reliefs sought.

The Claimants thereafter filed their written submissions. They submit that there being a CBA between KUDHEIHA and all Boards of Governors established under the Education Act, the deceased is entitled to service gratuity pursuant to clause 31 of the CBA. Further, that the deceased had worked continuously for 32½ years and was 54 years at the time of her demise. They rely on the cases of **KUDHEIHA Workers vs. Kariti Secondary School [2010] eKLR** and **KUDHEIHA Workers vs. Board of Governors Kerugoya Boys Secondary School [2010] eKLR**.

## **Analysis and Determination**

After considering the pleadings filed by the Claimants and analyzing the evidence and submissions presented before this Court, I find that the only issue for determination is whether the Claimants are entitled to the reliefs sought.

The Claimants' case is that at the time of the deceased's demise, she was earning a salary of Kshs.29,572.00. The Respondent has not filed a response or produced any evidence to disprove this.

However, the pay slip produced by the Claimants at page 14 of their bundle indicating that the deceased's salary was Kshs.29,572.00, is for November 2014. Additionally, there is a bank statement from Unaitas Sacco at page 15 of the bundle for the period 1<sup>st</sup> June 2015 to 6<sup>th</sup> November 2015, which indicates that the salary for the month of August 2015 was Kshs.24,472 and that it was paid into the deceased's account on 4<sup>th</sup> September 2015. Consequently, the claimants are not entitled to the claim for the deceased's salary for August 2015.

The claim for benefits in the sum of Kshs.961,090.00 fails for want of particularization and proof of the same. This court cannot rely on the CBA annexed to the Claimants' submissions as there is no evidence that the claimant's terms of employment was subject to the same.

However, in the letter dated 10<sup>th</sup> August 2017, the respondent agreed to pay gratuity at ½ a month's salary for every year worked although it denied that the claimant worked for 32½ years as alleged in the memorandum of claim.

Having worked from 1<sup>st</sup> March 1983 as reflected in the letter of appointment, the deceased indeed worked for a total of 32 years. At the gross salary of Kshs.29,572, reflected in her pay slip, the half salary would be Kshs.14,786/=. For the 32 years she worked, the gratuity amounts to Kshs.473,152/= which I award to the claimants.

**I therefore enter judgment for the claimants against the respondent in the sum of Kshs.473,152/=.**

The respondent will further pay costs of the claim. The decretal sum shall attract interest at court rates from date of judgment.

**ATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7<sup>TH</sup> DAY OF NOVEMBER 2019.**

**MAUREEN ONYANGO**

**JUDGE**