



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NUMBER 1887 OF 2016**

**PROF. ALFRED MWONGERA MUTEMA.....CLAIMANT**

**VERSUS**

**KENYA METHODIST UNIVERSITY.....RESPONDENT**

**RULING**

1. On 25<sup>th</sup> April, 2017 the court directed that it would entertain the application dated 9<sup>th</sup> March, 2017 only to the extent of the issue of interest payable, the rate thereof and commencement date. The court summarily rejected other aspects of the application.
2. Mr Gacheru for the claimant submitted that the rate of interest applicable was the bank rate. According to counsel, the evidence on record indicated that the gratuity sum was due to the claimant on or about 24<sup>th</sup> March, 2015 when the contract expired. He submitted that clause 1.0 of the contracts stated that the claimant was entitled to gratuity of 31% of the total basic salary earned for the period after satisfactory completion of the said period.
3. Counsel further submitted that the gratuity amount having already accrued to the claimant and the respondent having withheld it, the respondent was doing so unjustly. Had the respondent borrowed this money from a bank to do what he did, it could have paid interest at bank rates. Counsel further submitted that there was nothing under section 26 of the Civil Procedure Act that excluded the court from awarding interest higher than court rates.
4. Ngunjiri for the respondent submitted that claimant was not entitled for any interest since case law had established that for a party to be entitled to an award of damages he must have been deprived of use of his goods and money by a wrongful act on the part of the defendant. Counsel relied on the case of **Later Vs Mbiyu [1965] EA 392** cited in the case of **Francis Joseph Kamau Ichatha Vs HFCK**.
5. According to the counsel at no time had the respondent denied the claimant's claim for gratuity payment, the respondent who is currently undergoing financial constraints engaged the claimant in negotiations as to how the gratuity could be paid. From the letter exchanged it was clear that both the claimant and the respondent were exchanging offers on the number of installments to be paid as such gratuity was not unjustly or unfairly withheld from the claimant. Alternatively, the respondent submitted that if at all interest is ordered the interest should be at court rates which is 12% and further that the period should be from the date of filing suit.
6. There is no dispute that the claimant is entitled to gratuity. This entitlement accrued upon the expiry of his contract. The respondent did not pay the gratuity when it fell due prompting the claimant to file suit. The court became seized of the matter when the suit was filed. This therefore ought to be the period from which interest payable should be reckoned.
7. Concerning the interest rate courts have always awarded interest at court rates unless agreed to the contrary by the parties or in exceptional circumstances. No exceptional circumstances have been demonstrated in this case to warrant awarding of interest at a different rate.
8. In conclusion the court orders that interest is payable on the admitted gratuity amount at the rate of 12% p.a. from the date of filing suit until payment in full.
9. It is so ordered.

**Dated at Nairobi this 23<sup>rd</sup> day of February, 2018**

**Abuodha J. N.**

**Judge**

**Delivered this 23<sup>rd</sup> day of February, 2018**

**In the presence of:-**

..... for the Claimant

..... for the Respondent

**Abuodha J. N.**

**Judge**