



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 1333 OF 2014**

*(Before Hon. Lady Justice Maureen Onyango)*

**GRACE WANJIKU KAGENI WAIYAKI.....CLAIMANT**

**-VERSUS-**

**PEGRUME LIMITED.....RESPONDENT**

**JUDGMENT**

By memorandum of claim dated 30<sup>th</sup> July 2014 and filed on 14<sup>th</sup> August 2014, the claimant avers that she was employed by the respondent as Secretary and Personal Assistant to the Managing Director from 2<sup>nd</sup> July 1990 to 25<sup>th</sup> June 2011 when she left employment through retirement after serving the respondent for 21 years. Her last salary was Kshs.42,721.

The claimant avers that she was entitled to gratuity at half a month's salary for each year worked which she was not paid. She was also owed arrears of salary amounting to Kshs.90,838 which the respondent filed to pay.

The claimant further avers that on or about November 2007 while in the employment of the respondent she took a loan from KCB which was to be paid by check-off deductions from her salary by the respondent. She avers that the respondent made deductions from her salary and remitted the same to KCB from December 2007 till September 2008. She avers that from March 2010 to June 2011, the respondent failed to remit the check-off deductions made from her salary to KCB.

The claimant prays for the following orders against the respondent –

- a) An order of specific performance requiring the respondent to remit Kshs.313,48.42/= plus any accumulating interest to KCB.
- b) An order of specific performance requiring the respondent to pay the claimant a gratuity of Kshs.570,408/=.
- c) An order of specific performance requiring the respondent to pay the claimant salary arrears of kshs.90,838/=.
- d) An award of damages

e) Interest on a, b, c and d at courts rates

f) Costs of this suit.

g) Any other relief that the court may deem fit and just.

The respondent filed a defence denying all the allegations in memorandum of claim with the exception of the descriptive paragraphs, the date of employment of claimant and the fact that there is no other suit pending between the parties on the subject matter of this suit.

The claimant's case was heard on 27<sup>th</sup> June 2017. The case was fixed for hearing of the respondent's case on 18<sup>th</sup> December 2017. However on that date the respondent did not attend court.

At the hearing the claimant reiterated her averment in the claim and adopted her witness statement filed together with the memorandum of claim.

In the written submissions filed by the claimant, she relied on Section 35 of the Employment Act and the case of **MAX MASOUD ROSHANKAR & ANOTHER -VS- SKY AERO LIMITED [2014] eKLR**.

She further relied on the case of **JOHN MUIRURI KURIA -VS- KENYA PORTS AUTHORITY [2017] eKLR** in which the court held that terminal benefits must always be paid promptly upon termination.

The claimant prays for judgment against the respondent as prayed in her claim.

The respondent's case was closed by the court and directions taken for filing of written submissions. The respondent was served with both claimant's submissions and mention date for purposes of confirming filing of submissions and fixing of date for judgment. On the mention date on 7<sup>th</sup> February 2018 the respondent did not attend court and had not filed any submissions.

## **Determination**

The facts of this case are not contested. What is contested is whether or not the claimant is entitled to the prayers sought being gratuity, arrears of salary and money owed to KCB. The claimant further prays for damages.

### **Service Gratuity**

Section 35 (5) and (6) of the Employment Act provides for service pay as follows –

**(5) an employee whose contract of service has been terminated under subsection (1) (c) shall be entitled to service pay for every year worked, the terms of which shall be fixed.**

**(6) This section shall not apply where an employee is a member of-**

**(a) a registered pension or provident fund scheme under the Retirement Benefits Act;**

**(b) a gratuity or service pay scheme established under a collective agreement;**

**(c) any other scheme established and operated by an employer whose terms are more favourable than those of the service pay scheme established under this section; and**

**(d) the National Social Security Fund.**

The claimant attached payslips for the months of December 2009 and March 2010 which reflect that no

deductions were made in respect of NSSF. There is no evidence that the claimant was a member of any retirement benefits scheme or gratuity scheme. She is therefore entitled to service pay or service gratuity which I award her at Kshs.448,570.50/= calculated at 15 days salary for each completed year of service.

The claimant did not adduce any evidence to prove that she was owed arrears of salary amounting to shs.90,838 as claimed or state which months or years the arrears relate to.

On the deductions for KCB loan there is evidence that the respondent defaulted in remitting deductions from the claimant's salary which in her witness statement she states was shs.297,408/=. She has further annexed to the claim a schedule of how the amount was tabulated being 16 months from November 2008 to March 2010 at the rate of Kshs.18,588 per month.

I therefore enter judgment for the claimant against the respondent for the said sum of ksh.297,408/=.

The claimant prayed for general damages but did not state in respect of what the damages have been claimed. She was not unfairly terminated and her other prayers are liquidated and do not attract general damages. I find that she has not proved that she is entitled to general dammgges and dismiss the prayer.

In summary, I enter judgment for the claimant against the respondent in the total sum of Kshs.745,978.50/=.

In view of the fact that the sums awarded arise from non-payment of terminal dues and non-remittance of deductions from salary, I award the claimant interest from date of filing suit.

The respondent shall also pay the claimant's costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4<sup>TH</sup> DAY OF MAY 2018**

**MAUREEN ONYANGO**

**JUDGE**