



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE NO.2298 OF 2014**

**BANKING, INSURANCE & FINANCE UNION (KENYA).....LAIMANT**

**- VERSUS -**

**MAISHA BORA SACCO SOCIETY LTD.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Thursday 20<sup>th</sup> December, 2018)

**RULING**

The Court delivered judgment in the case on 26.10.2018 for the claimant against the respondent for:

- a) The declaration that the termination of the employment of the grievants by the respondent by way of redundancy was procedurally unfair.
- b) The respondent to pay each of the 57 grievants 3 months' salaries for unfair termination and the computed total be included in the decree and at the rate of monthly salaries stated in the schedule marked 1 on the submissions.
- c) The grievants be paid one month salary or wages in lieu of notice making a sum of **Kshs.1, 151, 840.00**.
- d) The grievants be paid underpayments for housing allowance at 15% of the basic salary amounting to **Kshs. 14, 434, 946.00**.
- e) The payments as ordered in this judgment be paid by 31.12.2018 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- f) The respondent to pay the claimant's costs of the suit.

In computing the dues per order (b) the parties have differed on whether in computing the 3 months' salaries for compensation under section 49 of the Employment Act, 2007 the underpayments for housing allowance at 15% of the basic salary should be included in the gross salary for purposes of section 49 of the Act.

Section 49(1) (c) provides that the employee may be paid, **“(c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal”** The Act does not define the meaning of **“gross salary”**. The **Black's Law Dictionary, 9<sup>th</sup> Edition** defines **“gross income”** as total income from all sources before deductions, exemptions or other tax reductions. Thus the court returns that **“gross salary”** under the section means the monthly basic salary and allowances as per the contract of service and therefore the 15% monthly house allowance that was found due under the relevant wage order was part of the gross monthly salary that was due. Thus, in computing the 3 months' gross salaries awarded in compensation, the 15% house allowance will be construed accordingly.

The Court returns that the gross salary under the section does not mean the last gross monthly salary actually paid but the last gross monthly salary or wage as per the contract of service. Thus there will be no absurdities such as an employer who had liability in salary arrears saying that because in the last month of termination there was no actual payment, then no compensation is due under the section. Conversely, if for one or other reason in the last month as at termination the employer overpaid the employee, it cannot be that the figure in the overpayment would apply in computing the gross salary under the section. To meet ends of justice in all cases between the employer and employee, the section can only be referring to that contractual gross monthly salary and nothing else.

In conclusion, the Court returns that **“gross salary”** in section 49 of the Act means the gross monthly salary per the contract of service and

the 15% of basic pay in house allowance as awarded will be reckoned as part of the grievants' gross monthly salary as at the time of termination because the Court found that it was part of their due regular payment under their respective minimum terms and conditions of service.

The parties will proceed to compute the decretal amount accordingly and each party shall bear own resultant costs of the proceedings leading to this ruling.

**Signed, dated and delivered in court at Nairobi this Thursday 20th December, 2018.**

**BYRAM ONGAYA**

**JUDGE**