



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

**AT NAIROBI**

**CAUSE NO. 853 OF 2010**

**KEN OLUOCH.....CLAIMANT**

**VERSUS**

**POSTAL CORPORATION OF KENYA LIMITED....RESPONDENT**

Ogoji for claimant

Miller for respondent

**RULING**

1. The respondent seeks an order for review of the judgment of the court delivered on the 9<sup>th</sup> December 2016 on the grounds that:-

(i.) The gratuity was awarded based on the gross salary instead of the basic salary as provided in the contract of service.

(ii.) The court ought to have awarded equivalent of one month's salary in lieu of notice and not three months' salary.

(iii.) The claimant ought not to have been granted 10 months' salary as compensation since he had not made request for renewal of contract.

2. The application is supported by an affidavit of Julius Opiyo sworn on 13<sup>th</sup> August of 2012.

3. The claimant filed grounds of opposition to the application on 16<sup>th</sup> May 2016 as follows: -

4. The application is misconceived, mischievous and in bad faith since it lacks basis.

5. There is no error on the face of the judgment and the application is a disguised appeal on the decision of the court.

**Determination**

**Gratuity**

6. The court is satisfied that the award of gratuity ought to be calculated at a rate of 25% of the basic

salary earned during the period and not on the gross salary in terms of the gratuity clause in the contract of service signed by the parties. **The award in judgment of the court is reviewed accordingly.**

**Notice Pay**

7. The court is satisfied that the claimant was entitled to the equivalent of three months' salary in lieu of notice in terms of the termination clause in the contract of service signed by the parties.

**Compensation**

8. This was a deliberate finding of fact and law by the court and may only be challenged by an appeal to the Court of Appeal and not by an application for review.

9. **The judgment of the court is reviewed accordingly.**

10. Each party to bear their own costs of the application.

**Dated, Signed and Delivered on this 17<sup>th</sup> Day of November 2017**

**MATHEWS NDERI NDUMA**

**JUDGE**