



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO 305 OF 2013

CHRISTINE NAFULA MUNIALO.....CLAIMANT

Versus

APPEX SECURITY SERVICES LIMITED.....RESPONDENT

Mr. Mochache for the claimant

Mr Wasuna for the respondent

JUDGMENT

1. Consent was recorded in this suit with exception of the claim for payment of service gratuity.
2. Section 35(5(c) of the Employment Act, 2007, provides;

“(5) A – employee whose contract of service has been terminated under Clause (1) shall be entitled to service pay for every year worked, the terms of which shall be fixed.”

3. Section 35(6) provides

“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 pay scheme established under this section; and*
 - d. *the National Social security Fund.”*
4. From the payslip of the claimant for the month of May 2012, produced by the claimant herself, she was a member of the National Social Security Fund (NSSF) and the respondent made monthly deductions of Kshs.200 from her salary for onward transmission to the fund. The claimant has not averred in the memorandum of claim that these deductions were not paid to NSSF together with the employer portion of the contribution to the fund.
 5. Accordingly, the claim for payment of severance pay has no merit and the same is dismissed.

6. Since the parties resolved most of the issues for determination amicably, the court makes no order as to costs.

Dated and delivered at Nairobi this 6th day of May, 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE