



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 348 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

MICHAEL OBUDHO AMONDI CLAIMANT

-Versus-

UNITED MILLERS LIMITED RESPONDENT

J U D G E M E N T

The Claimant filed this suit against the Respondent seeking payment of retirement benefits/gratuity. The Respondent filed a Memorandum of Defence denying owing the Claimant any retirement benefits or gratuity.

Facts of the Case

The Claimant was employed by the Respondent on 2nd April 1983 as a Laboratory Technician. He rose through the ranks to head of Quality Control Section. He retired on 31st August, 2014. His last salary was Shs.80,000.

The Claimant was issued with a notice of retirement on 13th May, 2014 informing him that he would retire on 31st August, 2014. He served the notice period and while clearing he inquired from the Human Resource Manager about his retirement benefits but was told there was none. His last pay was a net of Shs.26,255.40 after deductions amounting to Shs.79,255.40 in respect of NHIF, NSSF, Income tax and UML SACCO deduction.

The Claimant was aggrieved and filed this suit in which he alleges that he is entitled to gratuity for the 31 years he worked for the Respondent.

The Claimant testified that he was told by the Human Resource Manager that the new NSSF Act had scrapped gratuity. He testified that before him the Respondent paid gratuity at half basic salary per year worked to employees who retired from its service and others were even given vehicles.

Determination

The facts of this case are not contested except the issue of gratuity which the Claimant alleges is due to him while the Respondent denies the same.

Gratuity and retirement are not provided for by the law as part of terms presumed in every contract. The Regulation of Wages and Conditions of Employment Regulations provide for gratuity in some sectors only. However there is no general order for the Sector in which the Claimant was engaged, which

although not stated to court, I gather is the grain milling sector. There is therefore no statutory provision for payment of gratuity or retirement benefits to the Claimant.

There is also no contractual obligation on the part of the Respondent to pay the Claimant gratuity as the Claimant's contracts of employment that have been exhibited in his Memorandum of Claim do not provide for the same. The court notes that the Respondent retired the Claimant at age 55. His letter of retirement notice refers to **mandatory retirement age** but does not cite where that is provided for. The parties did not refer to the existence of any terms and conditions of service providing for mandatory retirement age.

The Claimant alluded to previous cases of payment of gratuity to employees who retired before him. He however did not provide proof of the same and the Respondent has denied that this has been the practice.

The Respondent's witness made some remarks about the Employment Act having done away with service gratuity. This is not the correct position. The Employment Act did not interfere with Service Gratuity where it was already a term of contract of an employee or was provided for under a wages order or collective bargaining agreement or paid as a practice of the employer. What Section 35(6) of the Employment Act provides is that where an employee is already benefiting from a registered pension or provident fund; or gratuity or service pay scheme established by the employer or under a collective bargaining agreement or is a member of NSSF, then he would not be entitled to service pay. The Claimant having been a member of NSSF, is not entitled to service gratuity.

The upshot is that the Claimant has not proved that he is entitled to retirement gratuity either through contractual or legal obligation with the result that the Claim fails and is dismissed with each party bearing its costs.

As a parting shot however, it is a shame that the Claimant worked for the Respondent with a clean record for 31 years and the Respondent did not find it improper to send him off without some token of appreciation for the long service. I trust the Respondent will review its decision and offer some ex-gratia send-off package for not only the Claimant, but all its employees who leave employment on grounds of retirement.

Dated and signed and delivered this 21st day of July, 2016

MAUREEN ONYANGO

JUDGE