2026 February | Employment

COURT OF APPEAL CLARIFIES THAT GROSS SALARY INCLUDES ALLOWANCES

Postal Corporation of Kenya v Tanui [2019] KECA 489 (KLR)

---

1. Background

In this case, the Appellant, Postal Corporation of Kenya, argued that allowances are not earned by an employee but are financial benefits given to the employee by the employer over and above the regular salary. In other words, it is an expense an employer accepts to incur to facilitate the employee's performance of his duties and is only payable up to the point of termination, not beyond it. In the circumstances, they argued that the High Court erred in finding that the Respondent was entitled to payment of his basic wages and allowances at the point of termination.

The Court of Appeal held as follows:

1. The definitions of wages and allowances are different and not interchangeable.

2. The Employment Act, 2007 does not define the terms "gross wages" or "gross salary." However, it defines "remuneration" as the total value of all payments in money or in kind made or owing to an employee arising from employment. Although the Act uses the terms "wages" and "salary" interchangeably, it refers separately to "wages" and "allowances" in section 18 and applies the term "gross wages" in section 20.

3. Further, section 49(1)(c) of the Employment Act provides that compensation for unfair termination may be awarded based on the employee's gross monthly wage or salary at the time of dismissal.

4. What then constitutes a gross monthly salary? Basic salary is the base income of an individual, being the fixed part of one's compensation package. On the other hand, an allowance is the amount received by the employee for meeting service requirements. It is provided in addition to the basic salary and varies from employer to employer.

5. Gross salary (or gross wages) is the amount calculated by adding an employee's basic salary and allowances before deduction of taxes and other statutory or contractual deductions.

6. Thus, the Court rejected the argument that gross wages or gross salary do not include any allowances and that it is the same as basic salary or basic wages.

2. Conclusion

This decision has significant implications for employers in relation to the structuring of remuneration packages, the treatment of allowances, and the computation of terminal dues and compensation under section 49 of the Employment Act. Employers are therefore advised to review their employment contracts, payroll structures, and internal policies to ensure clarity and alignment with the prevailing legal position.

Key Contacts

Anne Muema
Advocate / Managing Partner

Email: amutheu@mutieadvocates.com

Maureen Kubai
Associate

Email: mkubai@mutieadvocates.com

About Mutie Advocates

Mutie Advocates is a Nairobi-based law firm with a strong focus on legal compliance, data protection and privacy law, complemented by a broad range of legal services. Built on a foundation of legal excellence, the firm provides expert support in corporate and commercial law, employment and labour relations, intellectual property, litigation, dispute resolution and regulatory compliance. Known for its practical and client-centered approach, Mutie Advocates helps organizations navigate complex legal and regulatory landscapes through data audits, policy development and strategic legal advisory. The firm serves a diverse clientele, including individuals, corporates, non-governmental organizations and public institutions, delivering timely, effective and solution- oriented legal services.

Website: www.mutie-advocate.com
Phone: +254 768 042 180
E-mail: info@mutieadvocates.com
Address: Assi Centre, School Lane, Westlands
P O Box 211-00621, Nairobi

Disclaimer:

The views expressed in this article are for general guidance and should not be interpreted as legal advice. Mutie Advocates shall not be held liable for any reliance placed on this information without formal legal consultation. Always seek professional advice tailored to your situation.

Mutie Advocates