



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

(Before: Charles P. Chemmutut, J.,

J.M. Kilonzo & A.K. Kerich, Members.)

**CAUSE NO.42 OF 2001.**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL  
INSTITUTIONS, HOSPITALS & ALLIED WORKERS.....Claimants.**

**- v -**

**KIKUYU DAY SECONDARY SCHOOL.....Respondents.**

**Issue in Dispute:-**

**“Refusal by the Board of Governors (BOG) to pay Mr. Benson Gicho Karui (hereinafter called the grievant) the following:**

- 1. House Allowance from January, 1976 to August, 1982.**
- 2. Underpayment from January 1976 to August, 1982.**
- 3. Annual Increment from January, 1976 to August, 1982.”**

Mwari S. Njiru, Industrial Relations Officer, for the Claimants (hereinafter called the Union).

No appearance for the Respondents (hereinafter called the School).

**A W A R D.**

The Minister for Labour referred this dispute to the Court for consideration and determination on 24<sup>th</sup> April, 2001 in exercise of the powers conferred upon him by Section 8 of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act); and his reference, together with the statutory certificate from the Labour Commissioner under Section 14, subsection (9)(e) of the Act, were received by the Court on 3<sup>rd</sup> May, 2001. The dispute was then listed for mention on 18<sup>th</sup> May, 2001 when Mr. J.O. Kombewa appeared for the Union but there was no appearance for the School. In the circumstances, the case was listed for another mention on 8<sup>th</sup> June, 2001 when Mr. Kombewa again appeared for the Union, but once again there was no appearance for the School. In spite of the absence of the latter, however, the parties were directed and also notified to submit or file their respective written memoranda or statements on or before 28<sup>th</sup> June and 27<sup>th</sup> July, 2001, and the dispute was fixed for hearing on 23<sup>rd</sup> August, 2001. The parties did not submit or file their memoranda or statements as directed, and on the said date, i.e. 23<sup>rd</sup> August, 2001, the matter was stood over generally. On 20<sup>th</sup> September, 2001, Mr. E. Kaka, on behalf of the Hon. Attorney General, filed a Notice of Appointment, dated 24<sup>th</sup> August,

2001, to act for the School in this matter. The Union belatedly submitted their memorandum on 7<sup>th</sup> February, 2002. On 11<sup>th</sup>

February, 2002, the dispute was brought up for another mention on 21<sup>st</sup> February, 2002, but there was no appearance for the parties and the case was listed for a further mention on 11<sup>th</sup> April, 2002. On this occasion, Mr. Mwari S. Njiru appeared for the Union; and despite his absence, the Hon. Attorney General was granted an extension to file his reply statement on or before 10<sup>th</sup> May, 2002, and the dispute was fixed for hearing on 20<sup>th</sup> June, 2002. The Hon. Attorney General was also properly notified of this arrangement, but he neither filed his reply statement nor appeared throughout the entire proceedings of this case and no reasons were given for his failure to file the same or appear. The dispute was, therefore, heard *ex parte* on the said date, i.e. 20<sup>th</sup> June, 2002.

The case of the Union was that the grievant, who served the School as a teacher with a clean or unblemished employment record between January 1976 and September 1982, tendered his resignation but suffered the following terminal entitlements:-

(a) House allowance. Kshs.48,600/=

(b) Terminal benefits in accordance with the Teachers Service Commission Code of

Regulation, Chapter XI, Rule 74, Appendix

8: Kshs.1,070/= x 5 x 7 years. Kshs.37,450/=

(c) Underpayment of salary from January,

1976 to September, 1982 @ Kshs.90/= x 81

months. “ 7,290/=

(d) Underpayment on increment of Kshs.35/=

instead of Kshs.60/= per month from January

1976 to September 1982: i.e. Kshs.25/= x 81

months. “ 2,025/=

	Total	Kshs.95,365/=
Less amount paid	-	“ 11,000/=

Amount due to him Kshs.84,365/=.

The dispute was reported to the Minister for Labour who, after the usual investigation, recommended “that Mr. Karui be paid any difference in wages between the legal wages as per Teachers Service Commission salary scale and the actual wages he was paid during the period of his employment if any”.

Since the Hon. Attorney General for the School neglected or refused to file his reply statement, and also failed to appear during the proceedings in this matter despite having been notified to attend and state his case, I have no reason to disbelieve the case of the Union. In the circumstances, therefore, I award that the grievant be paid his outstanding terminal benefits of Kshs.84,365/= as shown hereinabove.

On consultation, the Members of the Court concur with this decision.

**DATED** and delivered at Nairobi this 16<sup>th</sup> day of October, 2002.

Charles P. Chemmutut,  
**JUDGE.**