



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**ELRC NO. 113 OF 2015**

**PETER WAMBUGU KARIUKI.....CLAIMANT**

**VERSUS**

**THE BOARD OF MANAGEMENT, MERERONI PRIMARY SCHOOL.....1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF EDUCATION.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Pursuant to the judgment issued in this matter on the 27<sup>th</sup> February, 2020, the Court directed the County Labour Office to assess the terminal dues for the claimant for the period between August, 2010 and December, 2014.
2. Subsequently the County labour officer filed its report dated 18<sup>th</sup> October, 2021 on 19<sup>th</sup> October, 2021.
3. The dues owing to the claimant under underpayments is a sum of Kshs. 192,011.85, leave days were calculated at Kshs.27,437, rest days/off days were calculated at Kshs.50,580, overtime was calculated at Kshs. 283, 251, while Public Holidays were calculated at Kshs 41, 355 all summing up to Kshs. 617,134.45.
4. The Court then directed the parties to file submission on the report of the labour officer.

**Claimants Submissions.**

5. The claimant submitted in agreement with how the labour officer calculated the terminal dues in the various heads save for the dues under leave days and rest/ off days. According to the claimant the grand total for leave days ought to be Kshs 30,806.40 and not Kshs 27,437 as indicated in the labour officer report. Further that the grand total for rest/off days stood at Kshs. 253,900.80 and not Kshs. 50,580 as submitted.

**Respondents' Submissions**

6. The Attorney General for the Respondent filed its submissions on the 1<sup>st</sup> December, 2021 and took issue with the calculations of leave days and submitted that for 93 leave days the claimant ought to be paid Kshs.19,755 and not Kshs 27,437 calculated by the labour officer.
7. I have considered the report of the Labour Office in relation to this claim and find that the claimant is in agreement with the respondent and the Labour Officer in terms of all dues save for that of leave days.
8. I have considered the submissions of the parties herein in relation to the labour officer's report. In terms of the calculation offered by the labour officer on the limb of underpayments, it is well guided by the legal notices prevailing at the time in question which she places at 192,011.85/= and which I adopt accordingly.
9. I also find the leave days well calculated in relation to the legal notice 197 of 1/5/2013. I adopt the calculation at 25.290/=.
10. In relation to off days, I have not been supplied with the master roll in order to ascertain that the claimant never went on off days. I therefore find the claim for off days not established.
11. As for overtime, I find the calculation by the labour officer in tandem with the law and adopt it at kshs.212,437.57/=. I also find the

claim payable for public holidays not supported by evidence of a master roll and I dismiss it.

12. In **TOTAL** I award the claimant as follows;

**1. Underpayments of kshs.192,011.85/=**

**2. Leave days 25,290/=**

**3. Overtime kshs.212,437.57/=**

**4. Unpaid wages in 2013 (9 months) – 22,500/=**

**GRAND TOTAL = 452,239/=**

**Less statutory deductions**

**5. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.**

**RULING DELIVERED VIRTUALLY THIS 20TH DAY OF JANUARY, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

**EKESA FOR CLAIMANT – PRESENT**

**RESPONDENTS – ABSENT**

**COURT ASSISTANT - FRED**