



REPUBLIC OF KENYA



KENYA LAW
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**Mumia v Board of Management, Murunyu High School (Cause 7 of 2016)
[2022] KEELRC 4870 (KLR) (27 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4870 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 7 OF 2016
HS WASILWA, J
SEPTEMBER 27, 2022**

BETWEEN

FANUEL ADOLWA MUMIA CLAIMANT

AND

BOARD OF MANAGEMENT, MURUNYU HIGH SCHOOL RESPONDENT

JUDGMENT

1. The claimant sued the respondent *vide* a memorandum of claim dated January 14, 2016, alleging to have been underpaid throughout his employment with the respondent.
2. He stated that he was employed by the respondent sometimes on September 10, 2009 as a general worker/ gardener earning a basic pay of Kshs 3,000 per month. In the year 2010 his pay was increased to Kshs 3500. On May 1, 2011 it was further increased to Kshs 5,000. On May, 2013 the respondent increased the claimant's salary to Kshs 6500, which money he earned till his retirement in April, 2015. This salary, according to the claimant, was way below the regulations of wages order pay for a general labourer.
3. Upon retirement the claimant was paid Kshs 39,000 as his terminal dues. He thus prayed for the following reliefs;
 - a. That the court order the respondent to pay the claimant compensation under provisions of section 49(1)(c) of the [Employment Act](#) to cater for the loss of money withheld by the respondents.
 - b. Costs of this suit.
 - c. Certificate of service.
 - d. Underpayments of Kshs 264, 513.15 as calculated at paragraphs 7-12 of the claim.



- e. Any other compensation the court may deem necessary to give.
4. The respondent entered appearance through the Honourable Attorney General and filed a response to claim on the July 15, 2016. In the response, the respondent states that the claimant was employed initially by Kamoronyo Primary school on February 3, 2009, which school gave birth to Murunyu High school and the board was inaugurated on July 1, 2009, which absorbed the claimant and the claimant continued working for them as a casual labourer. The claimant continued working for the respondent, while enjoying salary increase almost all years. Upon retirement the claimant was paid Kshs 39,000 as his terminal dues.
 5. The respondent maintain that the claimant received dues which was legally due to him and he was paid based on the available money and depending on the number of students enrolled in the school, a fact which the claimant was made aware of at the time of employment and agreed to be bound by the said terms of service. It is stated that since the claimant retired on account of age the claim for compensation under section 49 of the *Employment Act*, pleaded is not available, because the termination was not unfair as envisaged under the said section.
 6. On the certificate of service, the respondent stated that the same is available for collection. The respondent further stated that the terms of engagement including pay was agreed upon between the parties and that it was the only basis upon which the claimant was employed. Therefore, that the claim herein is filed in bad faith and the claimant should be estopped from contesting the said terms of employment.
 7. In response to the defence, the claimant maintained that he was employed by the respondent from the start and no point has he ever been employed by Kamuronyo Primary school. The claimant states that the handwritten letter is not his, neither is the signature. It was further stated that the claimant was underpaid and the respondent has not denied that fact or tabled evidence to the contrary.
 8. In the said reply, the claimant stated that he was employed as a general worker and his designation was that of a cook and worked as such till termination. He added that he carried out other duties alongside cooking. He therefore urged this court to allow the claim for underpayment as prayed.

Hearing.

9. The claimant testified as CW-1 and stated that he was employed by the respondent on February 3, 2009 as a support staff and tasked with several duties including; cooking, cleaning, messenger work, fetching water among others. He stated that as per the regulations of wages subsisting at the time, he was grossly underpaid to the tune of Kshs 288, 421.35/=. He also sought for Kshs 124,533 being compensation under section 49(c) of the *Employment Act*.
10. Upon cross examination by Ngira Advocate, the claimant testified that he worked for the respondent for 5 years. He stated that, at the time of employment he was 40 years old. He stated further that he was initially paid Kshs 3,000 while working for Kamoronyo primary school then increased to Kshs 3,500 upon moving to high school section. He stated that he was always the one that initiated the pay rise, and the same was increased to Kshs 6,500 which he received till his retirement. He testified that on retirement, he was paid Kshs 39,000 as his retirement package.
11. On re-examination, the claimant admitted that he worked in both primary and secondary school but was underpaid paid as compared to the regulations of wages issued by the government.
12. The respondent called two witness. The first was Pauline Mesenye, a cook at the respondent's school, who testified as RW-1 and adopted her witness statement dated July 15, 2016 which in a nutshell



stated that she was employed by the respondent together with the claimant and agreed the terms of employment and that they were aware of their pay at the time of employment and agreed to work on the said terms.

13. Upon cross examination by Owuor Advocate, the witness testified that she was employed with the claimant in Kamoronyo primary school, which later became Murunyu High school. She stated that the terms of engagement were similar though each of the employees had their own contracts of employment. She stated further that the respondent is a government school.
14. The second respondent's witness was John Thuita, the respondent's principal, who testified as RW-2 and adopted his witness statement of January 17, 2022 and produced the respondent's documents as their exhibits.
15. Upon cross examination by Awuor Advocate, the witness testified that he was not a principal at the time of employment of the claimant as such was not privy to the events of 2009 to 2015. However, that based on the documents and record, the claimant was employed as a cook though the claimants name does not appear in the minutes. He stated that the pay was agreed by board of management together with parents association as such binding to all employees employed by the management. He stated further that the issue of underpayment was raised after he retired.

Claimant's Submissions.

16. It was submitted for the claimant that he was underpaid throughout his tenure at the respondent. It was argued that the claimant was not a member of any trade union that could have regulated the salary payable to her as such the claimant ought to have been paid in accordance with regulations of wages order.

Respondent's Submissions.

17. The respondent submitted that the claimant left its employ upon retirement and not based on unfair termination as such he is not entitled to the prayers sought. The respondent relied on the case of *Wycliffe Jumallukol v Board of Management, Father Okodui Secondary School* [2022] eKLR.
18. On the reliefs sought, the respondent with regard to house allowance submitted that the claim for house allowance between 2009 and 2014, is statute barred as was held in *Teresia Wanjiku Ngugi v Kiambu Institute of Science and Technology* [2021] eKLR.
19. On underpayment, it was submitted that the pay which the claimant received was agreed upon between the parties and the claimant never raised an issue on that regard, in any case that having filed this suit in 2016 more than an year after the cessation of the injury (underpayment), the claim is caught up by doctrine of laches and the same should be dismissed by this court.
20. On costs sought, it was submitted that in accordance with provisions of section 27 of the *Civil Procedure Act*, costs are discretionary. He relied on the case of *Cecilia Karuru Ngaya v Barclays Bank of Kenya and another* [2016] eKLR. Accordingly, he urged this court to exercise its discretion and disallow the claim for costs and instead dismiss the claim and award them costs.
21. I have examined all the evidence and submissions of the parties herein. The fact that the claimant worked for the claimant is not in dispute.
22. It is also clear that the claimant worked for the respondent from September 2009 to April 2015 when he retired.



23. What is in dispute however is the salary the claimant was paid which he says he was paid below the statutory limit.
24. From the evidence adduced by the claimant herein however he was paid a salary of 3,500/= as per Appendix FAM I in 2010 which increased to 4,800/= in 2011, 6,500/= in 2013 to the time of retirement in 2015.
25. As tabulated in memorandum of claim paragraph 7, the claimant was indeed underpaid in relation to the minimum wage. The underpaid as tabulated amounted to 264,513.15/=.
26. The respondents have indicated that they paid the claimant the salary as agreed and depending on available money and number of students enrolled in the school.
27. The respondents have not exhibited any such agreement between claimant and themselves.
28. It therefore follows that the claimant was underpaid as pleaded and I enter judgment accordingly for him as follows;
 1. Kshs 264,513.15/= for underpayment of salary.
 2. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 27TH DAY OF SEPTEMBER, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Awuor for the Claimant – present

Nyambura holding brief for Ngira for Respondent – present

Court Assistant – Fred

