

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 1 OF 2012

(Formerly Cause 136 of 2010 at Nairobi)

**JOHN MWANGI KUNGU BEING LEGAL REPRESENTATIVE OF KUNGU MWANGI
(DECEASED).....CLAIMANT**

VERSUS

NEW MURARANDIA FARMERS CO-OPERATIVE SOCIETY.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday, 19th October, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 19.02.2010 through Mwaniki Warima & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Kshs. 125, 650.00 being unpaid salary for 6 months Kshs. 28, 950; pay in lieu of notice Kshs. 3, 900; accrued annual leave Kshs. 7, 800.00; and gratuity Kshs. 85, 000.
- b) The costs of the claim.
- c) Interest.

The claimant is the legal representative of one Kungu Mwangi (deceased) who was employed by the respondent as a watchman in July 1997 at Kshs. 3, 900.00 per month. The respondent suspended the employee from work sometimes in February 2008 on account of some theft. The employee was charged in Criminal Case No. 378 of 2008 in the Magistrate's Court at Murang'a for the alleged offence of stealing by servant and in alternative, failing to prevent a felony. While the criminal case was pending determination the employee sought to resume duty but was not allowed in view of the subsisting suspension.

The criminal case was heard and the claimant was acquitted under section 210 of the Criminal Procedure Code per ruling delivered on 21.05.2008. The claimant's trade union reported a trade dispute to the labour officer but the matter was not resolved. The Labour officer and the union computed the claimant's dues as prayed for.

Despite service the respondent failed to enter appearance or to file a defence or final submissions.

The court has considered the material on record and in absence of a response, the court returns that the claimant has established the claim on a balance of probability and as computed by the Labour officer and the union.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a) The respondent to pay the claimant **Kshs.125, 650.00** by 31.12.2017 failing interest to be payable thereon at court rates from the date of the suit till full payment.
- b) The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nyeri this Thursday, 19th October, 2017.

BYRAM ONGAYA

JUDGE