



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**CAUSE NO. 192 OF 2013**

**(Originally Nairobi Cause No. 50 of 2011)**

**AMALGAMATED UNION OF KENYA METAL WORKERS.....CLAIMANT**

**v**

**BWANI STORES LTD.....RESPONDENT**

**JUDGMENT**

1. In a ruling delivered on 15 May 2015, the Court set out the unfortunate background leading to the failure to have this Cause determined expeditiously.
2. The Cause was scheduled for mention on 22 May 2015. The Respondent was served, and must have been aware, but it did not appear nor send a representative.
3. The Court being satisfied that the firm of Mongeri & Co. Advocates had been served fixed the Cause for hearing on 23 November 2015 with an order to the Claimant to serve a hearing notice.
4. The Claimant did not serve a hearing notice and the hearing aborted on 23 November 2015. Fresh hearing date of 22 February 2016 was fixed.
5. When the Cause was called out for hearing on 22 February 2016, Ms. Kerubo who held brief for Mr. Mongeri sought an adjournment. The application was declined.
6. Ms. Kerubo merely stated that the hearing notice was received under protest on 18 February 2016, but did not offer any explanations as to the whereabouts of Mr. Mongeri.
7. The Cause proceeded to hearing at 10.45am at which point Mr. Mongeri was not in Court nor was there a representative of the Respondent.
8. In his testimony, Joseph Ochieng Ogola (Grievant) stated that he was employed by the Respondent in 1992 and that on 17 May 2007 he was assigned the duty of having a wiper motor taken for rewinding but when he took it to the rewinders, they refused to rewind it, allegedly because the Respondent had not paid the re-winder for previous jobs.
9. When he brought this to the attention of the Respondent, he was informed his services were no longer required but when he requested for a dismissal letter, none was forthcoming.

10. He reported to the Claimant which in turn reported a dispute to the Minister for Labour.

11. The Conciliator appointed by the Minister released his report on 15 January 2010 in which he recommended that the Grievant's dismissal be reduced to normal termination with payment of 12 months wages and the equivalent of 8 months wages as compensation.

12. The Respondent appeared to have rejected to implement the recommendations hence the present dispute.

13. On the other issues, the Grievant stated that at time of separation he was earning Kshs 7,200/- without any other benefits; that he was not paid wages for May 2007; that he was underpaid by a total of Kshs 36,104/- as he should have been earning Kshs 8,064/-.

14. He also stated that he was seeking service pay at the rate of 15 days pay for each year for the 16 years he served the Respondent (Kshs 56,096/-) and *pro rated* leave for 2 months he quantified as Kshs 24,192/- and 1 month pay in lieu of notice.

### **Evaluation**

15. The Grievant's testimony was not challenged or controverted. On that basis, there would be no legal basis to deny him the reliefs sought.

16. Further, the Labour Officer who served as Conciliator heard submissions from both parties and made certain findings and recommendations.

17. It is not clear from the papers why the Respondent opted not to accept the recommendations. Labour Officers have a lot of experience and firsthand knowledge of the employment arena and disputes, and coupled with their statutory powers as envisaged under the Labour Institutions Act and Labour Relations Act, their findings and recommendations ought not to be rejected offhand without concrete reasons.

18. The state of material placed before Court leave the Court with little option but to find that the dismissal of the Grievant was unfair and to award the heads of claim as sought.

### **Conclusion and Orders**

19. The Court finds and holds that the dismissal of the Grievant was unfair and awards him and orders the Respondent to pay him

a. 1 month pay in lieu of Notice	Kshs 7,200/-
b. Accrued leave	Kshs 24,192/-
c. Service pay	Kshs 56,096/-
d. Salary underpayments	Kshs 36,104/-
e. 12 months wages compensation	Kshs 86,400/-

TOTAL

**Kshs 159,992/-**

20. Heads of claim for leave travel allowance and wages for May 2007 are dismissed as having not been proved.

21. Claimant to have costs assessed as Kshs 30,000/-.

**Delivered, dated and signed in Nakuru on this 11<sup>th</sup> day of March 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant: Mr. Patrick Makale, Industrial Relations Officer Amalgamated Union of Kenya  
Metal Workers

For Respondent: Mongeri & Co. Advocates

Court Assistant: Nixon