



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

**CAUSE NO. 200 OF 2014**

*(BEFORE HON. LADY JUSTICE MAUREEN ONYANGO)*

**ALOICE OTIENO MIDUMBI OWILI .....CL**  
**AIMANT**

**-VERSUS-**

**THE REGISTERED TRUSTEES OF EVANGELICAL LUTHERAN CHURCH OF  
KENYA .....RESPONDENT**

**JUDGEMENT**

The Claimant Aloice Otieno Midumbi Owili filed this Claim against the Registered Trustees seeking payment of Shs.991,500 made up of salary underpayments, gratuity and salary arrears. He also prayed for costs and interest.

The Respondent was served with summons but it did not respond.

The case was fixed for hearing on 19th November, 2015 and after confirming that the Respondent was properly served with both the summons and hearing notice I allowed the Claimant to proceed with the hearing exparte.

The Claimant testified that he was employed by the Respondent as a tutor at Chesta Lutheran Teachers Training College located in West Pokot County on a two year contract commencing in September 2009 and expiring in September 2011 at a salary of Shs.28,000. Upon expiry of the contract the claimant was offered the position of Principal of the College at a Salary of Shs.30,000 per month. He worked as principal until March, 2012 when he wrote a letter of resignation. The resignation was not accepted and he continued working until September, 2012 when the college was closed due to financial constrains.

The Claimant testified that although his salary as a tutor was Shs.28,000, he was paid only shs,23,000 with a promise that the difference will be paid when the financial situation improved. He testified that he was not paid any salary after he was elevated to the position of principal as there were no sufficient funds.

The Claimant testified that according to his appointment contract he was entitled to gratuity for 25% on basic salary which he was never paid. A copy of his contract was annexed to the memorandum of claim.

**Findings and Determination**

I have considered the evidence on record and confirm that the Claimant's contract provided for salary of Shs.28,000 and from the copies of payslips attached that he was paid Shs.23,000. I have also confirmed from the record that he was elevated to the position of Principal in September 2011 at a salary of

Shs.30,000 per month.

The Claimant prayed for underpayments of salary by Shs,5000 for 24 months at Shs.120,000. He is entitled to this amount as he was paid Shs.23,000 per month instead of Shs.28,000 stated in his contract.

The Claimant further prayed for gratuity for 24 months at the rate of Shs.14,000 which I award him at 25% of Shs.28,000/-. He further prayed for gratuity for the period September 2011 to "September 2012 when the school closed down. Based on his salary of Shs.30,000 this would amount to Shs.7,500 and not Shs.17,500 claimed.

The Claimant further prayed for salary arrears for the period 2011 to 2012 at Shs.840,000. The correct position is that his salary was shs.30,000 and the arrears are for the period October, 2011 to September 2012, a period of 12 months amounting to Shs.360,000.

In summary therefore I award the Claimant **Shs.501,500/-** made up as follows:-

1. Under payments	Shs.120,000
2. Gratuity (2009-2011)	Shs. 14,000
3. Gratuity (2011-2012)	Shs. 7,500
4. Salary Arrears	Shs.360,000
<b>Total</b>	<b><u>Shs.501,500</u></b>

The Claimant shall also have costs of the Claim and interest on decretal sum from date of Judgment.

**Dated and signed and delivered this 26th day of May, 2016**

**MAUREEN ONYANGO**

**JUDGE**