



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1301 OF 2012**

**DAVID MUNGAI KINUTHIA.....CLAIMANT**

**VERSUS**

**SIMPLY PERFECT.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit on 1<sup>st</sup> August 2012. In his suit he sought to have the issues of his employment status and salary arrears resolved. The Claimant averred that at all times material to the suit he was an employee of the Respondent as a turn boy/ assistant driver. He averred that on 15<sup>th</sup> June 2011 he was involved in a road accident that occurred whilst he was travelling in Respondent's vehicle. He averred that the vehicle rolled several times causing him injury and rendering him unable to perform his duties. He sought payment of his salary at the end of each month until termination of the contract as well as salary arrears from January 2011 till date of judgment as well as the costs and interest on the sums claimed.

2. The Respondent filed a Memorandum of Response on 27<sup>th</sup> August 2012. The Respondent averred that the Claimant was engaged on a casual basis prior to 15<sup>th</sup> June 2011 earning a daily wage rate of Kshs. 282/- and later it was increased to Kshs. 348/- per day. The Respondent averred that sometime in the month of June 2011, the Claimant accompanied the driver of the Respondent's motor vehicle registration No. KAW 692M which was to deliver goods to a customer in Meru. The Respondent averred that the Claimant declined to be flown to Thika for specialized treatment but opted to be flown to Kiambu District Hospital. The Respondent averred that it had always met the medical expenses of the Respondent. The Respondent denied withholding payment and averred that it had continued paying the Claimant wages while he was in hospital till January 2011 when the Respondent demanded to know what kind of incapacity the Claimant was suffering from.

3. Parties consented to have the case determined using the documents on record in terms of Rule 21 of the Rules of this Court. The Court acceded to the parties request and now renders its decision.

4. The Claimant was employed by the Respondent. The Claimant earned Kshs. 8,460/- or thereabout a month. The Claimant would sign a voucher indicating the payment that was due daily. However, the payment was made at the end of the month and he was for all intents and purposes an employee on a monthly wage. He was not paid from January 2011 as admitted by both the Claimant and the Respondent. The Respondent asserts that the non-payment of salary is because the Claimant's extent of incapacity is unknown. The Claimant seeks payment from January 2011 until the date of judgment.

5. It would seem that he has not been terminated from service. The Claimant seems to have suffered some degree of disability. Having regard to the Workman Injury Benefits Act and the provisions of the Occupational Safety and Health Act, the Court is of the view that the Claimant requires to be examined by a medical doctor in terms of Section 25(1). To this end the Court directs that the Claimant to be subjected to the examination by a doctor to be assigned by the Director of Occupational Safety and Health Services. Upon report of the doctor being availed to Court the Court will make a determination on the

compensation, if any, payable to the Claimant. The cause to be mentioned before the trial Court on 22<sup>nd</sup> September 2015 to ascertain the position regarding the Claimant's examination.

Orders accordingly.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of July 2015**

**Nzioki wa Makau**

**JUDGE**