



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 49 OF 2014

(Formerly Cause No. 115(N) of 2009 at Nairobi)

BARNABAS MAINA

MUCHOKI.....CLAIMANT

VERSUS

**THE COMMITTEE, KIENI YOUTH POLYTECHNIC
THROUGH**

**CHAIRMAN, SECRETARY AND
TREASURER.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 2nd October, 2015)

JUDGMENT

The claimant filed the memorandum of claim on 13.03.2009 through J.N. Mbutia & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Kshs. 153, 241.20 unpaid or underpaid wages.
- b. Kshs. 1,000.00 for dishonored cheque.
- c. Costs of the suit.
- d. Interest on a, b, and c above.
- e. Any further or better relief this court may find just and expedient.

The respondent filed the response to the claim on 12.05.2009 through E.W. Waudo for the Attorney General. The respondent prayed that the suit be dismissed with costs.

The claimant's case was that he was employed from 18.05.2003 to 24.07.2007 in the position of an instructor in carpentry and was paid by the respondent Kshs. 2, 000.00 per month throughout the service. His services ended when another person was employed in his place. The respondent's board summoned the claimant to a meeting and informed him that he was not qualified as engaged. The claimant possessed Grade III certificate in carpentry at the time of termination having acquired the qualification while in the respondent's employment

The claimant had a long standing dispute with respondent over his pay ending in a report to the police at Murang'a and the respondent then paid Kshs. 15, 290.00 by cheque. When the claimant presented the cheque to his Equity Bank it bounced with a bank charge of Kshs. 1,000.00 against the claimant.

The claimant testified that he handed over on 25.05.2006 and his last day at work was on 24.02.2006. He

denied that he had a record of absenteeism.

The only issue for determination is whether the claimant is entitled to the prayers made. It is not disputed between the parties that the agreement between the parties was that the outstanding pay was Kshs. 15, 290.00 out of which Kshs. 5,000.00 was paid. The court finds that parties are bound by that agreement. The court finds that the claimant is entitled to Kshs. 15, 290.00 less Kshs. 5,000.00 paid and plus Kshs. 1,000.00 for the bank charges making a sum of **Kshs. 11,290.00** due. The claimant's employment was subject to government approval but which was denied because the claimant lacked qualifications. The court finds that the claimant was not therefore entitled to the minimum pay for an instructor in carpentry as claimed because he never qualified for employment in that position.

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

1. The respondent to pay the claimant **Kshs. 11, 290.00** by 1.11.2015 failing interest at court rates to be paid thereon from 13.03.2009, the date of the suit, till full payment.
2. The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 2nd October, 2015.

BYRAM ONGAYA

JUDGE