



**REPUBLIC OF KENYA**  
**THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 2105 OF 2012**

**KUDHEIHA WORKERS.....CLAIMANT**

**VERSUS**

**MASAKU SCHOOL FOR THE PHYSICALLY DISABLED.....RESPONDENT**

**JUDGMENT**

1. The Claimant herein commenced the suit against the Respondent on behalf of its member Wilson Sila Munguti. Mr. Munguti it was averred was an employee of the Respondent from 2000 until his termination on 15<sup>th</sup> October 2010 verbally. At the time the Claimant was earning Kshs. 6,262/- a month inclusive of house allowance. The Claimant averred that he was underpaid below the statutory minimum. He also claimed his gratuity, prorated leave, days worked and notice. The Claimant thus sought payment of the salary difference due for the years making a grand total of Kshs. 393,752/-. The Claimant sought intervention of the Ministry of Labour but the Respondent did not honour any of the meetings set by the Conciliator precipitating the suit.
2. The Respondent did not appear and did not defend the suit in spite of service of summons and hearing notices.
3. The Claimant testified before me on 30<sup>th</sup> October 2013 thus:- he was employed as an assistant cook. He would report at 4.45am and cook for the students breakfast and then lunch before leaving after supper in the evening. On 15<sup>th</sup> October 2010, he was a work as usual at 4.45am and at 6.00am he saw his colleague Patrick Maithya Ndungwa at work yet he was on off duty. When Sila asked why his colleague was at work when he was due to be off, his colleague told him that he had been called at 9.00pm the previous night and advised to report to work. At about 6.15am the boss came and told Sila that he was free to go. When Sila asked why he was sent away he was told to go and return. He reported the matter to the Claimant Union and when the officials went to the School, the Headmaster refused to talk to the Union officials and only met Sila, the shopsteward and Ndungwa. He told Sila that he could continue working but Sila declined due to the reshuffle the Headmaster had effected.
4. The Claimant filed final submissions on 6<sup>th</sup> November 2013. In the Submissions, the Claimant reiterated that Sila should be paid his dues and cited the decision of Rika J. in **Cause 291 of 2010 Kudheih Workers v. Muranga High School** (unreported).
5. The Claim from the evidence adduced and documents produced was proved on a balance of probability. The grievant Sila was terminated without regard to the procedure laid out in the

Employment Act 2007 Section 41. It was clear the Respondent declined to participate in the conciliation process by the Ministry of Labour and even failed and refused to participate in the case filed against it. The Claimant claimed under payment and produced the Government Circular issued in 2008. Cooks were entitled to payment under three bands – 8,819/-, 9,257/ and 9,721/-. I would place the grievant Sila at the band of Kshs. 8,819/- per month. The computations on underpayment were erroneous compelling the Court to recompute using 8,819/- instead of 8,519/-. In other parts there were inaccuracies in the actual mathematics.

6. He therefore is entitled to the following:-

- a. 1 month salary in lieu of notice – Kshs. 8,819/-
- b. Service gratuity for 10 years (15 days for each year) – Kshs. 48,504.50
- c. 15 days worked in October 2010 – Kshs. 4,409.50
- d. prorate leave for 5 months - - Kshs. 4,409.50
- e. Underpayments totaling Kshs. 187,942/-
- f. 3 months compensation for wrongful dismissal Kshs. 26,457/-

**Total – Kshs. 289,360.50**

7. He will also have interest on the above sum at 12% per annum from date of filing suit till payment in full plus the costs of the suit.

It is so ordered.

**Dated and delivered at Nairobi this 14<sup>th</sup> day of January 2014**

**Nzioki wa Makau**

**JUDGE**