

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NYERI

CAUSE NO. 31 OF 2012

(Formerly Cause No. 164 of 2012 at Nairobi)

**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS
AND ALLIED
WORKERS.....CLAIM
ANT**

-VERSUS-

**MARY IMMACULATE PRIMARY
SCHOOL.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 31st October, 2014)

RULING

This court delivered the judgment in the suit on 26.11.2013. The application for review was filed on 09.07.2014 for the claimant on behalf of its member Michael Mwangi who testified in the case. The application invoked rule 32 (1) of the Industrial Court Rules. It was urged that the claim was about and for the 2nd Claimant (grievant) known as Michael Mwangi Ndungu and not Michael Mwangi Nderitu as appears at page 5 of the judgment.

The respondent has submitted that the judgment made the error as submitted for the claimant. Accordingly, the court finds that review will be allowed by deleting Michael Mwangi Nderitu wherever it appears in the judgment and substituting the same with Michael Mwangi Ndungu.

The 2nd issue for determination in view of the application for review is whether the judgment should be reviewed by awarding the said Michael Mwangi Ndungu the terminal benefits as prayed for in the statement of claim because the judgment was premised on the alleged fictitious evidence of Michael Mwangi Nderitu. The respondent has opposed that submission and stated that the only error in the judgment was the name but the learned trial judge recorded and made appropriate findings with respect to Michael Mwangi Ndungu who actually appeared in court and gave evidence.

The court has revisited the record of evidence and the judgment. It is clear that Michael Mwangi was the 1st claimant's witness to testify. Further, the court evaluated all the evidence and found that the claimant had failed to satisfy the provisions of section 47(5) of the Employment Act, 2007 which required them to show that the termination was unfair. As required under the same section, the court found that the respondent had reasonably demonstrated that it had lawful reasons to summarily dismiss the grievants. Thus the claim was dismissed with costs. Thus, the court finds that there is no ground to vary the final orders of the court as made in the judgment.

In conclusion the court makes ruling in view of the application for review filed on 09.07.2013 with orders:

1. That **“Michael Mwangi Nderitu”** is deleted wherever it appears in the judgment and substituted with **“Michael Mwangi Ndungu”**.
2. That each party to bear own costs of the application for review.

Signed, dated and delivered in court at Nyeri this Friday, 31st October, 2014.

BYRAM ONGAYA

JUDGE