



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NYERI**

**CAUSE NO.23 OF 2014**

**ZAKARY MWANGI**

**MURIU.....CLAIMANT**

**-VERSUS-**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.....  
1<sup>ST</sup> RESPONDENT**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS (NANYUKI  
BRANCH)..... 2<sup>ST</sup> RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 19<sup>th</sup> December, 2014)**

**JUDGMENT**

The claimant filed the suit against the respondents on 04.02.2014 acting in person. The claimant prayed for judgment against the respondent for Kshs. 188,000.00; interest; costs; and any other relief the honourable court may deem fit.

The respondents' memorandum of defence was filed on 26.03.2014. The respondents prayed that the claimant's suit be dismissed with costs.

By the court order of 19.09.2014 the dispute was referred for conciliation before the labour officer at Laikipia County. The conciliator's report was filed in court on 19.09.2014. The conciliator found as follows:

- a. The claimant was a part-time respondents' union official who under the respondent's constitution was entitled to sitting allowances for meetings attended and not salaries.
- b. Moses Mureithi Waiganjo the branch secretary went on a three months' accumulated leave from 2<sup>nd</sup> June 2011 to 5<sup>th</sup> October 2011. During that period, the respondents did not appoint the claimant to act in place of the branch secretary who was on leave.
- c. As relates to Kshs. 53,000.00 with respect to the payments to Josphat Nyaga Njoka, the said Njoka had been paid by the Advocates who handled the case and the claimant could not recover the same from the respondents because the claimant's claims were based on private arrangements between the claimant and the said Njoka.

The claimant was dissatisfied with the findings and recommendations by the conciliator and the case went to full hearing before this court. The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The court makes findings as follows:

1. There is sufficient evidence that the claimant served to discharge duties of the branch secretary when Moses Mureithi Waiganjo was on leave for three months in August, September, and October 2011. The respondent's evidence was that there was no acting appointment but the court finds that there were clear arrangements between the parties that the claimant performs such duties and the respondents' internal deficiencies to make and convey the formal acting appointment cannot be visited upon the claimant. There is no dispute that the branch secretary was entitled to a monthly pay as a full time employee and the court finds that the claimant is entitled to the **Kshs. 45, 000.00** as the reasonable pay in that regard and as prayed for.
2. The claimant prayed for Kshs. 90,000.00 being half salary for the period of suspension as a part-time official for the respondents at the branch level. The court finds that it is not in dispute that as a part-time official the claimant could only earn sitting allowances for meetings attended and the claimant has not established the basis of the prayer. The same shall therefore fail.
3. The claimant prayed for Kshs. 53,000.00 being the amount of money received by the respondents as judgment sum in favour of one Josphat Nyaga Njoka and allegedly due to the claimant under alleged private arrangements between the said Njoka and the claimant. The court finds that the claimant failed to establish the basis of the claim and the same shall fail.

The claimant has partially succeeded in his claim and is awarded costs of the suit fixed at **Kshs. 25,000.00**.

**In conclusion judgment is entered for the claimant against the respondent for the respondent to pay the claimant Kshs.70, 000.00 by 1.02.2015 failing interest at court rates to be payable from the date of the suit 04.02.2014 till full payment.**

**Signed, dated and delivered in court at Nyeri this Friday, 19<sup>th</sup> December, 2014.**

**BYRAM ONGAYA**

**JUDGE**