



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**SUIT NO. 295 OF 2017**

**KENYA UNION OF COMMERCIAL FOOD &**

**ALLIED WORKERS (KUCFAW).....CLAIMANT**

**VERSUS**

**MUGOIRI FIVE FARMERS**

**CO-OPERATIVE SOCIETY.....RESPONDENT**

**JUDGMENT**

1. The Claimant sued on behalf of the Grievants Peter Mwangi Muiyuro and James Maina Muriu. The Claimant averred that the 1<sup>st</sup> Grievant was employed in 2005 as a machine operator and pursuant to the parties CBA wrote to the Respondent on 18<sup>th</sup> July 2014 giving notice of intention to terminate his contract on 28<sup>th</sup> July 2014. It was averred that the reason he gave for this was an industrial accident that had occurred as detailed in the medical report dated 23<sup>rd</sup> October 2013. The Claimant averred that on the date this notice was ending the Respondent in a turn of events issued the 1<sup>st</sup> Grievant with a termination notice. The Claimant averred that the 1<sup>st</sup> Grievant was entitled to unpaid dues – Kshs. 446,490.75 from Mikaya and Mugoiri Five F.C.S, gratuity – Kshs. 254,610/-, salary arrears of Kshs. 32,460/-, annual leave Kshs. 9,430/-. The Claimant averred that despite request for payment on 7<sup>th</sup> December 2014 the Respondent only gave verbal promises to pay and on 8<sup>th</sup> December 2015 the Grievant approached the area branch representative of the Claimant who made demand for payment of the terminal benefits as computed. The Respondent did not react in any way to the demand and on 13<sup>th</sup> January 2016 the Claimant wrote yet again seeking payment and again the Respondent did not respond prompting the Claimant to report a dispute with the Minister on 9<sup>th</sup> February 2016 and Mr. Mwangudza was appointed as conciliator. The Conciliator urged parties to submit memoranda in support of their positions and the Claimant submitted on 9<sup>th</sup> March 2016 and the Conciliator invited parties to a meeting on 7<sup>th</sup> April 2016. The Claimant averred that the Conciliator issued a referral certificate on 8<sup>th</sup> September 2016 to enable the filing of the suit. The 2<sup>nd</sup> Grievant was said to have been employed as a salary clerk in January 2005 and tendered a termination notice on 23<sup>rd</sup> November 2015 which the Respondent accepted on 25<sup>th</sup> January 2016. It was averred that he requested that his terminal dues be paid comprising unpaid salaries – Kshs. 715,291.25, salary arrears – Kshs. 7,915/-, gratuity – Kshs. 341,100/-. The Claimant averred that the matter was referred to the Minister and on 14<sup>th</sup> March 2016 the Cabinet Secretary accepted the dispute and appointed Mr. E.C. Mwangudza of Murang'a Labour Office as Conciliator and advised parties to submit their proposals. The Claimant averred that the Conciliator invited parties to forward their proposals which the Claimant did on 18<sup>th</sup> April 2016. The Conciliator issued a referral certificate on 18<sup>th</sup> September 2016. The Claimant thus sought the grant of the reliefs sought for the 2 Grievants as well as costs.

2. The Respondent entered appearance and filed a notice of preliminary objection to the suit asserting the suit was incompetent and that the Claimant lacks the *locus standi* to bring or maintain the suit and that there is no proper Claimant in the suit. No defence was filed and the Claimant procured hearing dates the case was heard.

3. The 1<sup>st</sup> Grievant testified that he was a salary clerk and that he issued a notice to terminate his employment with the Respondent. He said that his notice was accepted and the salary at the time was Kshs. 11,370 with a house allowance of Kshs. 1,710/-. He stated that the matter was reported to the Ministry of Labour and the issue was not resolved and therefore they filed the suit. He sought payment of Kshs. 1,064,306.25 as his terminal dues and arrears.

4. The Claimant filed submissions in which it stated that the parties had a valid and registered Collective Bargaining Agreement with the Respondent. It submitted that the Grievants were owed terminal benefits which the Respondent computed after accepting the termination notices served by the Grievants. The Claimant submitted that the claim being undefended the Grievants were entitled to the judgment sought.

5. The Claimant is a registered Trade Union which had a collective bargaining agreement with the Respondent from 1<sup>st</sup> October 2007 till 30<sup>th</sup> September 2009. There is no indication as to whether there was any extension as no registration certificate or a subsequent CBA for the succeeding years is exhibited. In the case before the Court, the Grievants all left the employ of the Respondent of their own volition but had claims for unpaid salary arrears and their gratuity. Under the Labour Relations Act, the Grievants each had the option to pursue the matter through the Union where applicable. Under Rule 5 of the Employment and Labour Relations Court (Procedure) Rules 2016, the matters that have been referred to court after a dispute that was before Conciliator must comply with this Rule. Rule 5(1)(b)(i) provides as follows:-

5. (1) Where a labour dispute is referred to the Court in accordance with the provisions of the Labour Relations Act-

*(b) where the labour dispute has been a subject of conciliation, the statement of claim shall be accompanied by-*

*(i) a report by the conciliator on the conciliation process supported by the minutes of the conciliation meeting;*

The Grievants did not attach any report by the Conciliator. No reason was also given in terms of Section 62(3)(b) of the Labour Relations Court as to why the Minister accepted the dispute by the 1<sup>st</sup> Grievant as the dispute was reported 2 years after the termination. The Claimant averred that the Grievant followed up on payments for close to 2 years before the matter was referred to the Cabinet Secretary for Labour in February 2016. The dispute presented as a claim to the court in respect of the 1<sup>st</sup> Grievant was almost stale by the time the suit was filed on 28<sup>th</sup> July 2017 as that was the very last day of the viability of the cause of action in terms of Section 90 of the Employment Act. Granted that there was no recognition agreement or a valid Collective Bargaining Agreement, the Claimant was non-suited against the Respondent as the Claimant lacked *locus standi* to institute the claim presented to Court. The Claimant failed to bring the suit in line with the law and it is unfit for grant and as such dismissed with no order as to costs.

It is so ordered.

**Dated and delivered at Nyeri this 19<sup>th</sup> day of November 2019**

**Nzioki wa Makau**

**JUDGE**