



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 1306 OF 2010**

**KENYA BUILDING CONSTRUCTION, TIMBER,**

**FURNITURE & ALLIED INDUSTRIES EMPLOYEES UNION.....CLAIMANT**

**VERSUS**

**M/S CEMENTERS LIMITED.....RESPONDENT**

**JUDGEMENT**

1. By memorandum dated 7<sup>th</sup> October, 2010 the claimant union averred that the respondent dismissed the grievants from employment on different circumstances without observing the provisions of either Building Construction Industry Order L. N. 94 of 2004 or the parties CBA.

2. The claimants had endeavored to settle the matter through tripartite meetings which have failed due to lack of cooperation by the respondents. According to the grievants, the respondent has been unwilling to settle the issue even after different attempts were made by the claimants and the Labour officer.

3. In their memorandum of response the respondent denied that the claimant was the rightful trade union to represent the grievants. The respondent further denied that there was a recognition agreement between the parties. The respondent also denied employing the grievants. The respondent denied not paying the grievants their terminal dues and stated that the same were fully paid upon termination of services. The respondent further denied they were unwilling to settle the dispute.

4. This matter has been in court for a long time. Several mention dates were set for possible recording of settlement which did not materialize. The matter has also been set down for hearing severally but has been adjourned either due to non-appearance of the parties or with a view to explore settlement.

5. On 14<sup>th</sup> July, 2014 the hearing of this matter proceeded before Rika J in the absence of the respondent. Only one grievant Mr Patrick Wanjohi testified. He informed the court that he used to work for the respondent as a driver and that he was employed on 21<sup>st</sup> March, 2008 and left on 21<sup>st</sup> November, 2008. He was not told the reason for termination. He used to pick workers and drive them to sites.

6. On 6<sup>th</sup> December, 2017 when the matter came up for hearing before me, Mr Githinji for the claimant informed the court that only one grievant had testified and that the rest had withdrawn membership from the claimant union. The court therefore directed the claimant union files submissions in order for the court to conclude this old matter.

7. The matter as stated proceeded undefended. The respondent though filed a response which consisted of bare denials, did not attend court to defend the claim. The court inevitably has to rely on the evidence of the grievant who testified.

8. The court will therefore enter judgement in favour of Patrick Wanjohi as follows:

- |                                      |              |
|--------------------------------------|--------------|
| a. One month's pay in lieu of notice | 15,600       |
| b. Pro rata leave                    | <u>8,100</u> |

**23,700**

9. The grievant shall further have costs of the suit.

10. The rest of the claim is hereby dismissed for want of prosecution.

11. It is so ordered.

**Dated at Nairobi this 20<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 20<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of**

.....Claimant

.....Respondent