



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 307 OF 2012

KENYA UNION OF DOMESTIC,

HOTELS, EDUCATIONAL INSTITUTIONS,

HOSPITALS AND ALLIED WORKERS (KUDHEIHA)...CLAIMANT

- VERSUS -

FATHER IN CHARGE ST. JOSEPH

THE WORKER CATHOLIC CHURCH.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th July, 2018)

RULING

The memorandum of claim was filed on 27.02.2012. The claimant prayed for judgment against the respondent for:

- a) Payment of Kshs.36, 021 per clause 16 (ii) being 3 months pay in lieu of notice.
- b) Kshs. 7, 784.00 underpayment of house allowance.
- c) Travelling allowance for 2 years Kshs.1, 980.00 for 2002 and Kshs.2, 020.00 for 2003.
- d) 12 months' pay in compensation for unfair termination Kshs.144, 084.00.

The claimant's case is that its member one Leonard Ngige Gichanga (the grievant) was employed by the respondent and the claim arises out of that contract of service. The parties are in a recognition agreement and a collective agreement.

The claimant's further case is that the grievant was employed by the respondent on 23.05.1994 as an instructor in carpentry and joinery. The claimant's employment was terminated on 08.03.2004 on account of misappropriation of the funds designated for the carpentry workshop. The grievant denied the allegations as levelled against him by the respondent. It was the grievant's case that the reason for dismissal was invalid because he was not in charge of any sales and revenues because his work was limited to training.

Being dissatisfied with the dismissal the claimant took up the grievant's case and reported a trade dispute to the Minister for Labour. An investigator was appointed but as at 17.10.2006 he had taken no action. Another investigator was appointed by the letter-dated 13.05.2009. The claimant's case was that the investigator having failed to act, the suit was filed as a reference to the Court under section 73(1) of the Labour Relations Act, 2007.

The respondent filed a preliminary objection on 06.09.2016 through S.N Thuku & Associates. It was urged that section 73 (1) of the Labour Relations Act, 2007 did not apply as there had been no conciliation in the case. Further there was no collective agreement between the parties and the claimant lacked standing. Finally, the memorandum of claim lacked the accompanying verifying affidavit as per rule 5 (1) of the Industrial Court (Procedure) Rules 2010 and ought to be struck out. On 29.09.2011 the respondent changed his advocates to Mutuku Mary & Company Advocates and later to Etemesi Elfes & Company Advocates who filed the response to the claim on 28.05.2013. It was urged that the suit was time barred, the grievant having been dismissed on 01.02.2004.

There is no dispute that the grievant was dismissed on 01.02.2004 and the suit filed on 27.02.2012. The 6 years for limitation of actions

under section 4 of the Limitation of Actions Act had lapsed by the time the suit was filed.

The Court has considered the inaction by the investigator appointed by the Minister which may have contributed to the delay in filing the suit and returns that each party will bear own costs of the suit.

In conclusion the claimant's suit is hereby dismissed with orders that each party shall bear own costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 6th July, 2018**.

BYRAM ONGAYA

JUDGE