

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 95 OF 2014

KENYA BUILDING, CONSTRUCTION,

TIMBER & FURNITURE INDUSTRIES

EMPLOYEES UNION..... CLAIMANT

VERSUS

KAFUNAPASA COMPANY LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 24th November, 2017)

JUDGMENT

The claimant trade union filed the memorandum of claim on 15.08.2014 claiming unlawful dismissal of 15 employees (the grievants) previously in the respondent's employment. The claimant's case was that the grievants were its members but there was no recognition and collective agreement between the parties.

It is the claimant's case that the grievants being in the respondent's employment broke for Christmas holidays in December 2011 and upon resuming duty on 04.01.2012, they were informed that their services were no longer required and they were thereby removed from employment. The conciliation proceedings failed to yield amicable settlement hence the filing of the suit. The claimant prays for judgment against the respondent to pay each grievant pay in lieu of notice; earned leave; service gratuity; underpaid wages; and compensation for unlawful loss of jobs. The amount due to each of the 15 grievants has been computed and specifically pleaded in the memorandum of claim. The claimant also prays for a certificate of service in favour of each grievant and costs of the suit. The terminal dues are in the sum of Kshs. 392, 130.00 for all the 15 grievants. Francis K. Murage, the claimant's General Secretary signed the memorandum of claim. The claimant's case was that the claimants were removed from employment on account of their signing to join the claimant trade union.

The response to the claim was filed on 05.09.2014 through Joan W.G. Ndorongo & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs and interest.

The respondent's case was that the claimants were seasonal employees hired from time to time when there was some work to be carried out. Further the respondent denied that the claimants were terminated on account of joining the trade union.

First, it is submitted for the claimant that the grievants signed the check off Form S on deduction of union dues on 20.12.2011 and on 01.08.2012 and the same signed by the claimant's Secretary General on 26.01.2012. It is then submitted that the termination was on 01.04.2012 (and not 04.01.2012 as was pleaded at paragraph 7 of the memorandum of claim). Claimant Witness No. 1 (CW1) stated that he joined the union after termination on 04.01.2012 and he did not pay union dues at all. CW1 was the only claimants' witness. By his testimony, the court returns that on a balance of probability, all the grievants were not members of the claimant trade union as at the time of their termination and accordingly, the claimant union lacked standing to sue on their behalf. In any event there was no recognition and collective agreement between the parties and even if the respondent employed the grievants, the union lacked privity or statutory underpinning to sue in that regard. The suit would therefore collapse for want

of a proper party as claimant. In such circumstances, the court will not investigate the other matters in dispute but at the same time, return that the claimant failed to testify to establish the alleged employment relationship.

In conclusion, the claimant's suit is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 24th November, 2017**.

BYRAM ONGAYA

JUDGE