

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 156 OF 2014

KUDHEIHA WORKERS.....CLAIMANT

VERSUS

B.O.M KIHUMBU-INI SECONDARY SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 27th May, 2016)

RULING

The claimant union filed the memorandum of claim on 25.11.2014 alleging the unfair termination of its member Catherine Wamukore Gothe, the grievant. The claimant prayed for judgment against the respondent for underpayment, unpaid public holidays, 3 months' pay in lieu of termination notice and 12 months' salaries for unfair termination all summing up to Kshs. 630,838.00.

The memorandum of response was filed on 11.12.2014 through F.O.Makaori, Litigation Counsel, for the Attorney General. The respondent prayed that the memorandum of claim be dismissed with costs.

On 26.06.2015 the court delivered judgment in the suit by dismissing the claimant's suit with costs.

On 03.02.2016 the claimant filed an application for review of the judgment. It is the claimant's ground for review that the court found that the grievant was not a member of the union whereas there were receipts now filed together with the application for review showing that the claimant was a member of the union effective 2009. In making the finding, the court stated in the judgment that the grievant had testified that she joined the union in 2009 but she had not filed the receipts to show that she had been remitting the relevant union dues. Thus the court found that the grievant was not a member of the union and therefore the claimant lacked standing to file the suit.

The claimant has not showed that with due diligence, the receipts now filed to establish the grievant's membership in the union could not have been filed before or at the hearing of the suit.

In the circumstances the court finds that the claimant has not satisfied any of the reasons for review as envisaged in rule 32 of the Industrial Court (Procedure) Rules, 2010 and the application will fail.

In conclusion, the application for review filed for the claimant on 03.02.2016 is hereby dismissed with costs.

Signed, dated and delivered in court at Nyeri this Friday, 27th May, 2016.

BYRAM ONGAYA

JUDGE