

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 29th July, 2016)

RULING

The claimant filed the memorandum of claim on 15.08.2014 on behalf of its 15 members and alleging the unlawful dismissal of the 15 members. There is no recognition or collective agreement concluded between the parties.

The claimant's case is that the 15 members in issue worked until they proceeded on leave in December 2011 and reported back on 04.01.2012 when they were informed that their services were no longer required. In a contradictory manner, the claimant further pleads that all the members were terminated in June 2011. The claimant's further pleading is that the members joined the union by signing the relevant Forms S being exhibit 1 on the bundle of the memorandum of claim. The forms show that the claimants joined the union on 08.01.2012 and on 20.12.2011. The particulars of date of dismissal for each member in the statement of claim show that each of the members was dismissed on 01.04.2012.

The respondent's preliminary objection is that the claimant union lacked standing to sue on behalf of its 15 members in issue because the Forms S is dated and forwarded on 26.01.2012 and paragraph 4 of the memorandum of claim states that the termination was in June 2011 long before the members joined the union. The respondent submits that in view of the pleading and signing and forwarding of Form S on 26.01.2016 by the claimant, the cause of action accrued in June 2011 when the membership of the 15 workers in the claimant union had not accrued so that the union lacked standing.

The claimant has opposed the preliminary objection that it is about matters of fact to be verified one way or the other at the full hearing. Further the letter forwarding the Forms S is dated 26.01.2012 and the membership had accrued on the dates the members actually signed the Forms S being 20.12.2011 and 8.01.2012 and the pleadings show termination was on 04.01.2012. The claimant submitted that there was a discrepancy in the memorandum of claim on the date of dismissal being stated as June 2011, then 04.01.2012. The respondent further submitted that any discrepancies could be cured by amendments.

The court has revisited the Forms S and mapped them against the 15 members in the statement of claim. The court has found that all the 15 members signed the Forms S on 20.12.2012. The memorandum of claim specifically states that each of the 15 members was dismissed on 04.01.2012. If the cause of action accrued on the date of dismissal on 04.01.2012, then all the 15 employees were already members of the union as of that date. The court's finding is that the respondent's preliminary objection, that the claimant union lacked standing for want of union membership of the 15 employees on the date the cause of action accrued, collapses without any possibility of revivification.

In conclusion, the respondent's preliminary objection is hereby dismissed with costs and parties are invited to take directions on hearing of the main suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 29th July, 2016**.

BYRAM ONGAYA

JUDGE