

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 26 OF 2015

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS
AND**

ALLIED WORKERS.....CLAIMANT

VERSUS

**THE BOARD OF MANAGEMENT ST.LUCY'S SCHOOL FOR THE
BLIND.....RESPONDENT**

(BEFORE HON. JUSTICE BYRAM ONGAYA ON FRIDAY, 22ND JULY, 2016)

JUDGMENT

The claimant union filed the memorandum of claim on 26.02.2015 alleging the unfair termination of its members Pamela Ciomba, Janerose Kawira, Lawrence Mwiti, Mary Karimi, Hellen Gichuku and Edith Igoki(the grievants). The amended memorandum of claim was filed on 17.07.2015. The claimant, on behalf of each grievant, prayed for judgment against the respondent for service gratuity for the years served; 3 months' pay in lieu of notice; 12 months compensation for the unfair loss of employment; and any other order that the Honourable Court deems fit and just. The employment history of each of the claimants is set out in the memorandum of claim and the further affidavits filed for each of the grievant.

The respondent's memorandum of response was filed on 07.07.2015. The respondent prayed that the claimant's case be dismissed with costs and interest on costs. The respondent also prayed for any other relief the honourable court may deem just to grant. The respondents filed on 30.07.2015 the further affidavit of Festus Mutunga.

The parties agreed that the suit be determined on the basis of the pleadings, documents, affidavits, and submissions on record. The parties further agreed upon the following issues for determination:

- 1) Whether the grievants were members of the union.
- 2) Whether grievants were paid terminal dues.
- 3) Whether due procedure was followed in terminating the grievant's employment by the respondent.
- 4) Whether the claimants are entitled to the remedies as prayed for.

The **1st issue** for determination is whether the grievants were members of the union at all material time. The evidence on the issue is clear. As submitted for the respondent each of the grievants joined the union long after the termination of the contract of employment. The court returns that in such circumstances the collective agreement between the claimant and the Ministry of Education did not apply to the grievants' employment. The court further returns that the claimant lacked the relevant standing to sue on behalf of the claimant. Even if the court considered that the union would have standing to sue on behalf of the grievants in view of the grievants having joined the union after the termination, the court would return that the suit was filed on 28.02.2015 long after the lapsing of the three years of limitation of action as provided under section 90 of the Employment Act, 2007. Indeed the pleadings are that the grievants were

terminated on 26.07.2011 and 13.10.2010 so that a suit based on their individual contracts of service and the ensuing termination was clearly time barred.

In view of the finding that the claimant lacked standing to sue on behalf of the grievants and that a suit based on individual contracts would anyway be time barred under section 90 of the Employment Act, 2007, the court returns that the claimant's suit will fail with costs. In view of that finding, the court will not delve into the other agreed issues for determination.

In conclusion judgment is hereby entered for the respondent against the claimant as the claimant's memorandum of claim filed on 28.02.2015 and as amended on 17.07.2015 is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 22nd July, 2016.**

BYRAM ONGAYA

JUDGE