



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 745 OF 2012**

**(Before Hon. Justice Hellen S. Wasilwa on 11<sup>th</sup> March, 2015)**

**KENYA BUILDING, CONSTRUCTION, TIMBER FURNITURE &**

**ALLIED INDUSTRIES EMPLOYEES UNION.....CLAIMANT**

**VERSUS**

**NAKALA BUILDING, GENERAL CONTRACTORS LIMITED .....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant herein filed their Memorandum of Claim on 3/5/2012. The issue in dispute was the unlawful dismissal of Stephen Otieno the Grievant herein. The Claimant is a duly registered trade union registered under the repealed Trade Unions Act Cap 233 Laws of Kenya. The Respondent is a duly Incorporated Company in the business of building and construction within the Republic of Kenya.

**The Claimant's case**

2. The Grievant herein is a member of the Claimant union and was employed by the Respondent in October 1994 as a Mason where he worked until 26<sup>th</sup> July 2006 earning Kshs.400/= daily wages. It is the Grievant's case that he worked for Respondent at different work stations as a Mason. However the Respondent apparently built his own hotel and quit the Construction Industry and then the Grievant's job was terminated. The Respondent promised to pay Grievant his terminal dues which he didn't. The Grievant sought help from his union, the Claimant herein.
3. The Claimant wrote to the Respondent asking for a meeting to discuss the issue and also reported the matter to the Labour Officer. The matter finally landed before this court. The Claimant wants to be paid for his services – severance pay plus notice fee of 2 months. He also seeks his leave pay as he never went for leave. He also prays for tools allowance as he used his own tools to work.

**Respondent's case**

4. The Respondents filed their Memorandum of Response on 15/10/2013 through the firm of P.K. Mureithi & Co. Advocates. They contended that the Claimant was not a properly registered union and therefore did not have locus to bring suit.

The Respondent also denies that the Grievant was ever employed by them as a Mason. It is their

position that the Grievant was a sub-constructor on some of the Respondent's construction sites who was engaged every now and again when construction work arose.

**Issues for determination**

5. Upon hearing the evidence of both parties, the issues for determination are:

- i. Whether there was any employee/employer relationship between the Grievant and Respondent.
- ii. If so, whether the Respondent breached any of the employment relations terms.
- iii. What remedies if any the Grievant is entitled to.

6. From evidence on record, there was no formal employer/employee relationship between the Claimant and Respondent.

The Respondent was a building contractor and from the evidence of the Grievant he was paid a daily wage of 400/= payable weekly. He also stated that he worked when there was work and whenever there was no work, he worked on other sites of the Respondent.

The intention here appears that there was no permanent employer-employee relationship between the Grievant and Respondent. The Respondent had indicated that the Grievant was a sub-contractor and he engaged his services when need be.

It is therefore this court's finding that there was no formal employer-employee relationship between the Grievant and the Respondent for which the Grievant can claim termination.

From the above finding, it also follows that the claim by the Grievant cannot stand and is therefore dismissed accordingly.

Each party will bear its own costs.

It is so ordered.

Read in open Court this 11<sup>th</sup> day of March, 2015

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Githuru holding brief for Claimant

No appearance for Respondent