

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.67 OF 2014

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.....CLAIMANT

-VERSUS-

MUTUGUTA FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2015)

JUDGMENT

The claimant filed the memorandum of claim on 06.06.2014 for unfair dismissal of its members Filimino Kaburu, Silas Mbaya, Nzalino Miriti and Fredrick Mputhia. The claimant prayed for orders against the respondent for payment to the grievants for notice, salary arrears for six months, worked days overtime, annual leave, gratuity and full compensation together with the costs of the suit.

The respondent filed the response to the claim on 16.10.2014 through Wahome Gikonyo & Company Advocates. The respondent prayed that the suit be dismissed with costs. The respondent raised a preliminary objection that the parties had not concluded the relevant recognition and collective agreements and the suit should therefore fail for want of the claimant's proper standing. The respondent urged that it was provisionally registered on 24.05.2000 as a cooperative society and the grievants had worked for it from 24.05.2000 to 7.08.2000 when they were dismissed for gross misconduct of stealing coffee.

The court finds that the claimant has failed to establish existence of a collective and recognition agreement concluded with the respondent. The claimant has not established the contractual basis between the claimants and the respondent upon which the claimant would justify the kind of reliefs as prayed for in the memorandum of claim. Further, the claimants having been dismissed on 7.08.2000 and valid or timely conciliation proceedings having not been established to have taken place, the court finds that the suit was filed after lapsing of the six years for contractual claims under section 4 of the Limitation of Actions Act, Cap.22 then applicable to such actions. In any event, the claimant has not in the pleadings, evidence or submissions given any suggestion of the monies to be awarded by the court under the prayers made.

For the reasons set out and in conclusion, the claimant's suit is dismissed with costs.

Signed, dated and delivered in court at Nyeri this **Friday, 6th March, 2015.**

BYRAM ONGAYA

JUDGE