



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 80 OF 2014**

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

**-VERSUS-**

**KIRUBIA FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 24<sup>th</sup> April, 2015)

**JUDGMENT**

The claimant filed the memorandum of claim on 23.06.2014 on behalf of its member John Simon Kiriungi, the grievant. The claimant prayed that the respondent pays a sum of Kshs. 582,883.00 being Kshs.37, 878.00 pay in lieu of notice, provident of Kshs.82, 069.00, Kshs. 3,400 not remitted to Chuka Municipal Council, pay for annual leave not taken for 5 years Kshs. 113,634.00, leave allowance for 5 years Kshs.5, 000.00, terminal benefits for 5 years Kshs. 189,390.00, and full compensation of 12 months' salaries for unfair termination Kshs.151, 512.00.

The respondent filed the response to the claim on 22.10.2014 through Wahome Gikonyo & Company Advocates. The claimant prayed that the claimant's suit be dismissed with costs.

The case came up for hearing on 12.03.2015 when the parties agreed that the case be determined on the basis of the documents on record without calling witnesses. The parties further agreed to file final written submissions and they acted accordingly.

It is not disputed between the parties that the grievant was employed by the respondent and the employment was terminated on 14.10.2003 when the respondent retired the grievant from employment. The claimant reported a dispute to the Minister for Labour on 14.05.2010 with respect to the grievant's retirement and the payment of the grievant's retirement benefits. The Minister's appointed conciliator rendered the recommendations on 7.03.2012 and the claimant wrote on 8.05.2012 agreeing with the conciliator's recommendations. The respondent declined to comply with the recommendations and the conciliator issued a referral certificate on 14.03.2014 paving way for filing of the present suit. The suit was filed on 23.06.2014.

The **1<sup>st</sup> issue** for determination is whether the claimant was entitled to sue on behalf of the grievant as retired by the respondent on 14.10.2003 and long before the parties to the suit concluded a recognition and collective agreement. The court has considered the record and it is clear that the claimant in urging its case relied upon the collective agreement which provides in clause 27 that the effective date was 1.10.2007 to 30.09.2009. The court finds that as submitted for the respondent, the collective agreement did not apply to the grievant's retirement and the grievant having left employment in 2003, the claimant lacked the relevant standing to sue and make claims on behalf of the grievant on the basis of the collective agreement on record.

The **2<sup>nd</sup> issue** for determination is whether the suit was time barred. The court has found that the collective agreement did not apply. As submitted for the respondent, the suit could only be brought on the contract of employment between the grievant and the respondent and within 6 years from 14.10.2003 as per the limitation period of 6 years then applicable under provisions of section 4 of the Limitation of Actions Act, Cap 22 Laws of Kenya. The court finds that the suit was not founded on such contract but

upon the collective agreement which was inapplicable and, the suit was filed on 23.06.2014 long after the lapsing of the allowed 6 years. Further the court finds that the conciliation proceedings did not help to overcome the running of the period of limitation because the recognition and collective agreement between the parties to the suit and which constituted the basis of the conciliation proceedings did not apply to the grievant's employment. Thus, the court finds that the suit was misconceived as it was time barred.

In conclusion judgment is entered for the respondent against the claimant and the suit is dismissed with costs.

**Signed, dated and delivered in court at Nyeri this Friday, 24<sup>th</sup> April, 2015.**

**BYRAM ONGAYA**

**JUDGE**