



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.156 OF 2014

KUDHEIHA WORKERS..... CLAIMANT

VERSUS

**THE BOARD OF MANAGEMENT, KIHUMBU-INI SECONDARY
SCHOOL..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 26th June, 2015)

JUDGMENT

The claimant trade union filed the memorandum of claim on 25.11.2014 alleging the unfair termination of its alleged member Catherine Wamukore Gothe, the grievant. The claimant prayed for judgment against the respondent for:

- a. Underpayment of wages from July 2008 to August 2013 in the sum of Kshs.313, 991.00.
- b. Unpaid 9 public holidays for 9years for double pay being Kshs.86, 832.00.
- c. Three months pay in lieu of notice being Kshs. 16, 080 x 3 being Kshs. 48, 240.00 less one month pay made Kshs. 11, 185.00 making Kshs. 37, 055.00.
- d. 12 months' salary compensation for unfair termination making Kshs. 12 x 16, 080.00 = Kshs. 192, 960.00.
- e. Total claim Kshs. 630, 838.00.

The respondent filed the memorandum of response on 11.12.2014 through F.O. Makori, Litigation Counsel, for Attorney General. The respondent prayed that the memorandum of claim be dismissed with costs.

The claimant was employed by the respondent in September 2014 to the position of a cateress. She worked for 9 years and the employment was terminated in July 2013.

By the letter dated 09.05.2013 the respondent asked the grievant to show-cause why disciplinary action could not be taken against the grievant on account of 6 allegations as follows:

1. In 1st term 2013 the grievant incited the students to go on strike which resulted to students' unrest on the night of 1.04.2013 and parents and students had attested to that fact.
2. The grievant incited workers by showing them payroll from other schools to show that the respondent underpaid its workers.
3. Team work was the respondent's core value but as head of kitchen staff the grievant created a lot of antagonism amongst the staff to a point that there was no team work in the kitchen department.
4. The grievant insubordinated the respondent's principal on 22.04.2013 by failing to attend a

scheduled meeting called by the principal and without giving apology. That was not the first meeting the grievant had failed to attend.

5. The grievant neglected duty on 3.05.2013 by failing to turn up on duty to prepare meals for respondent's members at the inauguration meeting.

The grievant offered her explanation in the letter dated 10.05.2013 culminating in the 1st warning letter dated 03.06.2013. The letter asked the grievant to present a copy of salary document she had by 5.06.2013 failing which she would get another warning letter for insubordination. By the letter dated 04.06.2013 the grievant wrote that the copy of salary document had got lost so that she could not present it.

By the letter of 26.07.2013 the grievant received the 2nd warning letter and a second letter dated 26.07.2013 inviting the grievant to a board meeting on 30.07.2013. The letter required the grievant to be away from the respondent's school till 30.07.2013 and to hand over the kitchen store keys to the bursar.

By the letter dated 30.08.2013 the grievant was dismissed with effect from 1.08.2013. She was to be paid salary up to 31.08.2013, one month salary in lieu of notice and to clear with the respondent by 15.09.2013. The total terminal dues paid as per the termination letter was Kshs. 22,370.00.

The claimant wrote to the respondent the letter dated 17.09.2013 about the grievant's termination. The respondent replied the letter by the one dated 23.09.2013 stating that the claimant could not get involved in the grievant's case because the relevant collective agreement was not known to the respondent and the grievant was not a member of the claimant.

The **1st issue** for determination is whether the grievant is a member of the claimant union. The grievant testified that she joined the union in 2009 but did not file receipts to show that she had been remitting the relevant union dues. In the circumstances, the court finds that the grievant was not a member of the claimant union and the union could not file the suit on behalf of the grievant. For that reason alone the claimant's suit will fail for want of standing. As then substantive issues in the suit remain undetermined and the time of limitation has not lapsed, it could be that the grievant might have another chance before the court. **In conclusion, the claimant's suit is dismissed with costs.**

Signed, dated and delivered in court at Nyeri this **Friday, 26th June, 2015.**

BYRAM ONGAYA

JUDGE