



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**

**Petition 34 of 2012**

**ABDULKADIR MOHAMED HAJI.....PETITIONER**

**AND**

**KENYA PETROLEUM WORKERS UNION.....RESPONDENT**

**JUDGMENT**

**Petitioner's Case**

1. Kenya Petroleum Workers Union sued Benzine Petroleum Workers Union in Industrial Court Cause No. 631N of 2009 and subsequently obtained judgment by way of an award dated 3<sup>rd</sup> June 2010.
2. The petitioner as a shareholder of Benzine Petroleum Company Limited brings this petition dated 6<sup>th</sup> February 2012 to forestall any further action to execute the award against him as an individual and in the petition he seeks the following reliefs;
  - (a) *An injunction be issued against the respondent, his agents and or employees prohibiting the respondent from proclaiming, attaching, selling or otherwise alienating the property of the petitioner in execution of the judgment of the Industrial Court in Case No. 631 N of 2009, Kenya Petroleum Workers Union versus Benzine Petroleum company Limited.*
  - (b) *A declaration be made that it would be a violation of the petitioner's rights under Article 31(b), 40(1) and 50(1) of the Constitution for the respondent to demand the petitioner to satisfy the debt owing to the respondent by Benzine Petroleum Company Limited.*
  - (c) *Such other orders as the court may deem fit to grant.*
3. The petition is supported by the petitioner's affidavit sworn on 6<sup>th</sup> February 2012 where he depones that auctioneers visited his private offices in Kileleshwa and purported to execute the Industrial Court judgment. He asserts that the act is an infringement of his right to property as he is a legally distinct person.

**Respondent's Case**

4. The petition is opposed by Cephas Olala, the Secretary General of the respondent, by a replying affidavit sworn on 29<sup>th</sup> February 2012. The respondent contends that the proceedings and judgment are irregular and the judgment has not been attacked as at all material times the respondent in the case was served.

5. Counsel for the respondent argued that the petitioner had a proper remedy in law to set aside any execution through the **Civil Procedure Rules**. He could lodge objection proceedings or apply to set aside warrants of attachment against him.

6. In counsel's view, these proceedings are an abuse of the court process as there is relief before the Industrial Court. Counsel relied on the case of **Jeremiah Muku v Methodist Church of Kenya Trustees and Another Meru HCCC 80 of 2005 (Unreported)**.

### **Determination**

7. I have considered the arguments by the parties and the only issue is whether the execution of the judgment against the petitioner is a breach of his fundamental rights.

8. It is true that the petitioner has all other reliefs under the **Civil Procedure Rules** but **Article 22** entitles a person to approach this court directly if his or her right has been infringed. I do not consider this petition an abuse of the court process.

9. The petitioner contended that his rights under **Articles 31(b), 40(1) and 50(1)** have been infringed. The execution of the decree against the petitioner is a breach of **Article 50(1)**. The petitioner is not a party to the suit, he is therefore denied a fair hearing.

10. In **Kenya Post Office Savings Bank & 2 others v Attorney General & Others Nairobi JR petition No. 193 of 2010 (Unreported)**, the Court considered the effect of execution against officers of a company in respect of a corporation debt. The court stated as follows; “[28] *I will now deal with the infringement of the rights of the petitioners. It would be convenient to deal with the situation for the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners. They are officers of the bank, an independent statutory body. It is now so well established that they cannot be held personally liable for the acts of body corporate more so in this case where the corporation is a statutory corporation. [29]The order made on 10<sup>th</sup> May 2010 was an order that “the Union will be at liberty to institute contempt proceedings and/or execute against the Managing Director, Mrs. Nyambura Koigi and Company Secretary Mrs Mercy Mbijiwe for appropriate orders.” This order exposes the 2<sup>nd</sup> and 3<sup>rd</sup> petitioner to loss of liberty. They are clearly threatened with execution of the entire judgement debt, if it is not paid. Their liability can only be for contempt and at any rate if they are found guilty after due process. [30]Section 14(b) of the Labour Institutions Act provides that contempt proceedings are one of the ways the court may enforce its orders. The penalty for contempt is prescribed at section 61 of the Act. This was what was endorsed on the order of 11<sup>th</sup> March 2010. The 2<sup>nd</sup> and 3<sup>rd</sup> petitioners could not be placed in a situation where execution for the entire judgment sum of Kshs.6,114,506.50 would be executed against them personally, particularly where the 1<sup>st</sup> petitioner, a statutory body does not possess statutory immunity from execution and court process. The judgment could be executed against it by normal means of execution.”*

28. The point I have made sufficiently disposes of the matter and it is not necessary for me to consider whether other rights of the petitioner are infringed. Should the respondent wish to pursue the petitioner, he may take appropriate steps in the proceedings to make the petitioner party to the proceedings otherwise execution cannot proceed against him personally.

29. In the circumstances, I grant the following relief;

**(a) An injunction be issued against the respondent, his agents and or employees prohibiting the respondent from proclaiming, attaching, selling or otherwise alienating the property of the petitioner in execution of the judgment of the Industrial Court in Case No. 631 N of 2009, Kenya**

**Petroleum Workers Union versus Benzine Petroleum company Limited.**

**(b) I order each party to bear their own costs.**

**DATED and DELIVERED at NAIROBI this 19<sup>th</sup> day of June 2012.**

**D.S. MAJANJA**  
**JUDGE**

Mr Kibanga instructed by Munga Kibanga and Company Advocates for the petitioner.

Mr Obara instructed by Obara and Obara Advocates for the respondent.