



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

Misc Civ Appli 1599 of 2003

**IN THE MATTER OF ENFORCEMENT OF AN INDUSTRIAL COURT AWARD CAUSE NO.
46 OF 2001**

KENYA UNION OF EMPLOYEES OF VOLUNTARY

ASSOCIATION TRADE UNIONS & ALLIED ORGANISATIONS
.....PLAINTIFF

VERSUS

CENTRAL ORGANISATION OF TRADE UNIONS (KENYA).....
.....DEFENDANT

RULING

The Applicant KENYA UNION OF EMPLOYEES OF VOLUNTARY ASSOCIATIONS TRADE UNIONS & ALLIED ORGANISATIONS filed a dispute under Cause No. 46 of 2001 against the Respondent – CENTRAL ORGANISATION OF TRADE UNIONS before the Industrial Court.

The issue in dispute was VICTIMIZATION AND UNLAWFUL UNJUSTIFIED TERMINATION OF Joash Amukaya, Philip Abongo, Paul Irungu and Bernard Ludoshi.

The Industrial Court gave its award in favour of the applicant on 20th February 2002 directing the Respondent to pay the applicants all their salaries and house allowances for 6 months amounting to Sh.208,410/= made as follows:

Joash Amukaya - Sh.51,000/=

Philip Abonyo - Sh. 6,500/=

Bernard Ludeshi - Sh.44,910/=

Paul Irungu - Sh.51,000/=

Total - Sh.208,410/=

On 27th October 2003 the Applicant filed this application by way of a Notice of Motion seeking orders

that the award of the Industrial Court in Cause No 46 of 2001 delivered on 20th February 2002 be adopted and confirmed by this Honourable court as the final judgment in the cause for the purposes of execution; that pursuant to order, above the applicants be at liberty to execute the final judgment against the respondent/defendant; that costs of this application be provided for.

The application is supported by sworn affidavit of O.B. Otieno, the National Secretary of the applicant union in which he has deponed that the 4 fully paid members of the applicant were terminated by the respondent whereupon they claimed their wages due for the period of 6 months which was granted through the award of the Industrial Court in the year 2002; that the union lodged a dispute in the Industrial Court being Cause No. 46 of 2001; that the Industrial Court heard and determined the matter in favour of the applicants; that from the date of the award, the respondent has refused, failed and/or neglected to honour and satisfy the said award.

The application was opposed by the respondent on the ground that the application is misconceived and bad in law; that the application is premature in the face of the pending suit being Misc. application No. 427 of 2002 that the application is intended to embarrass the defendant organization as the same is frivolous and scandalous and that the application is fatally defective. Mr. Enonda for the applicant submitted that since the Industrial Court had given an award in favour of the applicants the role of the High Court under Section 15(2) of the Trade Disputes Act is to adopt and confirm the award to enable a successful party commence execution proceedings while Mrs. Guserwa, counsel for the Respondent submitted that the award sought to be enforced is meant to benefit the 4 named persons cited in the award namely Joash Amukaya, Philip Abongo, Bernard Ludeshi and Paul Irungu and the union is not a beneficiary of this award and that the enforcement of the Industrial Award is through Civil Procedure i.e. a normal suit by way of a plaint for Originating Summons.

With due respect to counsel, the provisions of the both the Trade Disputes Act and the Civil Procedure Act are very clear. The 4 named persons cited in the award are party to these proceedings and therefore they have locus to execute.

The execution can only be effected through their union. Secondly once the Industrial Court has given its award and the same is confirmed by the court, the successful party ought to initiate execution process under Order XXI of the Civil Procedure Rules and is not required to file a normal suit.

For the above reasons, the applicants application is allowed in terms of prayer 1 of the Notice of Motion dated 27th October 2003 and the court orders that the applicant be at liberty to execute the judgment herein adopted and confirmed as per the Industrial Court award dated 20th February 2002.

DATED and delivered at Nairobi this 4th day of May 2006.

J.L.A. OSIEMO

JUDGE