



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Petroleum Oil Workers Union v Africa Fuels & Lubricants Limited  
(Cause E651 of 2023) [2024] KEELRC 586 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 586 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E651 OF 2023**

**J RIKA, J**

**MARCH 15, 2024**

**BETWEEN**

**KENYA PETROLEUM OIL WORKERS UNION ..... CLAIMANT**

**AND**

**AFRICA FUELS & LUBRICANTS LIMITED ..... RESPONDENT**

**RULING**

1. This Claim is presented by the Claimant Union on behalf its two members [Grievants], Alex Kubasu Ogutu and Phillip Richard Otieno.
2. It is pleaded that the Grievants were employed by the Respondent as Sales Executives. They were summarily dismissed on 1<sup>st</sup> August 2022.
3. The Claimant prays for their reinstatement, re-engagement or payment of compensation for unlawful termination and payment of terminal benefits.
4. Accompanying the Statement of Claim is an Application dated 7<sup>th</sup> August 2023, seeking orders, inter alia, that: -
  - a. Termination of the Grievants' employment is stayed.
  - b. The Respondent is restrained from terminating the Claimant's members' contracts and/or otherwise victimizing them, on account of their association with the Claimant, pending hearing and determination of the Application.
  - c. The Respondent supplies monthly claims forms for the months of June and July 2022.
5. The Application is founded on the Affidavit of the Claimant's General Secretary George Okoth Omollo, sworn on 7<sup>th</sup> August 2023.



6. At paragraph 10 of the Affidavit, the General Secretary prays for reinstatement or re-engagement of the Grievants. At paragraph 11, he prays for compensation and terminal benefits.
7. The Respondent relies on the Replying Affidavit of its Human Resource Business Partner Beatrice Ooko, sworn on 30<sup>th</sup> August 2023. She explains that termination was fair and lawful. The remedies sought are not warranted. The orders sought cannot issue through an Interlocutory Application. The Respondent cannot be restrained from terminating contracts, which have already been terminated.
8. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions. The latter were confirmed to have been filed and exchanged, at the last mention before the Court, on 7<sup>th</sup> December 2023.

**The Court Finds: -**

9. The Orders sought through the Application filed by the Claimant, replicate the prayers sought through the Statement of Claim. It ought not to have been filed. The Claimant ought instead, to have processed its Claim for full hearing. The Application is an unnecessary replication of the averments in the Statement of Claim, and a stark abuse, of the court process.
10. Orders for reinstatement or re-engagement, compensation and terminal benefits, are considered through a full trial. There would be nothing left for trial, if the Court were to grant the orders sought in the Application.
11. The prayer seeking restraint of the Respondent from terminating contracts and/ or victimizing Claimant's members is ambiguous. It does not name Employees or Claimant's members who apprehend victimisation by the Respondent on whatever ground. It does not appear related to the rest of the dispute, which concerns the two named Grievants, whose contracts have already been terminated. The Grievants are ex-Employees, not Employees of the Respondent, capable of being protected from termination.
12. The Claimant should not waste time, prosecuting an Application which is intended to achieve the orders, the Statement of Claim is intended in the end, to achieve.
13. There is nothing known as stay of termination, in the *Employment Act*. Once termination has taken place, an Employee can only seek remedies known in law, under the *Employment Act* and the *Employment and Labour Relations Court Act*. Stay of termination is not one such remedy.
14. The Application is in abuse of the process of the Court. It seeks to prosecute the substantive Claim, and dispense with full trial of the facts. It contains some prayers which are not known to the *Employment Act*.

It is Ordered: -

- a. The Application is declined.
- b. Costs to the Respondent.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 15<sup>TH</sup> DAY OF MARCH 2024.**

**JAMES RIKA**

**JUDGE**

