



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. E002 OF 2020

IN THE MATTER OF

ARTICLES 2, 3, 10, 19, 20, 22, 23, 25, 27, 28, 30, 41, 47, 48, 50, 162, 258, 259

AND 260 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF

SECTION 4 OF THE FAIR ADMINISTRATIVE ACTIONS ACT OF 2015

AND

IN THE MATTER OF

SECTIONS 18, 40, 43, 45, 47, 49 AND 50 OF THE EMPLOYMENT ACT

BETWEEN

DOMNIC OMBAGI.....1st PETITIONER

JOSHUA OGUCHA..... 2nd PETITIONER

EUNICE MONGINA ONGUTI.....3rd PETITIONER

ISAIAH OMWOYO MASITA.....4th PETITIONER

FELISTER KERUBO ONYANDO.....5th PETITIONER

ROSE KERUBO MARANGA 6th PETITIONER

& 115 OTHERS

v

KISII UNIVERSITY.....RESPONDENT

RULING

1. The Petitioners moved the Court on 13 October 2020, seeking in the main a conservatory order restraining the Respondents from terminating their contracts on account of redundancy.
2. The Court certified the Motion urgent and directed that it be served ahead of *an inter-partes* hearing on 3 November 2020.
3. The Petitioners, however, moved the Court a few days later through an application dated 16 October 2020, seeking an order to preserve and protect the subject matter of the initial Motion and Petition dated 12 October 2020.

4. When the second Motion was placed before the Court on 19 October 2020, it issued an order in the following terms:

(2) A conservatory order is hereby issued to preserve the subject matter of the Petition pending hearing and determination of the application interpartes in terms of directions earlier given on 3rd November 2020.

5. The Court gave directions for the hearing of the Petition on 3 November 2020, which culminated in a judgment on 11 December 2020.

6. In the judgment, the Court dismissed the Petition on the grounds that the Petitioners had approached the Court before exhausting the statutory dispute resolution avenues provided for in the Labour Relations Act, and because a trade union of which the Petitioners were members had also initiated other legal proceedings based on the same facts.

7. On 14 December 2020, the Petitioners filed a contempt application against the Respondent allegedly because the Respondent had failed to comply with the orders of 19 October 2020 (failure to pay salaries for November 2020).

8. The Respondent's Vice-Chancellor filed an affidavit in opposition to the contempt application on 12 April 2021, and pursuant to further Court directions, the Petitioners filed a further affidavit and submissions on 16 June 2021.

9. The Respondents filed joint submissions on 7 December 2021 (should have been filed and served on or before 30 July 2021).

10. The Court has considered the Motion for contempt, the affidavits and submissions and come to the view that the Motion should be declined for the following reasons.

11. First, a trade union of which the Petitioners are members had filed Kisumu Petition No. E009 of 2020, *Kenya Universities Staff Union v Kisii University* and Nakuru Petition No. 88 of 2020, *Kenya Universities Staff Union v Egerton University and Kisii University* over the same dispute.

12. The Kisumu Petition filed by the Union is still pending before this Court, and witnesses have already started testifying.

13. The issue of payment of any outstanding salaries after the redundancy notices was issued is a live question before the Court in said Petition, and there is a likelihood of inconsistent orders being issued in respect to the head of the claim for November 2020 salaries which forms the subject of contempt application.

14. In this respect, there is a possibility of causing embarrassment to the Court if conflicting findings were to be made.

15. Second, there is no evidence that the Petitioners' contracts which were preserved by the orders of 19 October 2020 have been terminated or lost. Hence the Petitioners are still employees of the Respondent and cannot claim unfair termination of employment.

16. Three, it is within the province of the Court to award the Petitioners any salaries found due to them as a final remedy.

17. For the above reasons, the Court declines to find the Respondent or any of its officers in contempt, and the Motion is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 15TH DAY OF DECEMBER 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioners Musyoki Mogaka & Co. Advocates

For Respondent Nyamurongi & Co. Advocates

Court Assistant Chrispo Aura