



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 166 OF 2020**

**KENYA PETROLEUM OIL WORKERS UNION**

**CLAIMANT**

**v**

**KENYA PIPELINE COMPANY LTD**

**RESPONDENT**

**RULING**

1. The Kenya Petroleum Oil Workers Union (the Union) moved the Court on 9 April 2020 seeking orders restraining the Kenya Pipeline Company Ltd (the Respondent) from restructuring its staff grades, staff and/or the Human Resources Policies and Manual.
2. The Court, *ex-parte* granted the order pending the giving of further directions/*inter-partes* hearing on 14 May 2020.
3. Before the Motion could be canvassed and determined, the Union filed another Motion dated 17 July 2020 seeking orders
  1. ...
  2. ...
3. **THAT** the Honourable Court summons to appear/issue a warrant of arrest against the Respondent Company Managing Director Dr. Irungu Macharia to show cause why he should not be committed to civil jail for such a period as this Honourable Court may deem fit and just for disobedience of the orders issued by this Court on 15<sup>th</sup> April 2020.
4. **THAT** in the alternative, the contemnor Respondent Managing Director Dr. Irungu Macharia be committed to civil jail on such terms as the Honourable Court may deem fit for disobedience of the orders issued on 15<sup>th</sup> April 2020.
5. **THAT** costs of this application and suit be met by the Respondent.
4. On 7 August 2020, the Court directed the filing and exchange of affidavits and submissions.
5. The Respondent filed on 11 August 2020 a replying affidavit sworn by its Human Resources Manager in opposition to the Motion.
6. The Union filed a further affidavit and submissions on 21 August 2020 while the Respondent filed its submissions on 3 September 2020.

**Parties' contentions**

7. In furtherance of the Motion, the Union contended that the Respondent caused an advertisement to be published on its website for positions of General Managers Grade 2 while the Court had suspended a restructuring or implementation of a Revised Grading Structure, Organisation Structure or staff establishment.
8. The Union also asserted that contrary to the Court orders of 15 April 2020, the Respondent commenced disciplinary proceedings against its members based on the new Human Resource instruments.
9. The Union further asserted that the Respondent had invited employees for interviews for purposes of redeployment in terms of the Revised Human Resource instruments which had been suspended by the Court.

10. Opposing the contempt application, the Respondent countered that the Court had granted final orders *ex-parte* without affording it a hearing; that the orders were not extended beyond 11 June 2020 and had therefore lapsed; that the application was supported by an unsigned affidavit; that the order was ambiguous and could only apply to Union members and not management staff and that the order did not stop recruitment of new employees or the conducting of disciplinary processes.

### **Final orders**

11. The Court has looked at a copy of the order which was extracted from the proceedings of 15 April 2020.

12. Although the extracted order indicated that the order would subsist till the hearing and determination of the suit, it does not agree with the handwritten notes on file.

13. The handwritten notes are to the effect **Order 3 of the Motion is allowed pending further directions/inter partes hearing on 14 May 2020.**

14. It is therefore not correct as contended by the Respondent that the Court made final orders *ex-parte*. If there was any mischief, it was in the extraction of the orders issued by the Court.

15. In this regard, the Court directs the Union to return any copies of the orders it extracted to the Deputy Registrar and further that the Deputy Registrar issues an order in conformity with the notes made on 15 April 2020.

### **Was Respondent in contempt?**

16. The Union asserted that the advertisement for General Manager positions was contrary to the orders issued by the Court because the advertisement indicated the applicable Grades as 2 and/or 3.

17. The Court has closely examined the Memorandum of Claim upon which the initial Motion was anchored. It sought orders expressly in respect of the Union's members.

18. The Union also averred severally in its pleadings that it had moved the Court on behalf of its members. No evidence has been placed before the Court so far that General Managers are unionisable to be affected by the dispute currently before the Court.

19. In the circumstances, the Court finds no wilful disobedience of the orders of 15 April 2020 in so far as the Respondent advertised for the positions of General Managers.

### **Disciplinary process**

20. The Court has looked at the *show-cause notices* dated 30 June 2020 and 1 July 2020.

21. The *show-cause notice* of 30 June 2020 did not refer or cite any Human Resource Policy, revised or old but instead cited the Employment Act and the Collective Bargaining Agreement between the parties.

22. The *show-cause*, therefore, does not exhibit any whim of contempt of the orders of 15 April 2020.

23. The *show-cause* of 1 July 2020 made reference to misconduct as regulated by clause 11.7.1(c) & (i) of the Human Resources Policies and Procedures Manual.

24. The parties did not file and/or produce copies of the Manual to enable the Court to ascertain whether the Revised Manual was being used contrary to the orders of Court.

25. The Court finds, again, no wilful disobedience of its orders.

### **The validity of orders of 15 April 2020**

26. *Ex-parte* injunctive orders are only valid for 14 days.

27. Any further validity depends on Court directions and/or consent of the parties. The *ex-parte* orders of 15 April 2020 were not extended on 11 June 2020. The Union did not seek an extension. Technically, the orders lapsed and the same ought not to be the foundation for a contempt application.

28. The Court also notes that the dispute between the parties revolves around terms and conditions of employment as embodied in the Human Resource Manual.

29. Such a dispute ought at the first instance be referred to the Cabinet Secretary, Labour for conciliation. There is nothing on record to suggest the parties considered such a course.

30. From the foregoing, the Court finds no merit in the Motion dated 17 July 2020. It is dismissed. Costs in the cause.

**Delivered through Microsoft teams, dated and signed in Nairobi on this 29<sup>th</sup> day of October 2020.**

**Radido Stephen**

**Judge**

**Appearances**

Mr. Onyony instructed by Onyony & Co. Advocates for Union

Mr. Mogire instructed by Munga Kibanga & Co. Advocates for Respondent

Court Assistant Lindsey