



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CAUSE NO. 170 OF 2017**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT**

**VERSUS**

**GITHUGURI WATER & SANITATION COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant herein filed suit on behalf of the Grievants Samuel Gachanja Ndungu and Charles Kaindo Ndungu the branch secretary and youth representative of the Claimant respectively. The Grievants were employees of the Respondent. It was averred that the Respondent had declined to implement the conciliators report concerning the dismissal of the Grievants who had been threatened and ultimately dismissed by the Director and Chairman of the Respondent on trumped up charges on account of their trade union activities. The Respondent did not form a disciplinary committee prior to the dismissal of the Grievants as was required. The Respondent declined to reinstate the Grievants despite the recommendation for this and the Claimant averred that the Respondent had breached the provisions of the Constitution of Kenya, the Employment Act and ILO Convention No. 135 on the right to representation and enjoyment of union rights. The Respondent was averred to have dismissed the Grievants despite their giving a proper response to the allegations made against them. They appealed their dismissal and the Respondent declined to consider the appeal and singled them out for punishment despite the Grievants inaccessibility of the items alleged to have been stolen. The Claimant averred that the Grievants sought intervention of the County Service and Administration Sectoral Committee of the Kiambu County Government and despite recommendation for reconsideration of the Respondent's position the Respondent did not recant. The Claimant averred that the Chairman of the Respondent wrote the letter rejecting the recommendation of the conciliator to reinstate the two Grievants back to their employment. The Claimant thus sought orders of reinstatement of the Grievants to their employment, a finding that the Grievants were discriminated against and that the Grievants were entitled to payment of the salaries for the period they have been kept out of employment unlawfully.

2. The Respondent responded to the suit through the Reply to Claim filed on 13<sup>th</sup> September 2017. The Respondent averred that it did not threaten its employees against membership in the Claimant. The Respondent averred that the Grievants were dismissed for gross misconduct and that the Grievants appealed the decision and failed to attend the appeal hearing. The Respondent averred that it followed the due process in dismissal of the Grievants and that the decision was warranted given the investigations against the Grievants and the gross misconduct they were accused of having participated in. The Respondent averred that the County Assembly cannot be enforced on the Respondent as it is a limited liability company which has its own managerial duties and responsibilities in relation to hiring and firing its employees. The Respondent averred that reinstating the Grievants to their positions would be highly prejudicial to the Respondent since they have on various occasions been involved in actions of misconduct. The Respondent averred that the Claimant's claim was frivolous and lacked merit.

3. The Grievants testified on 14<sup>th</sup> March 2018 and they stated that their employment was terminated unprocedurally for spurious allegations made by the Respondent. The Grievants stated that they were not reinstated as they had declined to withdraw the matter before the County Assembly. The Grievants conceded they did not attend the appeal as the matter was before the County Assembly. The Respondent called Winnie Kwamboka Ogutu the HR manager of the Respondent and Moses Ndwiga the former MD of the Respondent. The HR manager testified that the Grievants were given show cause letters and were invited for disciplinary hearings and they present at the initial hearing and upon appeal only one employee was reinstated and the two Grievants were summarily dismissed. She testified that the Grievants did not attend the appeal hearing despite being invited. The Grievants had been invited to attend in company of a colleague. The former MD testified that the Grievants attempted to intimidate the Respondent or have the management of the Respondent replaced. He confirmed issuing the show cause letters to the Grievants and invitation to disciplinary hearing. He stated that the Grievants did not want the management to handle their case and the matter was escalated to the Board which considered their matter and the special committee of the board was constituted to exclude the members of management the Grievants were uncomfortable with. He testified that the Grievants did not however attend the disciplinary hearing and the meeting resolved to reinstate one employee and dismiss the Grievants. He stated that the Grievants were given an opportunity to appear at the appeal and they declined to do so as the matter was before the County Assembly. He stated that the Respondent was not answerable to the County Assembly.

4. The parties did not file submissions despite indicating that they would do so. The Grievants were dismissed and after the dismissal sought intervention from the Labour Officer who recommended their reinstatement. This was not akin to the matter of the County Assembly which could not direct the Respondent. The Respondent declined to reinstate the Grievants despite the recommendation. Whereas there may have been cause to dismiss the Grievants, the conduct of the Respondent after conciliation left a lot to be desired. The period since the dismissal is not yet past the threshold of reinstatement but due to the bad blood that the Respondent has with the Grievants, the best course would be to order recompense in terms of Section 49 of the Employment Act. In addition the Grievants termination will be reduced to a normal termination in place of summary dismissal to enable them access their benefits. The compensation will be by payment of salary for each of the Grievants for 6 months. As they did not quantify the sums due as salary they will have to settle the terms of the decree in the normal manner. They will also have certificate of service and costs of the suit which I assess at 25,000/-. The rest of their claims fail.

It is so ordered.

**Dated and delivered at Nyeri this 4<sup>th</sup> day of June 2018**

**Nzioki wa Makau**

**JUDGE**