



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 28 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

JARAMOGI OGINGA ODINGA UNIVERSITY

OF SCIENCE AND TECHNOLOGY (JOUUST)CLAIMANT

VERSUS

KENYA UNIVERSITIES STAFF UNIONRESPONDENT

J U D G E M E N T

By its Memorandum of Claim filed on 9th February, 2016, the Claimant seeks the following remedies;

- a. A Declaration that the Respondent strike is unlawful.
- b. An order compelling the Respondent to revoke/cancel its directive/call for a strike and all other forms of industrial action.
- c. Any other relief that this Honourable Court may deem just and fit to award under the circumstances.

It was the Claimant's contention that the strike called by the Respondent was illegal for the failure to issue the claimant with notice of grievances in writing as provided in the Labour relations Act, failure to follow the procedure laid down in the Act, pulling out of office and compelling non-teaching staff members who are prohibited from participating in any strike to forcefully participate in the strike on on the first day of the strike and failure to report a trade dispute (if any) to the Cabinet Secretary in charge of labour and agreeing to go through a conciliation process as provided in the Labour Relations Act.

The Memorandum of Claim was filed together with a notice of motion in which the Claimant sought the following orders -

1. Application be certified urgent and it be heard ex-parte in the first instance.
2. THAT pending the hearing of this application inter-partes this Honourable Court be pleased to:
 - a) Direct that the Respondent action of going on strike is premature, unlawful and is hence not protected by this Honourable Court.
 - b) Direct the Respondent to withdraw and revoke their directive/call for a strike and all other forms of industrial action and that the membership of the Respondent should go back to

work.

c) Direct the Respondent to submit their list of grievances to the claimant and thereafter both parties should attend a conciliation process and to uphold the status quo as at the 5th of February, 2016 as the process of conciliation proceeds.

3. THAT the cost of this application be in the cause.

In the statement of Defence the Respondent denies that it called its members to strike or that there was any strike at all. The Respondent further avers that this suit was intended to derail the prosecution of the Claimant's Vice Chancellor for allegedly assaulting the Respondents Secretary General while attempting to seek dialogue on unresolved grievances. The Respondent further avers that the Claimant was fully aware of the grievances and unresolved issues raised by the Respondents and that the Claimant has always been intent to continue infringing on the rights of the Respondent's members.

The motion was heard *ex parte* in the first instance and the following orders issued -

1. That the matter is certified urgent.

2. That the Respondent, their servants, agents, and/or any person duly authorized by them to act on their behalf are restrained from continuing with the strike or calling any of its members on strike pending hearing of this application inter partes.

3. That the applicant is directed to serve the Order together with the Penal Notice to the Respondent and to place the same in conspicuous locations within the institution before close of the day on 10th February, 2016.

4. That the applicant is granted leave to amend the application within 24 hours and to serve the amended application together with the orders to the Respondent.

5. That the application is fixed for inter parte hearing on 11th February, 2016.

When the case came up for hearing the parties sought and were granted leave to proceed by way of written submissions which both parties filed and exchanged. In the written submissions the parties reiterated their positions on the Memorandum of claim defence.

I have considered the fact that the Respondent complied with the orders of 9th February, 2016 and the Claimant has confirmed that the strike lasted only up to 10th February 2016. It is the opinion of the court that the strike having fizzled out on 10th February 2016, the orders sought by the Claimant have been overtaken by events.

Parties are advised to negotiate and resolve the issues that gave rise to the strike through the machinery set out in both their recognition agreement and the Labour Relations Act.

There shall be no orders for costs.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF JANUARY, 2017

MAUREEN ONYANGO

JUDGE