



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 241 OF 2017**

**WILLIS OMOLLO & 86 OTHERS.....CLAIMANT**

**v**

**PYRETHRUM PROCESSING CO OF KENYA.....RESPONDENT**

**RULING**

1. The Claimants commenced legal action against the Respondent on 2 June 2017 and the issues in dispute were stated as

- i) Illegal suspension
- ii) Illegal lock out from work place
- iii) Withholding of salary.

2. At the same time, the Claimants filed a motion under certificate of urgency seeking

1. ...

2. THAT this Honourable court be pleased to restrain the Respondent from locking out the Claimants from their places of work pending inter partes hearing of the application.

3. THAT this Honourable court be pleased to order the lifting of the notice of suspension issued by the Respondent to the Claimants on 25<sup>th</sup> May, 2017 and direct the Claimants to resume duty immediately pending inter partes hearing.

4. THAT this Honourable court be pleased to direct the Respondent to immediately release to the Claimants the withheld salary for the month of May, 2017.

5. THAT pending the hearing and determination of this suit the Respondent be restrained from locking out suspending or withholding the salaries of the Claimants.

6. THAT costs of this application be borne by the Respondent.

3. The motion was placed before Abuodha J on 5 June 2017 and he directed that it be served upon the Respondent as well as the Kenya Chemical Workers Union and mention was scheduled for 14 June 2017 for further directions and/or hearing.

4. On 14 June 2017, Mbaru J before whom the motion was placed directed that the file be brought to Nakuru for mention on 22 June 2017. The Respondent was also directed to file its response to the motion within 7 days.

5. The Respondent filed a Memorandum of Appearance through the Federation of Kenya Employers on 20 June 2017.

6. On 22 June 2017, the Claimants filed a second motion under certificate of urgency seeking

1. ...

2. THAT this Honourable court be pleased to issue a temporary measure of protection by way of an Injunction to restrain the Respondent from continuing with the disciplinary proceedings against the claimants, dismissing or terminating employment of the claimants pending the hearing and determination of this application herein.

3. THAT this Honourable court be pleased to issue an order of injunction to restrain the Respondent from laying off, terminating or dismissing the employment or dismissing the claimants from their employment with the Respondent pending the hearing and determination of this cause.

4. THAT costs of this application be born by the Respondent.

7. When the application was placed before this Court on 23 June 2017, Mr. Masese indicated that the second motion had not been served upon the Respondent.

8. After hearing addressees from the parties, the Court directed that the Respondent's Human Resources Manager appear to shed light on the circumstances surrounding the dispute.

9. The Manager appeared, and after giving a brief of the circumstances of the dispute off record, the Court directed the parties to attempt an out of court settlement of the dispute with a rider that if there was no settlement, both applications would be urged on 30 June 2017.

10. The Respondent filed a replying affidavit opposing the first motion on 7 July 2017 and this prompted one of the Claimants to file a further affidavit on 10 July 2017.

11. There was no settlement and both applications were urged on 10 July 2017. The Court has given due consideration to the material placed before it and identified the issues arising as discussed hereunder.

### **Competency of the orders sought**

12. In so far as proposed orders 2 and 3 in the motion dated 2 June 2017 sought *ex parte* orders pending hearing of the motion without more, the said prayers have been overtaken by events and need no consideration by the Court.

13. Proposed Order 2 in the motion of 22 June 2017 is equally incompetent and/or overtaken by events as it sought an *ex parte* order pending inter partes hearing of the motion.

### **Salaries for May 2017**

14. Mr. Ndubi for the Claimants admitted in his address from the bar that May 2017 salaries had been paid save for 7 days the Claimants failed to report on duty.

15. Therefore nothing turns on this question save for the deduction of the 7 days remuneration which the Court will address shortly.

### **Injunction against dismissals pending hearing of the Cause**

16. This Court has variously held that it would interfere only in exceptional cases against a disciplinary process. This is borne by the fact that the Court now has jurisdiction to grant robust remedies such as reinstatement or re-engagement.

17. The Respondent has conceded that the initial disciplinary proceedings taken against the Claimants starting with the suspensions was devoid of contractual or legal authority and that it had cancelled the suspensions and issued interdiction letters to the Claimants, on the strength of the Human Resource Manual in place.

18. Such suspensions would therefore *ipso facto* be unlawful and would not have been allowed by the Court to stand.

19. In the instant case, the Respondents have tactfully removed that cause of action from under the feet of the Claimants by cancelling the suspensions and it would not be prudent for the Court to issue the order sought.

### **7 days salaries**

20. With the admission by the Respondent that the suspensions lacked legal or contractual authority, any deductions made to the Claimants remuneration during the 7 days were unlawful.

21. The deducted amounts should be paid to the Claimants.

### **Exhaustion of internal dispute resolution mechanisms**

22. The Court had at the *ex parte* stage directed the Claimants to serve the Kenya Chemical Workers Union with the suit papers.

23. According to the record, the Union was served but it did not bother to bring itself before the Court.

24. The wisdom of serving the union, in my view was because what the Claimants were allegedly agitating for related to terms and conditions of employment, and the Claimants being members of the Union should be agitating for such through the Union.

25. Although none of the parties bothered to bring to the attention of the Court the contractual agreements between the Respondent and the Union, this Court is aware that Unions and Employers ordinarily agree on the dispute resolution mechanisms in respect of collective grievances and disputes as well as individual grievances (recognition agreement and collective bargaining agreement).

26. It is not clear to the Court at this juncture whether the action taken by the Respondent took into consideration these provisions on resolution of collective grievances (terms and conditions of employment).

27. Failing the contractual provisions, the Labour Relations Act has provided avenues for resolution of industrial disputes.

28. There is nothing on record presently to suggest that the Respondent attempted to use those mechanisms before suspending or interdicting the Claimants.

29. But what is clear to the Court is that the parties have decided to play hardball. Hardball tactics are inimical to the principle of good faith in industrial relations. Indeed good faith is a cornerstone of industrial relations. Litigation should come as a last resort.

### **Way forward and Orders**

30. This Court has a mandate under its Constitutive Act to further and secure good industrial relations

between employers, employees, and Unions (where the employees have organised).

31. Further the normative cornerstone of the employment relationship in this jurisdiction by dint of Article 41 of the Constitution is fair labour practice(s).

32. What *is fair* goes far beyond what is legal or lawful. *Fairness* connotes impartiality, justice, equity and disinterest.

33. It is not disputed that some of the Claimants have served the Respondent for all their working lives and are approaching retirement.

34. It is also not denied that the Claimants were attempting to agitate for what they felt were their terms and conditions of employment but without strictly following the set statutory conditions, hence the big number of employees exposed to disciplinary action.

35. Fairness and the dictates of fair labour practices require that the litigating parties and the recognised Union ought to make attempts in good faith to resolve the issues in dispute.

36. The parties therefore ought to be given an opportunity to make an attempt at resolving the dispute before Court in a convivial atmosphere of good faith.

37. In this respect, the Court orders as follows

(i) The parties including the Kenya Chemical Workers Union to appear before the County Labour Officer, Nakuru for conciliation over the issues in dispute.

(ii) Pending the conciliation, the disciplinary action against the Claimants is stopped.

(iii) The Respondent to allow the Claimants back into the workplace forthwith.

(iv) The 7 days remuneration deducted be paid to the Claimants with the next payroll circle.

(v) Pending conciliation, this Cause is stayed.

(vi) Parties to report back on result of conciliation on a date to be agreed hereinafter.

38. Each party to bear own costs of the 2 motions.

**Delivered, dated and signed in Nakuru on this 13<sup>th</sup> day of July 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimants      Mr. Ndubi instructed by Robert Ndubi & Co. Advocates

For Respondent    Mr. Karanja instructed by Federation of Kenya Employers

Court Assistants   Nixon/Martin