



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU

PETITION NO. 24 OF 2016

(Before Hon. Lady Justice Maureen)

MUMIAS SUGAR COMPANY LIMITED.....PETITIONER

- Versus -

KENYA UNION OF SUGARCANE PLANTATION WORKERS.....RESPONDENT

Consolidated with

CAUSE NO. 191 OF 2016

KENYA UNION OF SUGARCANE PLANTATION WORKERS.....CLAIMANT

-Versus-

MUMIAS SUGAR COMPANY LIMITED.....RESPONDENT

JUDGMENT

Introduction

The parties hereto, MUMIAS SUGAR COMPANY LIMITED, the Petitioner (**the Company**) is a limited liability company engaged in cultivating and milling of sugarcane while KENYA UNION OF SUGARCANE PLANTATION WORKERS, the Respondent (**the Union**) is a trade union registered in Kenya to represent workers employed in sugarcane plantations and factories. The parties have a recognition agreement and have negotiated several collective bargaining agreements (CBAs). Under the recognition agreement there is provision for a Joint Consultative Council (JCC) composed of members from both the union and the company. The JCC meets from time to time to discuss issues of common interest to the parties.

By letter dated 6th June 2016 the Company convened a meeting of the JCC to be held at the Company's Training Centre at its Mumias Complex on 29th June 2016 at 9.00am. The agenda of the meeting was to discuss matters relating to medical services, security in the estate in general, uniforms and protective clothing, factory services and any other business. Arrangements were made by the Employee Relations Manager of the Company as was customary, for the concerned Union officials to be released by their respective supervisors to enable them attend the meeting.

For some reason the starting time of the meeting was changed from 9 am to 10 am and then the meeting

was postponed to 29th June 2016 at 10.00am. Upset by the postponement of the meeting the union officials went to the office of the Chief Supply Chain Officer and, bundled him out of the office and frogmarched him to the company gate and roughed him up before he was rescued by the Petitioner's security personnel. The union officials then proceeded to the Harvesting and Transport Office where they again attempted to rough up the officer but were prevented from doing so by the intervention of the security personnel of the Respondent. The union officials thereafter proceeded to the Risk and Compliance Manager's office but did not find her. The union officials then went to the Petitioner's cane yard where they instructed tractor drivers to drive the tractors to the yard. They then proceeded to the office of the County Commander where they were given an opportunity to submit their grievance,

Following the incidents of 28th June 2016 the Petitioner issued show cause/suspension notices to the union officials namely Patrick Mutimba, Hamisi Ndombi, Wycliff Kutiri. On 4th July 2016 the union withdrew labour protesting the suspension of the union officials.

It is under the above state of affairs that the parties herein filed two separate suits that have been consolidated.

The first to be filed was Nairobi Petition No. 100 of 2016 filed on 5th July 2016 in which the MUMIAS SUGAR COMPANY LIMITED (the Company) sought the following orders against KENYA UNION OF SUGARCANE PLANTATION WORKERS (the Union):

- a) A declaration that the strike action called by the Respondent is opaque, egregious, clandestine, capricious whimsical and contrary to articles 10, 30, 41, 47, and 50 of the Constitution of Kenya, 2010 and sections 76, 77, 78 and 79 of the Labour relations Act No.14 of 2007 hence unconstitutional and consequently null and void.
- b) An order of permanent injunction do issue restraining the Respondent, or any other person, body, entity, or office or officer acting on its behalf (except in accordance with the law or the constitution) from calling inciting, instigating others to take part on unprotected strike or any form of industrial action against the Petitioner.
- c) That a Permanent injunction do issue restraining the Respondent either by themselves or through their agents and/or servants from calling any unlawful strike action, threatening or intimidating or causing any fear and despondency against peaceful workers of the Petitioner.
- d) THAT this Honourable Court do and hereby issue a permanent prohibitory order declaring the strike called by the Respondent unlawful and unprotected as no notice had been issued by the Respondent.
- e) Any other and further relief or direction the Honourable Court may deem fit and grant.
- f) Cost of this suit with interest.

The Company at the same time filed an application under certificate of urgency which was heard *ex parte* on the date of filing and the following orders granted:

1. **THAT** the matter be and is hereby certified as urgent and the Petitioner is directed to serve the Respondent.
2. **THAT** the Industrial action called by the Respondent be and is hereby suspended pending inter parties hearing of this application.
3. **THAT** the employees are hereby directed to resume work forthwith.
4. **THAT** restraining orders are hereby issued barring the Respondent, its officials and members from taking any action that may be construed as breach of industrial peace at the Petitioner's

Company.

5. **THAT** inter parties hearing on 20th July, 2016 at Kisumu Employment and Labour Relations Court.

6. **THAT** the Deputy Registrar is hereby directed to facilitate transfer of the file to Kisumu.

The file was subsequently transferred to this court and registered as Petition No. 24 of 2016.

On 6th July 2016 the Union also filed Kisumu Cause No. 191 of 2016 seeking the following prayers:

- a) An order of revocation/cancellation of the suspension of the Claimants on 28th June 2016,
- b) Upon the grant of prayer a) above an order of reinstatement of the Claimants to their respective positions of employment with the Respondent,
- c) Costs of the cause together with any other relief the Court may deem fit, just and expedient to grant in the circumstances.

Together with the memorandum of Claim the Union filed a motion application seeking the following orders:

- a) An order of cancelation/revocation of the suspension of the Claimants on the 28/06/2016.
- b) Upon the grant of prayer (a) above an order of reinstatement of the Claimants to their respective positions of employment with the Respondent.
- c) Costs of the cause together with any other relief the Court may deem fit, just and expedient so to grant in the circumstances.

Upon hearing the application *ex parte* the court made the following orders:

1. **THAT** the application is certified urgent and the same heard *ex parte* in the first instance.
2. **THAT** status quo as of today pending inter-partes hearing of the application be maintained.
3. **THAT** an application dated 6/7/2016 is hereby fixed for inter-parties hearing on the 19/07/2016.

The two suits were consolidated by consent of the parties on 17th July 2016. On 6th October 2016 the court referred the case to conciliation by the County Labour Officer Kakamega and directed the County Labour Officer to file a report of the conciliation in court within 30 days.

In the report dated 28th November 2016 the Kakamega County Labour Officer sets out the issues in dispute as:

(i) The Management of Mumias Sugar Company Limited stated that the issue in dispute is:- “Illegal Strike”

(ii) KUSPAW Officials stated the issue in dispute to be:-

“Irregular termination of three Union Officials namely:-

- i) Ndombi H. Mulita – Treasurer
- ii) Patrick Mutimba – Chairman

iii) Wycliffe Kutiri – Chief Shop Steward”

At conciliation the Union submitted that –

The parties in the dispute have a recognition Agreement signed by both parties and have negotiated various CBA's settled and implemented.

On 28th June, 2016 employees went on a go-slow/sit in strike due to Maladministration and mismanagement of Company resources and abuse of Office by some senior company employee.

This matter went to court under a certificate of Urgency and the honourable Judge ordered for conciliation and further mention on 6th October, 2016 which was done and fresh orders granted for conciliation to take place and the parties to report back on 8th November, 2016.

The Union submits that the issue in dispute has never been discussed by the parties at the enterprise level thus not allowing the due process to be followed, as the Union was not allowed anytime:-

(i) To engage the Management for any investigation, interrogation and settlement of the dispute at hand and that the Management refused to engage with the Union and walked out on the General Secretary on 4th July, 2016.

(ii) That the Management violated the due process of issuing Show Cause letters, Suspension letters and ultimately issuing the three Union Officials with termination letters unprocedurally without correctly using the laid down procedures.

(iii) The Union engaged the Management through the Chairman of the Board of Directors Mr. Dan Ameyo with a view of resolving the dispute, he drafted a return to work formulae which was used by the General Secretary to call off the strike but to their surprise, Mr. Dan Ameyo refused to sign on the document.

(v) The Union reported this matter to court and orders were issued on 11th July, 2016 restricting management from any further disciplinary action against all employees and Union Officials but the management went ahead to write termination letters backdated to 11th July, 2016 in utter violation of the law and in contempt of the court orders issued. The termination letters to the three Union Officials dated 12th July, 2016 was issued unprocedurally.

(v) On 11th July, 2016 the Management convened an illegally constituted team of Management without allowing the Union/Employees an opportunity to be heard or represented. They proceeded with a hearing session where they passed a verdict to terminate the services of the Union Officials unilaterally amounting to victimization of Union Officials.

(vi) On 4th August, 2016 the Union presented an appeal over the termination of three Union Officials through the Chairman of the Board Mr. Dan Ameyo, unfortunately the appeal was not considered and tabled for discussion and finally no reply was availed to the Union over the proceedings.

(vii) The terminated employees have a contract of Service with the employer and are elected Union Officials being terminated for advancing, participating in Union activities and registering complaint to the Management thus being victimized.

(viii) The Union further states that the employer acted unfairly and practiced discrimination in employment and violated the provision of the CBA and Disciplinary procedures, Employment Act Section 41, 45, 46 and 48.

The Union avers that the employer should be guided by the provisions of legislation to maintain good Industrial Relations and also abide with the Labour Legislations to avoid bad Human Resource practices resulting into wrongful and unfair termination.

Finally the Union prayed that the three Union Officials should be reinstated unconditionally and be compensated for their services since the date of termination.

The Company however did not make any report to the County Labour Officer and insisted that the issue in dispute was the illegal strike and not irregular termination of employment of Ndombi H. Mulita, Patrick Mutimba and Wycliffe Kutiri. The County Labour Officer's report states that the Company representatives were uncooperative and seemed to have a fixed mind and were not ready for conciliation.

The parties who attended conciliation on behalf of the company were -

1. Ronald Luby – Legal Manager
2. Moses Owino – Chief Human Resource Officer

For the union the representatives were –

1. Bonface Mulomi – 2nd Deputy General Secretary
2. Vitalis K. Makokha – Assistant Branch Secretary
3. Rhodah A. Bakhuya – Assistant Branch Treasurer
4. Henry D. Kibondori – Committee Member

After hearing the parties the Conciliator made the following findings and recommendations:

Findings

- (i) That on 5/7/2016 a return to work formulae was signed by the General Secretary and 2nd General Secretary of KUSPAW but the Chairman of the Board of Directors Mr. Dan Ameyo refused to sign the same for reasons best known to him.
- (ii) That the Union used the return to work formulae and convinced workers to return to work.
- (iii) The termination of the three Union Officials was discriminatory as they were agitating for the workers' rights as enshrined in Article 41 of the Kenyan Constitution 2010.
- (iv) The Management violated the due process of issuing Show Cause letters and termination letters to the three Union Officials without representation from the Union.
- (v) That the Management snubbed the General Secretary of KUSPAW on 4/7/16 when he went to their Offices for discussion on the way forward concerning the affected three (3) Union Officials.
- (vi) The Management was unwilling to engage the Union thus buying time at all expenses.
- (vii) The issue in dispute could not be 'irregular Strike' as it had been surpassed with time and workers were working.
- (viii) The Management wrote termination letters to the three Union Officials despite a Court Order barring them to do so.

Recommendation

The termination of the three Union Officials was unilateral as they were not represented by their Union at any stage and furthermore the Management disobeyed the Court Order and hence I recommend that the Union Officials should be reinstated unconditionally and be compensated for their services with effect from the date of their termination up-to-date.

The parties thereafter filed written submissions on the conciliation report which were highlighted in court on 7th March 2017.

Submissions by the Company

Counsel for the Company Mr. Okweh Achiando submitted that the Company terminated employment of two persons namely Wycliffe Wafula and Ndombi Hamisi Mulita on 11th July 2016. He submitted that the grounds for termination were that the two failed to respond to suspension/show cause notices within 48 hours as instructed in the suspension letters dated 29th June 2016. He submitted that a total of 18 suspension letters were issued but the Company issued only 2 termination letters. He submitted that the other termination letters were not issued as the Company was complying with the court orders obtained by the union on 11th July 2016 restraining the Company from carrying out further disciplinary action against the employees.

Mr. Achiando submitted that an employee who does not comply with internal disciplinary machinery cannot complain of unfair termination. He submitted that the 2 termination letters were issued on 11th July 2016 before the order was served upon the Company. Mr. Achiando referred to the Union's minutes of a meeting held on 22nd June 2016 before the strike where at line 6 it is stated "*Here we have to use jungle law because many cases taken to court have not had good results.*" He submitted that this reflected a union that does not believe in decisions of the court and that there was a premeditated decision which the union proceeded to execute on the management on 28th June 2016 when union officials roughed up the Company's officers. Mr. Achiando further submitted that the reasons for the industrial action were matters that did not concern the union, which is only supposed to concern itself with terms and conditions of service.

Mr. Achiando relied on the case of **Alfred Nyungu Kimungui v Bomas of Kenya** in which the court upheld the right of an employer to discipline an employee. He submitted that Article 41 of the Constitution is limited by the Labour Relations Act.

On the Claim filed by the union he submitted that there were no names of persons referred to as "10 Others" in the Claim who are suing as Mumias Branch. He submitted that the persons whose services were terminated are not before court, and so are the 18 persons who were issued with show cause letters. He urged the court to dismiss the Claim by the union and enter judgment as prayed in the petition.

Submissions by the Union

Counsel for the Union Mr. Pascal Odhiambo submitted that it is clear from the record that there was a dispute between the parties which led to the strike on account of which the petition and claim were filed. He submitted that subsequently the parties held a meeting and a return to work formula was agreed upon with the Company Chairman Mr. Dan Ameyo. He submitted that in the return to work Formula it was agreed that all employees resume work immediately and that there will be no victimisation of either party due to the strike. That it was further agreed that management will consider investigating the managers mentioned by the union and take appropriate action.

Mr. Odhiambo submitted that the union subsequently called off the strike and workers resumed work on 5th July 2016. He submitted that the petition was filed on 6th July 2016 after the strike was called off and workers had resumed duty. He submitted that the Respondent did not honour the return to work formula, that the Company went ahead and terminated the employment of the two Grievants even after the court ordered status quo.

Mr. Odhiambo submitted that in the minutes of a meeting held on 16th June 2016 the CEO of the

Company admitted that the issues raised by the union carried legal weight and that there were management staff who should be terminated. He submitted that there is admission that 52 staff were disciplined based on the issues raised by the union on maladministration. He submitted that the petition before the court is spent as the strike was stopped before the petition was filed and granting the orders prayed for will be an academic exercise. He further submitted that the petition is not properly before the court and the provisions upon which it is based are omnibus.

Mr. Odhiambo urged the court to find that there is no justification at all for issuing the termination letters, that the excuse used by the Company that the Grievants failed to respond to show cause letters is neither here nor there as the Union had moved to court and the court had ordered status quo and that any action taken subsequent to the meeting of 5th July 2016 were in bad faith.

Mr. Odhiambo further submitted that there is no denial of the issues raised in the claim as the company did not file a defence to the Claim. He further submitted that the Company having not denied that there was maladministration the union was justified in taking industrial action. He relied on the case of **Alfonse Mwangemi Munga & 10 Others v African Safari Club** in which the court stated that parties should make use of normal procedure instead of invoking constitutional jurisdiction.

He urged the court to find merit in the claim and grant orders sought therein in respect of all employees who were victimised by the Company. He further prayed for reinstatement of the employees terminated after the filing of the claim as the terminations were effected when there were court orders in place.

Rejoinder by the Company

In a brief rejoinder to the submissions by made on behalf of the union, Mr. Achiando submitted that the return to work formula is not signed by the Respondent and there are no minutes of the meeting at which it was agreed upon and it is therefore a nullity. He further submitted that assuming it was signed by Dan Ameyo it is still a nullity as Dan Ameyo is not an executive chairman.

On suspensions Mr. Achiando submitted that they were effected on 8th July 2016 while the court orders were issued on 11th July and the orders can not apply retrospectively. He further submitted that there is no prayer for reinstatement and also no prayer for compensation and the court cannot grant the said orders. He urged the court to grant orders as prayed in the petition.

Determination

I have carefully considered the pleadings and the submissions of the parties made both in writing and orally. I have further considered the authorities cited. The issues for consideration are first whether at the time of filing the petition on 5th July 2016 there was any strike warranting the filing of the petition and whether the petition is now spent.

The petition was filed on 5th July 2016 and orders suspending the strike made on 6th July 2016. As deposed in the Replying Affidavit of BONIFACE MULOMI sworn on 15th July 2016, there was a meeting between the Company's Chairman Dan Ameyo and the Union's General Secretary Mr. Francis Wangara on 5th July 2016 at which a Return to Work Formula was agreed upon and the union immediately called off the strike so that by 6th July 2016 when the orders were granted there was no strike. These averments have not been denied by the Company except in the submissions of counsel in court which of course is not evidence.

Although there was industrial action by the Union's members on 4th July 2016 the strike was called off on 5th July 2016. There was therefore justification for filing the petition on 5th July 2016. However, the strike having been called off on 5th July 2016 I agree with the Union's submissions that the prayers in the petition are redundant as a strike once called off cannot be revived as any other strike would constitute a fresh cause of action.

The next issue for consideration is whether there was a return to work formula and if the Respondent

disregarded the same in taking disciplinary action against the union officials.

As I have already observed above, the Company did not deny the Union's averments that there was a meeting between its Chairman and the Union's General Secretary on 5th July 2016 at which a Return to Work Formula was negotiated. A copy of the Return to Work Formula signed by the Union's General Secretary Mr. Francis Wangara and Branch Secretary Mr. Bonface Mulomi is appended to the affidavits of Bonface Mulomi sworn on 14th July 2016 in support of its application of even date marked as Annexure "BM5" and also in the replying affidavit sworn on 15th July 2016 in opposition to the Company's application dated 5th July 2016 in which it is marked as Annexure "BM4". The wording of the Return to Work Formula is as follows-

REF: RETURN TO WORK FORMULA

Following the withdrawal of Labour by workers and sit in as from 28th June 2016 in a free and friendly atmosphere the parties have agreed as follows:-

- 1. The employees resume work immediately.*
- 2. That the suspension of union officials be reviewed to resume work immediately.*
- 3. Management to consider investigating the mentioned managers and take appropriate action.*
- 4. The parties have agreed that there will be no victimization of either party due to participation in the sit in.*

The submissions by the Company that the Return to Work Formula is not signed or that there are no minutes supporting the same and that it is not binding are countered by the Union's averments in the affidavits referred to above to the effect that-

5. In any event the present application is wholly spent and overtaken by events. Vide a meeting held on the 05/07/2016 and called by the Chairman of the petitioner and attended by myself together with the General Secretary of the head Office, we amicably agreed on an amicable solution to the present stalemate concluded by the respective parties. In that meeting we consented to returning to work on condition that the suspension of the Officials be lifted and the grievances raised by ourselves be addressed. (Annexed herein and marked "BM-4" is the return to work formula letter).

6. In a candid show of the mischief of the Petitioner, I wish to state that to our shock, disbelief and consternation it transpired that whilst we were negotiating with the Board Chairperson on a return to work formula which led us to call off the sit in, the Petitioner did instruct their Attorneys in the present petition who rushed to Court obtaining orders and worse still issued letters of termination to three Officials together with Notices to Show Cause on several employees.

Having not denied the averments in Mulomi's affidavits, the submissions by counsel are not supported and cannot counter the said averments.

Section 77 of the Labour Relations Act provides that parties must negotiate in good faith in conciliation meetings to resolve a strike. The section provides as follows-

77. Powers of Industrial Court

(1) A party to a dispute that has received notice of a strike or lock-out may apply to the Industrial Court to prohibit the strike or lock-out as a matter of urgency if—

(a) the strike or lock-out is prohibited under this Part; or

*(b) the party that issued the notice has failed to participate **in conciliation in good faith with a view to resolving the dispute.***

(2) A party that failed to attend any conciliation meeting may not seek relief under subsection (1)(b).

*(3) The Industrial Court may, in granting relief in respect of any application made under subsection (1)(b), **direct the parties to engage in further conciliation in good faith with a view to resolving the dispute.***

[Emphasis added]

It is apparent that the Company was not acting in good faith as deposed in Mr. Mulomi's affidavits and as further reflected in the Report of the Kakamega County Labour officer following this court's reference of the dispute to the Labour Officer for conciliation.

I find that the parties negotiated a Return to Work Formula and that the Company disregarded the same in taking disciplinary action against the members of the union.

The next issue is whether or not the termination of employment of Wycliffe Wafula and Ndombi Hamisi Mulita was justified

For termination of employment to be justified the employer must prove that there was valid reason for the termination and that it complied with fair procedure as provided in sections 41 and 43 of the Employment Act.

Section 46 sets out grounds which would not qualify as reasons for termination as follows-

46. Reasons for termination or discipline

The following do not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty—

(a);

(b);

(c) an employee's membership or proposed membership of a trade union;

(d) the participation or proposed participation of an employee in the activities of a trade union outside working hours or, with the consent of the employer, within working hours;

(e) an employee's seeking of office as, or acting or having acted in the capacity of, an officer of a trade union or a workers' representative;

(f) an employee's refusal or proposed refusal to join or withdraw from a

trade union;

(g)....;

(h).....; or

(i) an employee's participation in a lawful strike.

The Company has urged the court to find that it was justified in terminating the employment contracts of the Grievants following their refusal to respond to the show cause notices within 48 hours as directed in the said notices. The Company relied on the cases of **Mohamed Yakub Athman & 29 Others v Kenya Ports Authority** in which the court held that an employee participating in a strike is entitled to be subjected to the disciplinary process provided for in Section 41 of the Employment Act and section 80 of the Labour Relations Act. The Company also relied on the following cases: **Caliph O Ogega v the National Social Security Fund; Mathew Lucy Cherusa v Poverelle Sisters of Belgano T/A Blessed Louis Palazzalo Health Centre; Jackson Butiya v Eastern produce Kenya Limited (Industrial Court Cause 335 of 2011)(unreported);** and **Mary Wagikuyu Komu v The Kenya Hospital Association T/A The Nairobi Hospital** all of which dealt with the issue of an employee being subjected to the disciplinary process.

For the Union it was submitted that the termination of the employees was unfair labour practice as there was a Return to Work Formula in which it was agreed that there will be no victimization of either party due to participation in the strike.

The letters of termination dated 11th July 2016 give the reason for termination as failure to respond to the show cause notice within 48 hours as stipulated in the notice. The letters of termination do not mention the reasons for which the Grievants were issued with the show cause notices.

The Company did not file a response to the Statement of Claim. The union has denied that the Grievants were involved in roughing up some managers as alleged. None of the managers swore an affidavit to state what happened and no other evidence was filed as proof of the alleged assault of the managers. As I have already stated above, the Company has not rebutted the Union's contention that there was a Return to Work Formula on 5th July 2016 in which it was agreed that there will be no victimisation for participation in the strike that occurred on 28th June 2016.

Further there is no explanation why only 2 out of the 3 employees suspended through the show cause notices on 29th June 2016 were terminated. It is also not clear from the record when the letters of termination were served upon the Grievants and whether it was before or after the Respondent had been served with the court orders which was served on the same date as the date of the letters of termination.

Besides the foregoing the Company's Staff Manual does not provide for show cause notices at all. The manual only provides for suspension for a period not longer than 21 days. There is no provision in the manual for response to a show cause notice within 48 hours which in any event the court views as too short to enable an employee consult and respond to a show cause notice. Failure to respond to a show cause notice can therefore not form the basis for termination of employment. All the cases cited by the Company are not relevant as they do not address the issue at hand which is whether the termination should be for failure to respond to a show cause notice or for misconduct.

The court must also take into account that the Grievants were union officials and were reacting to the calling off of a meeting to discuss grievances raised by employees as acknowledged by the Respondent. Without condoning the acts of lawlessness which may have followed the calling off of the meeting of 28th June 2016 as averred by the Company, the court must also not lose sight of the circumstances prevailing at the workplace at the time. Was the action of the Respondent responsible under the circumstances? Could it be that the calling off of the meeting was provocative and triggered the angry reactions of the union officials? Should an employer be allowed to provoke workers and then discipline them for reacting to the provocation?

The Respondent has admitted through the replying affidavit of Ronald Lubia sworn on 19th July 2016 that on 4th July 2016 the Union's General Secretary visited the Company to discuss the issues in dispute between the parties but the Company declined to meet with him on grounds that the union had not furnished the company with an agenda. This does not reflect good industrial relations especially in a strike situation, taking into account that the General Secretary, being the apex office in the union, had undertaken to discuss the dispute. Did the Respondent expect the Secretary General to send an agenda in advance when workers are on strike? Wasn't the action of rushing to the Company to try and resolve the strike by the Secretary General the most responsible in the circumstances?

From the foregoing I find that the termination of the services of the Grievants was unfair for reasons that they were not taken through the disciplinary process set out in section 41 and were terminated for a reason unknown to both law and the Company's Staff Manual. I further find that there was a Return to Work Formula which the Company disregarded in terminating the employment of the Grievants and the Company's action was intolerant and constituted very poor industrial relations.

The final issue is whether the parties are entitled to the prayers sought in both the petition and the Claim.

I will start with the petition in which the Company is praying for a declaration that the strike is unconstitutional, a permanent injunction restraining the Union from calling a strike and an order of prohibition. As I have already found above, the strike was resolved on 5th July 2016 following the Return to Work Formula. There is therefore no further action necessary as the said strike was called off the very day the Company obtained the court orders even before the Union became aware of the orders.

For the union, the prayers in the claim are for the cancellation and/or revocation of the suspension of Wycliffe Wafula and Ndombi Hamisi Mulita and the reinstatement of all the employees who were suspended. As I have found above, the Grievants were not taken through any disciplinary process provided for in either the Employment Act or the Company's Staff manual. No valid reason was given for the termination of their employment. The Grievants are union officials protected both under statute (section 5 and 46 of Employment Act and section 5 of Labour Relations Act) and Articles 36 and 41 the Constitution.

I find that the Union has proved that there are exceptional circumstances in this case that warrant the grant of the orders prayed for being the revocation of the letters of suspension of all the employees under suspension and immediate reinstatement of Wycliffe Wafula and Ndombi Hamisi Mulita to their former positions with no break in their services and with full benefits, which I hereby do.

There shall be no orders for costs.

Dated, Signed and Delivered this 22nd day of September, 2017

MAUREEN ONYANGO

JUDGE