



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 755 OF 2015**

**DOCK WORKERS UNION.....CLAIMANT**

**VS**

**KENYA PORTS AUTHORITY.....RESPONDENT**

**RULING**

**Introduction**

1. The application before the court is the claimant's Notice of Motion dated 7.10.2015. It is brought on behalf of 91 members of the claimant (herein after called the grievants) who were summarily dismissed from employment by the respondent between 29<sup>th</sup> day and 30<sup>th</sup> day of September 2015 for gross misconduct. The Motion seeks the following orders:-

- (a) Reinstatement of all the grievants to their employment with full access to the respondent's premises pending the hearing and determination of this suit.
- (b) That the 91 grievants be allowed access to their personal accounts with the Bandari Sacco which is located within the respondent's premises pending the hearing and determination of this suit.
- (c) Injunction to restrain the respondent and her agents from ejecting, evicting, harassing or in any other manner whatsoever interfering with the quiet possession or occupation of the staff houses occupied by the 91 grievants pending the hearing and determination of this suit.

2. The Motion is supported by the undated affidavits sworn by Abukar Muhamed Abdulahi and filed on 7.10.2015 and 9.1.2015. The gist of the affidavits is that the grievants were subjected to a multiplicity of inquiries and unfair administrative process on allegation that they had presented fake and forged academic certificates to the respondent for the purpose of security employment or career advancement. That the said process culminated into unfair summary dismissal of all the grievants between 28<sup>th</sup> day and 30<sup>th</sup> day of September 2015 vide the respondent's letters which also gave the grievants 7 days to vacate their respective staff houses. That the alleged misconduct is not false and the procedure followed to dismiss the grievants was unfair. That the threat of evicting the grievants has caused tremendous anxiety and untold suffering because the grievants live with dependants including school going children in the staff houses, and who may be adversely affected by the intended eviction. That if the orders sought are denied, the grievants will suffer loss and damages.

3. The Motion is opposed by the respondent's using the replying affidavit sworn on 19.10.2015 by Mr. Amani Yuda Komora. The gist of the replying affidavit is that the Motion and the suit is fatally incompetent because the verifying affidavit and the supporting affidavits filed by the claimant are signed by an unauthorized person. That Mr. Abukar Muhamed Abdulahi was dismissed from employment in July 2015 for participating in an illegal strike and as such he lost his membership and office in the claimant union. That even if he was still a member and the Assistant General Secretary of the claimant, he is still without authority to sign Court papers on behalf of the claimant. That the suit and the Motion is incompetent because the claimant has not proved that the grievants are indeed her members as some of them were managers.

4. In addition to the foregoing Preliminary Objection (P.O) the respondent has deposed that the grievants were investigated and finally dismissed for presenting fake or forged Academic Certificate to her for purposes of securing employment and career advancement. That the procedure followed was fair and the misconduct was proved against the grievants. That after losing their employment the grievants also lost the right to be housed at the respondent's staff quarters. That the orders being sought can only be granted after the trial.

5. He further deposed that the applicant has not met the threshold for grant of interlocutory injunction. That no prima facie case or irreparable loss has been proved. That the Motion is based on an illegality and the law does not allow a dismissed employee to continue being housed by the former employer. That if the grievants succeed in their suit after trial, the Court will order compensation for the unfair termination or reinstate their employment and their staff housing. That the balance of convenience favours the respondent because if the grievants continue to occupy the houses and finally lose the suit after trial, they will not be able to compensate the respondent with rent and repairs.

6. As regards access to the Bandari Sacco offices, the respondent deposed that the Sacco premises are located outside the Port enclosure. That the Sacco premises is accessible by current and former employee without the need of a Court order. That the respondent is not in charge of the affairs of the Sacco and as such she cannot block the grievants from accessing their accounts at the SACCO. The Motion was disposed of by written submissions which were highlighted by counsel on 1.12.2015.

### **Analysis and determination**

7. The issues for determination are:

- (a) Whether the Motion is fatally incompetent and defective.
- (b) Whether interlocutory injunction against eviction should issue as prayed.
- (c) Whether the grievants should be reinstated to their employment pending trial.
- (d) Whether the respondent should be ordered to allow the grievants access to their personal accounts at Bandari SACCO which is located within the respondent's premises.

### **Incompetent Motion**

8. The respondent has objected to the suit on grounds that the affidavits verifying the suit and supporting the Motion were signed by person who is not the authorized representative of the union. Under section 2 of the Labour Relation Act (LRA), authorized representative means the General Secretary of a Union or a person appointed by the General Secretary. In his own affidavits, Mr. Abukar Muhamed Abdulahi has admitted that he is the Assistant General Secretary of the claimant. He has, therefore, no authority to sign document to initiate or support court proceedings on behalf of the union without first obtaining authority in writing from the General Secretary of the claimant. Consequently the Court finds that the Notice of Motion is incompetent because it is supported by an invalid affidavit. The invalidity is further entrenched by the failure to date both affidavits filed in support thereof. In view of the foregoing finding, the Court sees no point of answering the other issues framed herein above for determination.

**Disposition**

9. The Notice of Motion dated 7.10.2015 is struck out with costs.

**Signed, dated and delivered this 19<sup>th</sup> February 2016.**

**ONESMUS MAKAU**

**JUDGE**