



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU
CAUSE NO 51 OF 2013
(FORMERLY NAIROBI CAUSE NO. 906 OF 2011)
(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF COMMERCIAL,
FOOD AND ALLIED WORKERS.....CLAIMANT**

VERSUS

SIBO WATER & SANITATION COMPANY.....RESPONDENT

**LAKE VICTORIA SOUTH
WATER SERVICES BOARD.....INTERESTED PARTY**

JUDGMENT

The Claim herein was filed by **Kenya Union of Commercial Food and Allied Workers**, the Claimant on behalf of its member **GODFREY ODHIAMBO OCHUKA** herein after called "*the Grievant*." The Claimant sought orders restraining **SIBO Water and Sanitation Company** the Respondent and **Lake Victoria South Water Services Board**, the Interested Party, from suspending, dismissing or terminating the Grievant or taking any further disciplinary action against him. The Claimant further sought reinstatement of the Grievant to his job and payment of withheld salary.

Both the Respondent and the Interested Party filed their defence denying the claim.

Background

The Grievant was employed as a driver by the National Water Conservation and Pipeline Corporation under the Ministry of Water and Irrigation and was seconded to the Interested Party. The Claimant was deployed to the Respondent by the Interested Party in line with a Service Provision Agreement between the Respondent and the Interested Party under which the Interested Party contracted the Respondent to operate water supply within Siaya and Bondo Districts (as they were known then). The Respondent was responsible for paying the Grievant while under secondment but did not sign any contract with the Grievant.

On 29th December, 2009 the Grievant was suspended from service by the Respondent's Managing Director for allegedly stealing 6 cubic meters (6m²) of Water at Siaya Water Treatment Works in collaboration with two other people, and for being rude and non-cooperative with the Respondent's Managing Director. The Grievant was thereafter arraigned in court for the theft of water but was later

acquitted after the Respondent failed to provide witnesses for the case.

On 2nd June, 2010 while the Grievant was still on suspension the Respondent gave him a letter handing him over to the Interested Party. However the Interested Party to whom the letter was copied did not redeploy the Grievant leading to the reporting of a dispute by the Claimant. The dispute was not resolved at conciliation and the Claimant filed this claim.

On 7th July, 2011 while this claim was pending in court the Permanent Secretary in the Ministry of Water and Irrigation wrote a letter to the Grievant transferring him back to National Water Conservation and Pipeline Corporation where he was required to report not later than 21st July, 2011.

The Grievant having been reinstated the only issue remaining for determination is the payment of the Grievant's salary withheld during suspension between January, 2010 and 7th July, 2011 in the sum of Kshs. 253,584/= made up of salary at the rate of Shs. 14,880/= per month.

It is not in dispute that the Respondent was the one paying the Claimant's salary up to the date on which the salary was stopped upon his suspension on 29th December, 2009. The Claimant was reinstated and salary payment resumed upon transfer to National Water Conservation and Pipeline Corporation on 7th July, 2011.

In the letter dated 2nd June, 2010 advising the Claimant of his handing over to the Interested Party there is no mention of the lifting of suspension or payment of salary withheld during the suspension. There is also no evidence that the Interested Party agreed to take back the Claimant as no record of the meeting purported to have been held between the Respondent and the Interested Party are annexed. The Interested Party has denied ever having a contract with the Claimant or having any obligation to either take the Claimant back or pay his salary. The eventual transfer of the Claimant by the Permanent Secretary was from the Respondent to the National Water Conservation and Pipeline Corporation.

There being no link between the Claimant and the Interested Party it is my finding that the Respondent is responsible to pay the Claimant's salary between the date of suspension to the date of reinstatement of the salary upon transfer from the Respondent to the National Water Conservation and Pipeline Corporation.

I therefore enter judgement for the Claimant against the Respondent in the sum of Kshs. 253,584 with interest from the date of filing suit to date of payment.

The Respondent will also pay costs to the Claimant.

There shall be no order for costs of the Interested Party.

Dated, signed and delivered this 2nd Day of February, 2016.

MAUREEN ONYANGO

JUDGE