



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**MISCELLANEOUS CAUSE CAUSE NO. 6 OF 2014**

**NYERI COUNTY GOVERNMENT.....CLAIMANT/APPLICANT**

**VERSUS**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....RESPONDENT**

**AND**

**NYERI COUNTY PUBLIC SERVICE BOARD.....INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Thursday, 14<sup>th</sup> April, 2016)

**JUDGMENT**

The applicant filed on 17.12.2014 a notice of motion through Wahome Gikonyo & Company Advocates. The application was under rule 16 of the Industrial Court (Procedure) Rules 2010 and section 77(1) of the Labour Relations Act, 2007. The applicant prayed for orders:

- a. That the application due to its urgency be certified urgent and be heard exparte in the first instance.
- b. That the strike by the respondent's members in employment of the claimant be forthwith prohibited.
- c. That the respondent's members in employment of the claimant do resume their duties forthwith.
- d. That the strike by the respondent's members in employment of the claimant be declared unprotected and illegal.
- e. That the parties herein be directed to continue in further conciliation in good faith with a view of resolving the dispute.

The court made interim orders in terms of prayers 1, 2, and 3 and the respondent and its members complied accordingly. The interim orders subsisted pending the hearing and determination of the case.

The court has considered the material on record. It is not in dispute that the parties' unresolved grievances and leading to the strike in issue related to the respondent's claims for unpaid arrears for accumulated leave days, overtime and uniform dues. The parties agreed that they should go to conciliation or negotiate amicable solution. The respondent filed on 06.2015 the replying affidavit of Roba S. Duba through Brian Otieno & Company Advocates. It is clear from the affidavit that parties had been in unsuccessful attempts towards amicable resolution of the grievances.

The issue for determination is whether the strike in issue was unprotected because the notice was shorter than the 7 days prescribed in section 76(c) of the Labour Relations Act, 2007. The evidence is that the letter giving the notice was dated 08.12.2014 and it stated that the strike would start on 11.12.2014. The

court finds that the notice was shorter than the prescribed 7 days and the strike was therefore not protected under section 76(1) of the Act.

The court has considered the history of the dispute dating back to 1986. The court has also considered the respondent's reluctance to get the matter expeditiously resolved by conciliation. The court has further considered that the parties should go to conciliation with a view of negotiating in good faith to amicably resolve the dispute. Accordingly the court returns that each party will bear own costs of the suit in furtherance of the parties' co-operation towards resolving the grievances in issue through alternative dispute resolution mechanisms including negotiation and conciliation.

In conclusion the notice of motion filed on 17.12.2011 is hereby determined with orders:

- a. That the strike by the respondent's members in employment of the claimant based on the strike notice of 08.12.2014 is hereby forthwith prohibited.
- b. That the respondent's members in employment of the claimant do continue discharging their duties.
- c. That the strike by the respondent's members in employment of the claimant based on the strike notice of 08.12.2014 is hereby declared unprotected and illegal.
- d. That the parties are hereby directed to continue in further conciliation in good faith with a view of resolving the dispute.
- e. That each party to bear own costs of the suit.

**Signed, dated and delivered** in court at **Nyeri** this **Thursday, 14<sup>th</sup> April, 2016.**

**BYRAM ONGAYA**

**JUDGE**