



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1106 OF 2012

KENYA PETROLEUM OIL WORKERS UNION.....CLAIMANT

VERSUS

NATIONAL OIL CORPORATION OF KENYA.....RESPONDENT

JUDGEMENT

Introduction

1. The Claimant brought this Claim on behalf of Mr. Patrick Ondari on 29.5.2010 seeking orders to bar the Respondent from dismissing the grievant pending conclusion of the dispute settlement process under the Collective Agreement between the parties herein. Without the leave of the court the Claimant filed an Amended Memorandum of Claim on 11.10.2013 seeking reinstatement of the grievant from suspension. The amended Claim was however struck out for want of the leave and the original Claim remained.
2. The Respondent filed defence on 12.9.2012 contending that the grievant was suspected of siphoning fuel from the Respondent's terminal in collusion with a truck driver and was after preliminary hearing suspended to pave way for full investigation. That according to her, the suspension was proper and within law.
3. The Suit was heard on 20.4.2016 when the grievant testified as CW1 but the Respondent called no witness. Thereafter the Respondent filed Written Submissions urging the Court to dismiss the Suit for being overtaken by events after the grievant was dismissed before the conclusion of the Suit.

Analysis and Determination

4. There is no dispute from the pleadings, evidence and submissions that the grievant was employed by the Respondent as a loader in her Terminus in the Industrial Area Nairobi since June 2006. There is also no dispute that the grievant was suspended after being suspected to have stolen 5 litres of fuel cahoots with the driver of truck registration number KBN485L on 29.5.2012. There is further no dispute that the grievant was dismissed from employment by the Respondent on 1.11.2012 according to the letter filed in court on 22.2.2013 as an exhibit in the Notice of Motion filed on the same date by the Respondent. The question that arises for determination is whether the Suit is overtaken by events.
5. The Respondent has submitted that since the Suit sought to bar the Respondent from dismissing the grievant, the same has already been overtaken by events because the grievant was dismissed way back on 1.11.2012. The Court agrees with the Respondent that the Suit is overtaken by

events and there is nothing to determine on the merits. The only prayer sought in the Suit is:

“-----that the Respondent should be ordered to stop their intention to dismiss Mr. Ondari until the Parties conclude and exhausts all the machinery and agree on the way forward.”

6. No evidence was adduced to prove that the alleged alternative dispute Resolution Mechanism has been exhausted or not. There is however clear evidence to prove that the grievant was dismissed on 1.11.2011. Consequently the Court finds that the Suit is overtaken by events and there is no need to consider its merits because the substratum of the Suit has vanished.

Disposition

7. For the reasons stated above, the Suit is dismissed. Each party to bear her own costs.

Signed and dated at Mombasa this 26th day of May 2016.

ONESMUS MAKAU

JUDGE

Delivered at Nairobi this 10th day of June 2016.

JUDGE