



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1179 OF 2011**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 21<sup>st</sup> October, 2015)**

**KENYA CHEMICAL & ALLIED WORKERS UNION .....CLAIMANT**

**VERSUS**

**NOBLE GASES LIMITED .....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant's herein Kenya Chemical and Allied Workers Union filed this claim on behalf of their Members M/s Janet Mutinda Mutiso, Enos Ogwang Ohoa, Lawrence Maingi and Ouma Owende claiming that these Grievants had been unlawfully summarily dismissed.
2. The Claimants have submitted before this Court that on 9/3/2011, the Respondents served the Grievants with dismissal letters. That all the Grievants were members of the Claimants Union and that the Respondents formed the core team coordinating recruitment of their colleagues to join the Claimants. The said dismissal letters were attached and marked **Appendix 1.**
3. The Claimants aver that they had recruited members from amongst employees of the Respondent who voluntarily approached them wishing to be recruited into the Union Membership. The four Grievants were the organizers from October 2010 leading 27 employees to join the Claimant Union out of a total labour force of 34 employees whose check off forms is attached as **Appendix 2.**
4. The Claimants contend that the Respondents were not happy with the Grievants association with the claimants Union and as a result, they started threatening the Grievants with sackings unless they renounced their Union Membership.
5. The Respondents management alleged that the four are the ones who introduced union activities in the Respondents premises and were required to revoke such Union Membership and influence their colleagues to do so. The four did not concede to these threats by the Respondents and were later dismissed from their employment starting with Mr. Ouma Owende on 9/1/2011 and other three on 9/3/2011.
6. The Claimants avers that on 24<sup>th</sup> February 2011, the Respondents gave bio data forms to the three Grievants to fill attached with another form meant to engaging causal employees headed "*Letter of engagement*". The Respondents required them to fill both forms.

7. Upon the Grievants being given the forms, they secured appointment with Respondents Managing Director to discuss why they were filling the said forms yet they were permanent staff who had already filled their bio-data forms after employment. The Managing Director informed them that those forms were from the Respondents lawyers and they should not ask for reasons or raise issues as it was the Respondents policy to fill such forms.
8. The three then asked the Director for more time to consult with their colleagues and Claimants and the Managing Director agreed and promised to communicate the extension in writing.
9. On 8/3/2011, the Respondents wrote to the three Grievants giving them 3 days within which to fill those forms as per their **Appendix 4.**
10. On 9<sup>th</sup> March 2011 however, barely a day after the Respondents gave the Grievants/employees three days in which to fill in and submit the bio data and casual forms mentioned in Appendix 3, and 4 above which they were planning to fill and return, the Respondents gave them summary dismissal letters (**Appendix 1).**
11. On 11<sup>th</sup> March, the Claimants made an effort to meet the Respondents to discuss the dismissals and proposed a date for a meeting through its letter to be on 16/3/2011, at 10.30 am (**Appendix 5).**
12. On 15/3/2011, the Respondents responded to the Claimants letter above by stating that they were not reinstating the Grievants and that if the three felt aggrieved by the Respondents action they should seek recourse at the Industrial Court of Kenya (**Appendix 6).**
13. On 28/3/2011, the Claimants reported a formal trade dispute to the Minister for Labour as required by Section 62(1) of the Labour Relations Act 2007 on realizing that the Respondents were very hostile and uncooperative to the Claimants (**Appendix 7).**
14. A Conciliator was appointed accordingly (**Appendix 8).** The Conciliator invited the Respondents and Claimants to a joint meeting on 4/5/2011 at 11.30 am (**Appendix 9).** The Claimants aver that they submitted their written memorandum/proposals on the dispute to the Conciliator on 29/4/2011 as required by the Conciliator.
15. The Claimants further attended the Conciliator's meeting on 4/5/2011 but the Respondents didn't turn up. The Conciliator got in touch with Respondents Managing Director who claimed to be bereaved and could not attend the meeting. He asked the Conciliator to fix another date. He was informed of the next date of the meeting and was promised that a letter was to be delivered to that effect.
16. Another meeting was scheduled for 12/5/2011 at 12 pm (**Appendix 11).** The Claimants attended this meeting but once more the Respondents didn't attend and they informed the Conciliator that they were not willing to attend. The Conciliator wrote his report (**Appendix 12)** on his inability to reconcile the parties.
17. The Claimants on behalf of the Grievants have submitted that the Grievants were unfairly and unlawfully terminated and prays for their reinstatement or in the alternative, payment of all their terminal dues and entitlements under the law plus costs.
18. The Respondents on their part filed their reply to the Memorandum of Claim on 1/11/2012 through the firm of Mang'erere J. and Company Advocates. They aver that the 3 Grievants Janet Mutinda, Lawrence Maingi and Enos Ohoa Ogwang were dismissed from service for failing to obey a lawful order by the Respondents contrary to Section 44 (4) of Employment Act 2007. That for Ouma Owende, they aver that his contract had expired and the Respondents had no obligation to renew it.
19. They deny threatening the Claimants members to renounce the Union Membership as there was

no recognition agreement in existence and the Union had not even approached the Respondents for recognition.

20. They aver that they issued the Grievants the bio data forms for purposes of updating their records which is a standard procedure and that there was no casual engagement attached to the bio data form as alleged by the Claimants. They aver that the letters attached by Claimants are a forgery and are not on Respondents letterheads.

21. It is also Respondents position that the Grievants had by the time of their dismissal incited other employees and had turned violent prompting the Respondents to call in the police to disperse them as all avenues of negotiation had failed to contain it. They concede that they refused to attend to the conciliation meeting as they thought it was not prudent to do so.

22. The Respondents therefore ask Court to find the Claimants case unwarranted and ask Court to dismiss it with costs to themselves.

23. When this case came up for hearing, the parties agreed to proceed by way of written submissions which they filed. I have looked at the submissions which are basically a repeat of what they had pleaded.

24. I have considered the pleadings and submissions file and the issues for determination by this Court are as follows:

**1. Whether there were valid reasons to warrant dismissal of the Grievants.**

**2. Whether due process was followed before the Grievants were dismissed.**

**3. What remedies to give in the circumstances?**

25. On the 1<sup>st</sup> issue, the reasons given by Respondents in the letters dismissing the Grievants are that they had incited other employees to stop working leading to disruption of the office work. These letters were written on 9<sup>th</sup> March 2011 after the show cause letters on 8<sup>th</sup> March 2011 which gave the Grievants 3 days to respond. The three days had not been exhausted when the Respondents took the action of dismissing the Grievants.

26. Prior to this there were check off forms that had been filed by the Claimants 27 members dated 1/3/2010 requiring the Respondents to deduct and submit union dues. The Respondents never responded to this. It is apparent that there was a problem between the Respondents and the Claimants following recruitment of members to the Union and this did not go well with the Respondents.

27. The Respondents were further invited to a Conciliator's meeting to resolve the dispute and they opted not to attend. If the Respondents truly had a valid reason to dismiss the Claimants members, attending the Conciliator's meeting would have been the most prudent thing to do but the Respondents declined to attend the meeting ostensibly because they had no valid reason to dismiss the Grievants.

28. It is this Court's finding that the Respondents didn't have valid reason to dismiss the Grievants.

29. On the 2<sup>nd</sup> issue, the issue of due process was ignored by the Respondents. They aver that they followed Section 44 of Employment Act on summary dismissal. This however will not apply here as this Court has already made a finding that there was no valid reason to warrant summary dismissal of the Grievants.

30. Concerning one Mr. Owende whom the Respondents allege his contract had lapsed, the Respondents didn't display any such contract and therefore their averment remains unproved.

31.I find that the summary dismissal of the Grievants was not warranted. It was unfair and unjustified and I convert it to a normal termination.

32.I therefore award the Grievants as follows:

**1. Janet Mutinda Mutiso**

***1 months salary in lieu of notice = 12,000/=***

***12 months salary as compensation for unlawful termination = 12 x 12,000 = 144,000/=***

***Salary for 9 days worked in March 2011 = 4,154/=***

**TOTAL = 160,154/=**

Less statutory deductions

**2. Enos Ohoa Ogwang**

***1 months salary in lieu of notice = 20,000/=***

***12 months salary as compensation for unlawful termination = 12 x 20,000 = 240,000/=***

***Salary for 9 days worked in March 2011 = 6,925/=***

**TOTAL = 266,925/=**

Less statutory deductions

**3. Lawrence Mwangi**

***1 months salary in lieu of notice = 12,000/=***

***12 months salary as compensation for unlawful termination = 12 x 12,000 = 144,000/=***

***Salary for 9 days worked in March 2011 = 4,154/=***

**TOTAL = 160,154/=**

Less statutory deductions

**4. Ouma Owende**

***1 months salary in lieu of notice = 8,724/=***

***12 months salary as compensation for unlawful termination = 12 x 8,724 = 104,688/=***

***Salary for 9 days worked in March 2011 = 1,007/=***

**TOTAL = 114,419/=**

Less statutory deductions

33.Each Grievant will also be issued with a Certificate of Service.

The Respondents will pay costs of this suit.

**Read in open Court this 21<sup>st</sup> day of October, 2015.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

John Gwako for the Claimants

No appearance for Respondent