



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT KISUMU

CAUSE NO. 156 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 30th July, 2014)

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS.....CLAIMANTS

-VERSUS-

MEK SACCO SOCIETY LTD.....RESPONDENTS

RULING

The application before court was filed by the applicants herein on 1.7.2014 and brought under certificate of urgency through a notice of motion dated 19.6.2014. The application is brought under S. 3 & 12 of Industrial Court Act 2011, Section 40, 41, 43, 45, 49, 50 and 87 of Employment Act, 2007, S. 77 of Labour Relations Act 2007. Article 41, 50, and 159 of the Constitution of Kenya, Industrial Court Procedure Rules 2010 and all the inherent powers of the Court.

The applicant seek orders that:-

- 1. That the Hon. Court certifies this application as urgent and be heard on priority basis.**
- 2. That the application be heard *ex parte* in the first instance and service of the same be dispensed with.**
- 3. That the Hon. Court be pleased to issue a conservatory order against the respondent on the grievant's positions pending determination of this application.**
- 4. That this Hon. Court do issue permanent order restraining the respondent from intimidating, harassing and/or victimizing, the grievants pending determination of this application.**
- 5. That this Hon. Court do issue an order restraining the respondent from disciplining, terminating, dismissing and or declaring the grievants redundant pending determination of this dispute.**
- 6. That the Hon. Court do order the respondent to pay the grievants salary arrears amounting to Kshs. 490,992 pending determination of this dispute.**
- 7. That the Hon. Court do issue an order reinstating the grievants back to employment**

without loss of benefits pending determination of this application.

8. That the Hon. Court do declare the respondent's action to dismiss/terminate the 2nd grievant unprocedural and therefore unlawful.

9. That the Hon. Court do declare the respondent's action illegal, null and void and reinstate the grievants unconditionally.

10. That the Hon. Court grant costs to the applicants.

The application is grounded on the annexed affidavit sworn by **John Miduri** who is the applicant's Kisumu branch secretary.

The applicants first appeared in court on 3.7.2014 and were heard *ex parte* and granted orders in terms of prayers 1, 2, 3, and 4. The case was set for *inter partes* hearing on 24.7.2014. On the day for *inter partes* hearing, the respondents failed to appear. There was proof that they had been served with the application. The application therefore proceeded in their absence. It is the applicant's case that they have a valid Collective Bargaining Agreement with the respondents. The grievants are *bonafide* members of the claimant union. It is the applicant's contention that in December 2012, the respondents locked out the grievants from employment and advertised for their positions. The applicants attempted to resolve the issue with respondents at shop level. This attempt failed. The applicants reported a dispute and on 22.4.2014 the Minister appointed a conciliator to resolve the issue. The respondents however deliberately chose not to attend the meeting convened for 5.6.2014 and on the same day the respondents unilaterally and unfairly sent the grievants on indefinite compulsory leave.

The matter was thereafter referred to court by the conciliator on 10.6.2014. The applicants now want the respondents restrained from terminating, dismissing or declaring the grievants redundant pending the determination of this dispute. They also want the court to reinstate the grievants back to employment without loss of benefits pending determination of this application. There is evidence that this dispute went through a conciliation process. There is also proof that the respondents failed to honour summon to attend the conciliation process prompting the matter to be referred to court. Failure on the part of respondent from attending to the conciliation process is proof of their determination not to resolve this dispute amicably and to their resolve not to accord applicants fair labour practices as envisaged under Article 41 of the Constitution.

Under S. 73(1) of the Labour Relations Act 2007;

“If a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Industrial Court in accordance with the rules of the Industrial Court”

The applicants have referred this dispute to court in accordance with the law and they have an arguable case. I find their case has merit and I find for them and grant them orders as prayed as follows:-

- 1. The respondents are restrained from intimidating, harassing and/or victimizing the grievants pending the determination of this dispute.**
- 2. The respondents are restrained from disciplining, terminating, dismissing and/or declaring the grievants redundant pending determination of this dispute.**
- 3. The respondents are ordered to pay the grievants their salary arrears amounting to Kshs 490,992 pending determination of this dispute.**
- 4. The respondents are ordered to reinstate the grievants back to employment without loss of benefits pending determination of this cause.**
- 5. The respondents shall pay costs of this application.**

HELLEN S. WASILWA

JUDGE

30/7/2014

Appearances:-

Atela for claimants present

N/A for Respondents

CC. Wamache