

REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1106 of 2012

KENYA PETROLEUM OIL WORKERS UNION.....CLAIMANT

VS

NATIONAL OIL CORPORATION OF KENYA.....RESPONDENT

RULING

1. On 6th December 2012, the Claimant through Mr. Obure Advocate urged the Notice of Motion application dated 11th October 2011 supported by the Affidavit of Patrick Odari of 27th August 2012. It seeks various Orders:

- (a) That the claimant be granted orders lifting suspension.
- (b) The Respondent reinstate the grievant without loss of pay.

2. He submitted that the grounds are that the actions taken against the applicant are not in line with the Labour Relations Act Section 4(1)(2) and (3) and Employment Act Section 44(4). The Respondent's action discriminates against the grievant on account of trade union activities. See Annex 8 – The action goes against the spirit of the relations. If allowed to go on it will lead to loss of industrial relation. ILO Convention 135 Article 1 prevents intimidation of workers. See Annex 10. Managing Director and Supply Manager are implicated in fraud by EACC. These are employees of Respondent yet they were not suspended. Why the double standards? See Annex 12. Grievant was not arrested or charged and his suspension exceeded the 30 days. See Annex 9. Driver deposes the theft did not take place – See Annex 13. Respondent has summarily dismissed grievant while matter is before court. Pray court considers and grants orders as prayed.

3. Miss Osoro submitted that the whole application had been overtaken by events. The grievants were dismissed. None of the orders in the Notice of Motion cannot be granted as the Court does not issue orders in vain. Counsel relied on the affidavit of Cecilia Kalungu-Uvyu sworn on 20/11/2012 and referred Court to Appendix F which was the letter of summary dismissal.

4. Mr. Obure in reply stated that the Claimant had sought protection of the Court and was given dates for *inter-partes* but Respondent went ahead and suspended and dismissed the Claimant. This is against the spirit and the Court process. It should be given due process.

5. After hearing the parties the Court reserved the Ruling. What is before Court is an application seeking interim relief, the same has been overtaken by events. The Court would be engaged in an academic exercise if it were to consider the interim relief application in greater depth. The Claimant still has the option of the hearing of the Claim in full. The final orders would incorporate damages if proved for the injury suffered as a result of the dismissal effected.

6. Applicant's application is dismissed with no order as to Costs.

It is so ordered.

Dated and delivered in Nairobi on this 25th day of January 2013

Justice Nzioki wa Makau

Judge of the Industrial Court