



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA
(BIMA TOWERS)

CAUSE NO. 118 OF 2013

KENYA PETROLEUM OIL WORKERS

CLAIMANT

v

ABDALLAH FATHIA SALIM/DIGO

ROAD KOBIL SERVICE STATION

1st RESPONDENT

KENOL KOBIL CO LIMITED

2nd RESPONDENT

RULING

1. The Kenya Petroleum Oil Workers Union filed a Claim against Abdallah Fathia Salim trading as Digo Road Kobil Service Station on 20 May 2013. The issue in dispute was stated as wrongful and unfair termination of Mr. Hezron Guyo and James Macharia.
2. On 27 August 2013 the parties appeared in Court and I directed that they attempt out of court settlement failure to which the Cause would proceed to hearing on 2 October 2013.
3. On 2 October 2013 Mr. Raphael Olala, Branch Secretary of the Claimant union informed the court that the parties had not negotiated but that he had been shown a consent filed in court on 30 September 2013 signed by the Grievants and the 1st Respondent.
4. The Court directed the Deputy Registrar to issue summons to the Grievants to attend court to explain how the consent was signed.
5. The first Grievant Hezron Guyo attended court on 10 October 2013. The Grievant informed the Court under oath that he did not sign the consent or the notice of discontinuance of the suit, both dated 3 September 2013 and filed in court on 30 September 2013. He further denied receiving Kshs 15,000/- in settlement.
6. The 1st Respondent's Manager Mr. Swaleh Muhsin Abdallah also testified and stated that he reached an agreement with the Grievants directly without involving the Union because it had a fixed mind, and his Advocate.
7. The consent in issue has been disowned by one of the Grievants. The consent was allegedly negotiated when the Cause had been filed. The respective parties' representatives were not involved in the preparation of the consent.
8. Although the Industrial Court by its very nature is supposed to promote conciliation, in the circumstances of this case the Court declines to admit and or adopt the consent. The parties are free to negotiate through their representatives failure to which this Cause will proceed to hearing.
9. Regarding the complaint of assault by Mr. Swaleh Muhsin Abdallah the same has been reported to the Police and it is within their competence to carry appropriate investigations and take any consequent action.

Delivered, dated and signed in open Court in Mombasa on this 8th day of November 2013.

Radido Stephen

Judge

Appearances

Mr. Olala Branch Secretary

for Union

Ms. Salma instructed by Aboge & Co Advocates

for 1st Respondent