



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

CAUSE NO. 183 OF 2013

KENYA UNION OF COMMERCIAL FOOD

& ALLIED WORKERS

CLAIMANT

v

TAVEVO WATER & SEWERAGE CO LTD

1ST RESPONDENT

COAST WATER SERVICES BOARD

2ND RESPONDENT

RULING

1. The Kenya Union of Commercial Food & Allied Workers (Union) filed a Motion under certificate of urgency on 28 June 2013 against TAVEVO Water & Sewerage Co. Ltd (1st Respondent) and Coast Water Board (2nd Respondent).
2. The motion was seeking
 - a. an order restraining the 1st Respondent from issuing any memos, press release or any other action prejudicial and punitive against William Ruto Chebolet (Grievant)
 - b. an order to the 1st Respondent to pay the grievant salary arrears pending determination of the application
 - c. an order to 1st Respondent to allocate grievant same duties he was previously performing
 - d. an order reinstating the grievant unconditionally
 - e. an order to pay general damages among other orders.
3. I certified the motion urgent and directed the Union to serve the Respondents' for an *inter partes* hearing. I heard the parties on 31 July 2013.
4. It is not disputed that the Grievant was suspended on 1 December 2012 and terminated on 27 February 2013. He pleads that the termination was unconstitutional and seeks mainly reinstatement or redeployment.
5. Reinstatement is one of the primary remedies for unfair termination and or wrongful dismissal. The Grievant had already been terminated at the time he moved to Court and one of the factors the Court ought to consider before ordering reinstatement are the practicability of ordering reinstatement and the common law principle that there should be no order for specific performance in a contract of service except in very exceptional circumstances.
6. In any case, were the Court to find that the termination of the Grievant was not in accord with both procedural and substantive fairness then the Court can use its discretion to award such compensation as would be just in the circumstances of the case.

7. The motion sought very generalized and imprecise orders some of which can only be awarded after full hearing and ventilation of the parties' respective positions.
8. Determining the issues raised in the motion would most likely dispose of the entire Cause on the merits through affidavit evidence while the pleadings/documents filed show strongly disputed facts and law.
9. I have duly considered the material placed before Court and reached the conclusion that the motion application dated 24 June 2013 should be dismissed and the Cause proceed to hearing on the merits.

Delivered, dated and signed in open court in Mombasa on this 1st day of November 2013.

Radido Stephen

Judge

Appearances

Mr. Atela (Union official)	for Union
Ms. Kariuki instructed by Kioko, Munyithya, Ngugi & Co. Advocates	for 1 st Respondent
Mrs. Umara instructed by Munyithya, Mutugi, Umara & Munza Co. Advocates	for 2 nd Respondent