



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO 782(N) OF 2009**

**KENYA UNION OF COMMERCIAL  
FOOD AND ALLIED WORKERS  
UNION.....CLAIMANT**

**VS**

**MINISTRY OF WATER AND IRRIGATION & 9  
OTHERS.....RESPONDENTS**

**RULING**

**Introduction**

1. On 6th May 2013, the Claimant withdrew its claim against the Respondents on the ground that it had been overtaken by events. Counsel for the 10th Respondent did not object to withdrawal of the claim but sought to be awarded costs. It was therefore agreed by consent that the parties would file written submissions on the basis of which the Court would make a determination on the issue of costs.

**Submissions by the 10th Respondent**

2. In the written submissions filed by the 10th Respondent on 17th July 2013, it was submitted that the Claimant's claim was premised on an intended clustering of Water Service Providers which would affect the Claimant's members. The intended clustering was however suspended in December 2009. This information was confirmed by letter dated 16th March 2010 from the Permanent Secretary, Ministry of Water and Irrigation addressed to the Chief Industrial Relations Officer and copied to the Claimant. The letter was received by the Claimant on 26th March 2010.

3. However and in spite of this information, the Claimant insisted on proceeding with its claim, prompting the 10th Respondent to file a Memorandum of Reply on 24th May 2010. It was the 10th Respondent's submission that the Claimant's claim was an act of activism and did not disclose any recognizable dispute. Further, the Claimant kept the true position on the matter from the Court and caused several court attendances and meetings at the Ministry's offices where the 10th Respondent was represented by Counsel, thus incurring unnecessary costs.

**Submissions by the Claimant**

4. In response, the Claimant submitted that it came to Court for valid reasons and was granted interim orders by the Court. The Claimant further submitted that the Industrial Court is a court of

equity for settling of employment and industrial relations disputes. The Claimant gave the reason for withdrawal of the claim as delay by the Conciliator in filing his report. The notification of suspension of the clustering program was received by the Claimant after it had filed its claim.

**Ruling by the Court**

5. Section 12(4) of the Industrial Court Act, 2011 provides that:

***“In proceedings under this Act, the Court may, subject to the rules make such orders as to costs as the Court considers just.”***

6. Rule 27(1) (e) of the Industrial Court (Procedure) Rules, 2010 provides:

***“Provided that subject to these Rules and any other written law, the Court may at any time in the conduct of proceedings issue-***

***(e) an order for costs”***

7. Clearly, the award of costs in proceedings before the Industrial Court is discretionary but discretion must be exercised judiciously and the Court must always bear in mind what is just in each case.

8. The Claimant filed its claim on 10th December 2009 and obtained a temporary order on 16th February 2010. Subsequently, by letter dated 5th March 2010 and received by the Claimant on 10th March 2010, the Permanent Secretary, Ministry of Water and Irrigation notified the Claimant that the clustering of Water Service Providers had been suspended until further notice.

9. In my view, the Claimant should have withdrawn its claim at this stage since there was no longer a recognizable dispute pending for determination. In the circumstances, I find that the Claimant knowingly caused the 10th Respondent to incur unnecessary costs. I therefore direct that the Claimant will meet the costs incurred by the 10th Respondent after 10th March 2010 when the Claimant received the first communication that the intended clustering had been suspended. The costs will be assessed by the Deputy Registrar in the normal manner.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 3RD DAY OF DECEMBER 2013**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....*Claimant*

.....*Respondent*