

REPUBLIC OF KENYA



Approved.
SNA
24/11/2020

Hon. Speaker
You may agree.
24/11/2020

THE NATIONAL ASSEMBLY (FOURTH SESSION)

PUBLIC PETITION

(No. 44 of 2020)

PARLIAMENT
OF KENYA
LIBRARY

**REGARDING THE PLIGHT OF EMPLOYEES AND UNION OFFICIALS OF
KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS (KUSPAW)**

I, the **UNDERSIGNED** on behalf of employees and Union officials of Kenya Union of Sugar Plantation and Allied Workers (KUSPAW);

DRAW the attention of the House to the following: -

1. **THAT**, the Constitution of Kenya repossesses all sovereign authority to the people of Kenya;
2. **THAT**, Kibos Sugar and Allied Industries Limited which commenced its operations in 2007, has grown tremendously as evidenced by the many subsidiary companies that have emerged because of its existence namely Kibos Sugar Limited, Kibos Refinery Limited, Kibos Distillery Limited and Kibos Papers and Packaging Limited. Despite this marked growth, the Management of the Company and that of its subsidiaries have for a very long time entrenched unfair labour practices against its employees who are the core elements of production, without which the company would collapse;
3. **THAT**, employees at Kibor and Allied Industries have been facing numerous challenges with regards to unfair labour practices ranging from intimidation, harassment, victimization and unlawful dismissal among others;
4. **THAT**, early this year, the management unlawfully and unprocedurally suspended six Union officials from service on malicious and baseless allegations and further disregarded court order granting temporary orders of stay/conservatory lifting of dismissal or suspension;

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- 5. THAT,** further, the management went ahead to stop union dues deductions and remittances of the affected officials to both the branch and national offices as at 31st January, 2020;
- 6. THAT,** the union moved to court to challenge the action of the management and were granted orders mandating the management to reinstate the said remittances and dues to the union in respect of the said members, an action which the management has defied to-date;
- 7. THAT,** the management's main objective is to revoke the Recognition Agreement between the parties yet the said Agreement is an umbrella that protects the rights of the said employees against unfair labour practices and working conditions;
- 8. THAT,** to-date, the management of Kibos Sugar and Allied Industries have maintained that there is no union in all its subsidiary companies despite the existence of Recognition Agreement between the said parties;
- 9. THAT,** most of the casual employees are employed by cartels in the name of out-sourced contractors yet they work in the mainstream factory hence denying the existing employees their rights to join the union and inclusion in the current Collective Bargaining Agreement;
- 10. THAT,** the management has been violating the law relating to employment of foreign employees (Asian origin) because most of them do not have work permits hence denying the local employment opportunities;
- 11. THAT,** engagement of foreigners has further escalated racial discrimination between Africans and Asians doing the same job as foreigners are highly paid while Africans in the same job scale are poorly paid and exploited;
- 12. THAT,** efforts made by the Petitioners to have the management address the plight of employees have not been successful;
- 13. THAT,** the matters raised in this Petition are not pending before any Court of law, Constitutional or any other legal body.

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THEREFORE, your humble Petitioners pray that the National Assembly through the Departmental Committee on Labour and Social Welfare: -

- (i) Recommends that the Management of Kibos Sugar and Allied Industries unreservedly grants to all employees, including union officials the inalienable rights to form, join or participate in the activities and programmes of a trade union as enshrined in Article 41 of the Constitution;
- (ii) Causes the Company to honour and implement the Collective Bargaining Agreement (CBA) of 2017 for all employees without any discrimination whatsoever, including payment of salary arrears of the affected employees from February 2020.
- (iii) Recommends that the Management revokes unfair termination of employment of six (6) and reinstates them to service;
- (iv) Inquiries into the circumstances under which employees of Asian origin who do not have authentic work permits have been unprocedurally outsourced to perform non-expatriate work that would ordinarily be performed by locals and recommends annulment of their engagement; and
- (v) Makes any other appropriate recommendations it deems fit in addressing the circumstances raised in this Petition.

And your Petitioners will ever pray.

PRESENTED BY:


THE HON. JAMES ONYANGO KOYOO, MP
MEMBER FOR MUHORONI CONSTITUENCY

DATE: 24/11/2020

PETITION TO PARLIAMENT UNDER ARTICLE 119 OF THE CONSTITUTION
STANDING ORDERS 220 OF THE NATIONAL ASSEMBLY ON THE ISSUE OF LABOUR
RELATIONS AND PRACTICES AND HEALTH CARE SERVICES PURSUANT TO
ARTICLES 41 AND 43 OF THE CONSTITUTION OF KENYA.

19/11/2020

TO:

NATIONAL ASSEMBLY OF KENYA,
C/O THE SPEAKER OF THE NATIONAL ASSEMBLY,
HON. JUSTIN MUTURI EBS,
PARLIAMENT BUILDINGS
P. O. BOX 41842- 00100
NAIROBI- KENYA.

THROUGH HON: JAMES ONYANGO KOYOO
M.P MUHORONI CONSTITUENCY

I the Branch Secretary of Kibos Sugar and Allied Industries and the National Vice Chairman of Kenya Union of Sugar Plantation and Allied and Workers.

DRAW the attention of the house to the following:

1. The Constitution of Kenya 2010 reposes all sovereign authority to the people of Kenya.
2. The employees at Kibos Sugar and Allied Industries have been facing tremendous challenges with regards to unfair labor practices, wanton intimidation, harassment and victimization of union officials as highlighted herein below.

PETITION TO PARLIAMENT UNDER ARTICLE 119 OF THE CONSTITUTION
STANDING ORDERS 202 OF THE NATIONAL ASSEMBLY ON THE ISSUE OF LABOUR
RELATIONS AND PRACTICES AND HEALTH CARE SERVICES PURSUANT TO
ARTICLES 41 AND 43 OF THE CONSTITUTION OF KENYA.

3. That KIBOS SUGAR AND ALLIED INDUSTRIES LIMITED commenced its operations in December 2007 as one company and currently the Company consist of;
- a) KIBOS SUGAR LTD.
 - b) KIBOS REFINERY LTD.
 - c) KIBOS DISTILLERY LTD.
 - d) KIBOS PAPERS AND PACKAGING LTD.

The above listed subsidiaries are evidence of rapid growth of the Company.

4. We are however concerned that the Management of the Company and that of its subsidiaries have been for a very long time now entrenching unfair labour practices.
5. The Management without any lawful authority nor legitimate excuse suspended six (6) union officials from its service on malicious, false, fabricated and baseless allegations and despite court granting temporary orders of stay/conservatory lifting and cancelling the action on 27th Feb 2020 the Management is still adamant to reinstate the aggrieved officials to date.
6. The Management did not stop at that, they went ahead to stop union dues deductions and remittance to both Branch and National office as at 31st January 2020. The union moved to Court and was granted orders mandating the management to deduct and remit to the union, union dues in respect of its members in the employment which the management defiantly defied to date.
7. That the sole objective of the Management is to revoke the Recognition Agreement between the parties so that it can subject the helpless employees to Harsh, Dehumanizing, Pathetic and avoid provisions of the law protecting workers against hostility.

PETITION TO PARLIAMENT UNDER ARTICLE 119 OF THE CONSTITUTION
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8. The management of Kibos sugar and Allied Industries is positioning themselves to stop union elections due from 4th January 2021 by all means and we are aware that the current County labour officer Mr. Godosio is working with them to help them achieve their goal.
9. That the Management of Kibos Sugar and Allied Industries have maintained that there is no union in all its subsidiaries Companies despite the existence of Recognition Agreement between Kibos Sugar and Allied Industries and Kenya Union of Sugar Plantation and Allied Workers.
10. That despite the existence of the CBA numerous employees of the company having academic qualifications and meeting the requisite terms of the CBA the company has failed to comply with its own regulations and Structures which was duly adopted by the Employment and Labour Relations Court during the Industrial dispute between the company and the union in 2016 at Kisumu labour Court and continues to underpay employees.
11. That the majority of casual employees are employed by cartels in the name of out sourced Contractors yet they work in the mainstream factory effectively denying them their rights to join union and be graded according to the current CBA.
12. That am strongly concerned with the high handedness by which the company operates where even institutions like Court, Ministry, FKE and Union are ignored and that their take on various issues concerning workers are never implemented, including court orders are never obeyed acts which border impunity and lawlessness.

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LABOUR RELATIONS AND PRACTICES AND HEALTH CARE SERVICES
PURSUANT TO ARTICLES 41 AND 43 OF THE CONSTITUTION OF KENYA.**

13. I am deeply concerned about the issue of company employees of Asian origin who do not have work permit and have a separate pay roll from that of other employees thus end up evading to pay taxes to the Kenyan Government as required by the law and we suspect complicity of the institutions that ought to regulate and oversight the issue of such foreign employees, and majority of them have no skills which are not locally available and are trained on job by Kenyans whom they later turn to be their bosses and supervisors.

14. Employees are strongly opposed to the current trend of the company where the social welfare of the employees is run and controlled by the management contrary to labour practices where by members are allowed to elect the office bearers through a competitive election at an Annual general meeting. The management has taken over full control of issue such as members' contribution and the office holder for last 7 years despite requirement that elections be after every two years as per the Constitution of the welfare and AGM be held twice a year.

15. The Human Resource Department is so compromised to an extent that it could be seen as incompetent and or so insecure that the employees issues raised to them are swept under the carpet and employees records becomes a top secret that cannot be accessed even with Government labor officers whenever they visit.

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ARTICLES 41 AND 43 OF THE CONSTITUTION OF KENYA.

THEREFORE, I humbly Petition and PRAY that Parliament, through the Departmental Committee on Labour and Social Welfare:

- a) That this petition be dealt with immediately in view of the urgency of the matter.
- b) That the Committee investigates the above malpractices with a view to forcing the company to adhere to laid down Labour practices.
- c) That the Management be summon immediately to highlight their role in frustrating union and its officials who are currently out of service despite court order reinstating them.
- d) That the speaker of the house invoke his mandate and duty to direct the relevant committee of the house to act with speed to ensure the management of **KIBOS SUGAR AND ALLIED INDUSTRIES LIMITED** respects the right of its employees.

HUMBLE PETITIONER



MICHAEL OCHIENG GOMBE
BRANCH SECRETARY KIBOS BRANCH/ NATIONAL VICE CHAIRMAN
KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS(KUSPAW).