

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 893 of 2006

BANKING INSURANCE FINANCE UNION (K)APPLICANTS

VERSUS

AGRICULTURAL FINANCE CORPORATION.....RESPONDENT

RULING

The applicant is a duly registered Union under the provisions of the Trade Unions Act having the appropriate constitutional mandate to recruit and represent employees in the defendant's establishment.

On the 22nd March 2003 the union entered into a recognition agreement by entering into a collective bargaining agreement on terms and conditions of employment as well as terms of redundancy.

By Clause 3 of the Agreement the Respondent undertook to negotiate terms and conditions of employment of unionsable staff of the applicant including terms of redundancy.

Miss Guserwa counsel for the applicant submitted that due to these provisions the Applicant/Respondent is duty bound to inform the union of its intention to declare some of its members redundant through downsizing or restructuring.

On the 8th May 2006 the applicant union came to learn of the intended staff rationalizations that was about to be effected by the Respondent. The Respondent had not informed the union as it was obliged to do under the agreement or as mandatorily required under Section 16A (a) of the Employment Act Cap 226 which provides:-

“16A (1) A contract of service shall not be terminated on account of redundancy unless the following conditions have been complied with-:

“(a) the union of which the employee is a member and the labour officer in charge of the area where the employee is employed shall be notified of the reasons for, and the extent of, the intended redundancy.”

As the intended staff rationalization by the Respondent would clearly breach both the statute and the collective bargaining agreement, the applicant filed this suit against the Respondent seeking relief limited only to compliance of the procedural requirement of the statute as well as the agreement entered into by the Respondent and the union.

The application is opposed by Mr. Ondongo counsel for Respondent who in his submissions conceded that on the 22nd May 2003 the applicant did enter into a Recognition Agreement with the Respondent thereby empowering the Applicant to represent the interests of its members who are in the employment of the Respondent in matters relating to the terms and conditions of their employment including terms of redundancy.

But owing to financial constraints on the part of the Respondent, was reached on several other items

being salaries, and wages, commuter allowance, relocation allowance, house allowance, level of union representation and terms of redundancy.

Failure to reach a consensus led to the institution by the applicant of industrial case at the Industrial Cause being Cause No. 126 of 2004. Further the applicant has also filed a Reference dated 16th August 2006 with the Ministry of Labour and Human Resource Development in regard to the issue of the intended right sizing exercise and a decision thereon is still pending.

Mrs. Guserwa in reply conceded that there is a dispute between the applicant and the Respondent before the Industrial Court. But that dispute did not deal with the unlawful retrenchment which is the issue in the instant suit. The dispute before the Industrial Court related to terms and conditions of employment of all the workers. She further submitted that the Industrial Court which is a statutory tribunal under the Trade Disputes Act, has no jurisdiction to grant an injunction and the High Court being a court of unlimited jurisdiction was the appropriate forum to approach in the circumstances.

All that the Applicant seeks is for the Respondent to comply with the procedure as provided for under the statute and their collective agreement. Where procedure is provided for by statute, it must be followed to the letter.

For the above reasons the Plaintiff's application is allowed in terms of Prayers 2 and 3 of the Chamber Summons dated 16th August 2006.

Dated at Nairobi this 12th day of March 2007.

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J.L.A. OSIEMO

JUDGE