



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 34 OF 2020

KENYA UNION OF SUGAR PLANTATION

AND ALLIED WORKERS.....CLAIMANT

v

KIBOS SUGAR AND ALLIED INDUSTRIES

LTD RESPONDENT

JUDGMENT

1. The Kenya Union of Sugar Plantation & Allied Workers Union (the Union) sued Kibos Sugar & Allied Industries Ltd (the Respondent) on 19 May 2020, and it stated the Issue in Dispute as:

Refusal to deduct and remit union dues.

2. The Respondent filed a Response on 2 June 2020 and the Union filed an Amended Statement of Claim on 25 May 2021.

3. On 29 June 2021, the Union suggested that the Cause proceeds to hearing based on the record and submissions to be filed.

4. The Union filed its submissions on 21 July 2021, while the Respondent filed its submissions on 30 July 2021.

5. The Court has considered the record (including affidavits) and the submissions.

6. While the parties did not explicitly set out the Issues in Dispute in the submissions, the Court has discerned the Issues as examined hereunder.

7. But first a brief background.

Background

8. On or around 18 February 2020, some 156 employees of the Respondent and members of the Union wrote to the General Secretary notifying him of their withdrawal from the Union.

9. Consequently, the Respondent stopped deducting and remitting monthly union subscriptions from the employees.

Evaluation

Jurisdiction: Exhaustion of alternative dispute resolution mechanisms

10. The Respondent resisted the competency of the Cause on the ground that it was premature because the dispute relating to the union dues was still pending before a Conciliator appointed by the Cabinet Secretary for Labour.

11. The Union countered that the dispute which was pending before the Conciliator concerned the negotiations of a collective bargaining agreement and not purported withdrawal of union members and deduction of union subscriptions.

12. The Court has looked at the letter by the County Labour Officer dated 4 February 2020 calling the Union and the Respondent to

conciliation talks.

13. The items in dispute set out in the letter are:

- (i) Finalising the CBA negotiations.
- (ii) Issuance of appointment letters.
- (iii) Upgrading of employees identified during the head count.

14. The question of withdrawal of employees from the Union and union subscriptions were not part of the items in contention as asserted by the Respondent (the withdrawal letter was dated 18 February 2020).

15. Nevertheless, the Union and the Respondent have a recognition agreement.

16. Clauses 3 and 4 of the agreement sets out a dispute resolution mechanism.

17. The Union did not place any material before the Court to show that an attempt was made to settle the dispute regarding the withdrawal of the 156 members from the Union or the question of attendant union subscriptions as contemplated therein or as outlined in Part VIII of the Labour Relations Act.

18. The jurisprudence on exhaustion of statutorily anchored dispute resolution avenues is now clear.

19. In *Speaker of the National Assembly v Karume* (2008) 1 KLR 425, the Court of Appeal held that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or Act of Parliament, that procedure should be strictly followed.

20. The Union did not attempt or demonstrate that it complied with the alternative dispute resolution mechanisms agreed with the Respondent or as outlined in Part VIII of the Labour Relations Act.

21. The Court would therefore decline jurisdiction on ground of failure to exhaust contractual and statutory alternative dispute resolution avenues before moving the Court.

22. If the Court were wrong on the prematurity question, it would still have dismissed the Cause on the merits.

Merit of the Cause

23. The Union challenged the validity of the withdrawal notice(s) and the stoppage of deduction of union subscriptions on the grounds that the meeting whereupon the decision was made was called by the Respondent and it was not involved.

24. The Union also contended that most of those who attended the meeting were casual employees who were not its members.

25. The Union further asserted that the meeting where the decision to withdraw from the Union was reached was not quorate as it was only attended by 18% of its membership.

26. In the Amended Statement of Claim, the Union exhibited schedules in which some employees of the Respondent disowned the withdrawal notice(s).

27. None of the parties called witnesses and the Court now gives reasons why the Cause was not proved.

28. First, the Union failed to lead any evidence to show that the 156 members were coerced or did not voluntarily sign the resignation or withdrawal letter(s).

29. The Union did also not demonstrate that the meeting of 18 February 2020 or thereabouts was not quorate or was attended by casuals or that the 156 employees were not its members.

30. The decision of an employee to withdraw from a trade union is an exercise of the freedom of association as well as a labour right. The question of quorum is not material in that respect because the decision is an individual decision even if taken in a collective forum.

31. The Union did not provide any evidence that the members who signed the withdrawal letter were coerced or forced to append their signatures to the letter or that they rescinded the decision.

32. In this regard, the Court finds that the fact that the Union allowed the employees to participate in the Union elections held on 16 January 2021 did not vitiate the resignations.

33. Where an employee exercises the right to resign from a trade union and the trade union wishes to challenge the validity of the decision, cogent evidence including from the employee or a representative would be required to show coercion, duress or fraud.

Conclusion and Orders

34. From the foregoing, the Court declines jurisdiction, and further finds that the Union did not prove its case to the required standard.

35. The Cause is dismissed.

36. Due to the social partnership between the parties, there is no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 19TH DAY OF JANUARY 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr Gombe, Branch Secretary

For Respondent Mr Onsongo instructed by Onsongo & Co. Advocates

Court Assistant Chrispo Aura