



Kenya Plantation & Agricultural Workers Union v Limuru Tea Growers Group of FKE & 7 others (Cause 263 of 2017) [2022] KEELRC 13328 (KLR) (28 November 2022) (Ruling)

Neutral citation: [2022] KEELRC 13328 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 263 OF 2017
DN NDERITU, J
NOVEMBER 28, 2022**

BETWEEN

KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT

AND

**LIMURU TEA GROWERS GROUP OF FKE 1ST RESPONDENT
VALENTINE GROWERS COMPANY LIMITED 2ND RESPONDENT
MENENGAI FARMERS LIMITED 3RD RESPONDENT
NYARA TEA ESTATES LIMITED 4TH RESPONDENT
NASICO LIMITED 5TH RESPONDENT
RURIGI ENTERPRISES LIMITED 6TH RESPONDENT
ALICEDALE LIMITED 7TH RESPONDENT
KIBENDA ESTATES LIMITED 8TH RESPONDENT**

RULING

I. Introduction

1. In a Notice of motion dated January 26, 2022 the claimant /applicant prays for-
 1. – spent
 2. That this honourable be pleased to compel the respondent(s) to pay agency fees and deduct and remit union dues from the emoluments of the employees who have signed into union membership and pay arrears of unremitted union dues from the emoluments of the members since April, 2017 to date, pending the report from the National Labour Board.



3. That the cost of this application be provided for and be borne by the respondent(s).
2. The application is expressed to be brought under article 36(1) and 41(1)(2)(c) of the Constitution, sections 19(1) of the Employment Act, sections 48, 54, and 56 of the Labour Relations Act, section 17 of the Employment and Labour Relations Court Act, and all other enabling provisions of the law.
3. The application is based on the grounds on the face of it and supported by the affidavit of Thomas Kipkemboi, the Deputy Secretary General of the claimant/applicant, sworn on January 26, 2022 with several annexures thereto.
4. The respondents though served filed nothing in response to the application.
5. On March 30, 2022 this court directed that the application be heard by way of written submissions. Counsel for the applicant, Miss Omwaka, filed her submissions on May 13, 2022 but Counsel for the respondent, though served and present in court on May 30, 2022 opted not to file any submissions.

II. Background

6. In an amended statement of claim dated August 24, 2021 filed in court on even date, the claimant seeks the following-
 1. A declaration that the intended termination of the recognition agreement is unlawful and unfair.
 2. A permanent mandatory injunction restraining the respondents from terminating the recognition agreement.
 3. An order for the Respondent to continue deducting union dues.
 4. Costs of this cause.

III. The Claimant's Case

7. The claimant is a registered trade union under the provisions of the Labour Relations Act while the Respondents are limited liability companies registered under the Companies Act carrying on the business of growing crops, and mainly tea, in the Limuru area of Kiambu County and elsewhere in the Republic, for both local and international markets.
8. The claimant has a recognition agreement with the Respondents dated and signed on March 3, 2008 as a result of which various collective bargaining agreements (CBA) have been negotiated and agreed by and between the parties.
9. On March 23, 2017 the 7th respondent served the Claimant with a three months' notice of termination of the recognition agreement to take effect from June 30, 2017. The 2nd respondent served the claimant with a similar notice dated March 22, 2017 to take effect from June 30, 2017. The 3rd and 4th and 5th respondents followed suit and issued notices to take effect from June 30, 2017. The 1st respondent issued a similar notice on April 12, 2017 ostensibly to take effect from July 1, 2017.
10. The claimant pleaded with the respondents to hold meetings and negotiate on the way forward but the claimant states that the meetings were ignored by the respondents who stated that they were waiting for communication from the National Labour Board (the Board) who had been served with copies of the notices alluded to above. The deponent has attached copies of the recognition agreement and the said notices to the affidavit in support of the application.



11. The claimant states that the respondents have failed, refused, and or neglected to remit union dues from the emoluments of the employees who have signed into the union membership since April, 2017 notwithstanding that the claimant represents the simple majority of unionisable employees of the Respondents and hence the recognition agreement is still valid in law.
12. It is on the basis on the foregoing that the claimant prays for the interim orders in this application as set out in an earlier part of this ruling.

IV. The Respondents' Case

13. As stated elsewhere in this ruling the respondents did not file any responses to the subject application and no defence has been filed to the amended memorandum of claim.
14. Miss Odwako for the respondents attended court on May 30, 2022 and promised to file submissions in regard to this application and in response to the written submissions by Counsel for the claimant yet no submissions were filed.
15. From the foregoing the application is undefended.

V. Submissions By Claimant's Counsel

16. Counsel for the claimant has identified the one issue for determination as per prayer 2 in the application as reproduced above – Whether the respondent(s) should pay agency fees and deduct and remit union dues from the emoluments of the employees who have signed into union membership and pay arrears of unremitted union dues from the emoluments of the members since April 2017 to date.
17. Counsel for the claimant has submitted that the respondents un-procedurally and unlawfully served notices of termination or revocation of the recognition agreement instead of applying to the Board to be allowed to terminate the agreement in accordance with section 54 (5) of the *Labour Relations Act*. Counsel argues that there is no way that the Respondents can unilaterally terminate or revoke the recognition agreement without following the law.
18. Counsel argues that what the Respondents issued is a notice to unilaterally terminate the recognition agreement as opposed to an application to the Board for consideration, as required by the law. Counsel submits that the Board has not considered the notice, as it was improperly issued by the Respondents, and as such the status prior to the notice should obtain pending the hearing and determination of this court in this cause and or the decision of the Board.
19. Counsel has cited the Court of Appeal in *Micato Safaris v Kenya Game Hunting & Safari Workers Union* (2014) eKLR to the effect that the respondents ought to have applied to the Board to terminate the recognition agreement rather than issuing a notice for termination.
20. On the basis of the foregoing Counsel for the claimant has pleaded that this application be allowed with costs.

V. Determination

21. Article 41 of the *Constitution* provides as follows-
 41. (1) Every person has the right to fair labour practices.
 - (2) Every worker has the right—
 - (a) to fair remuneration;



- (b) to reasonable working conditions;
 - (c) to form, join or participate in the activities and programmes of a trade union; and
 - (d) to go on strike.
- (3) Every employer has the right—
- (e) to form and join an employers organisation; and
 - (f) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers’ organisation has the right—
- (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining.
22. In operationalizing labour rights the Legislature has passed several statutes including but not limited to the *Employment Act* (the Act), *Fair Administrative Action Act*, The *Employment and Labour Relations Court Act*, *Labour Relations Act*, et al.
23. It is evidently clear that the right of an employee to join and participate in the activities of a trade union is a constitutional right with all the rights and privileges appurtenant to such membership. Likewise, an employer has a right to join an employer’s organization and to enjoy all the rights and privileges that come with such membership.
24. Deduction and remittance of union dues on the instructions of an employee through a union is a duty that an employer must execute subject only to the provisions of the law. An employer cannot simply walk away from a recognition agreement by way of notice that has no basis and foundation in law such as the Respondents purported to do. The respondents ought to have maintained the status quo after expressing their intention of terminating the recognition agreement and apply to the Board for the termination. In the meantime, therespondents ought to have continued paying the agency fees and submitting the employees’ monthly remittances until the Board made a decision based on the provisions of section 54 of the *Labour Relations Act*.
25. Instead of following and applying the law as laid down, the Respondents took matters upon themselves, ignored the law, issued unlawful notices to terminate the recognition agreement and copied the same to the Board instead of applying for the termination as required by the law, and stopped paying agency fees and remitting union dues effective April, 2017. This is not the way it should be done and the Court of Appeal said as much in *Micato Safaris case* (*supra*).
26. This court has said enough to illustrate that the Respondents ought to have maintained the status quo before April, 2017 until the Board made a decision upon a proper application made by therespondents and or upon a valid court order once the matter was filed in court. Therespondents cannot in law make a unilateral decision to walk away from a binding recognition agreement without following the procedure provided for in law.



V. Orders

27. Flowing from the foregoing this court makes the following orders in regard to the Notice of Motion dated January 26, 2022-
- a. That pending the hearing and determination of this cause or a decision from the National Labour Board the respondents are hereby ordered and compelled to pay agency fees and deduct and remit union dues from the emoluments of the employees who have signed into union membership and pay arrears of unremitted union dues from the emoluments of the members since April, 2017 to date.
 - b. The claimant is awarded costs of this application.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS.28TH DAY OF NOVEMBER, 2022.

.....
DAVID NDERITU
JUDGE

