



Kenya Plantation & Agricultural Workers Union v Kenya Tea Development Agency (Githambo Tea Factory) (Cause E028 of 2021) [2022] KEELRC 13563 (KLR) (15 December 2022) (Ruling)

Neutral citation: [2022] KEELRC 13563 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E028 OF 2021
ON MAKAU, J
DECEMBER 15, 2022**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT
AND
KENYA TEA DEVELOPMENT AGENCY (GITHAMBO TEA
FACTORY) RESPONDENT**

RULING

Introduction

1. This ruling relates to the notice of motion dated May 30, 2022 brought by three of the 13 grievants herein Mr David Maina Karongo, Gibson Mwambi Macharia and Ruth Njoki Kanyari. The application seeks for the orders that they be allowed to replace the trade union as direct claimants in the suit. They also seek for costs of the application.
2. The grounds upon which the orders are sought are set out in the body of the motion and the supporting affidavit sworn by the 3 applicants jointly. In brief the applicants contend that the 13 grievants instructed the claimant union to file this suit on their behalf; that since they are no longer employees and have agreed to take over their suit and be represented by the 3 applicants herein; that the cause of action remains the same and the union has requested them to take over the case; and that it is in the interest of justice that the claimants application be allowed as prayed.
3. The respondent has opposed the application *vide* the replying affidavit sworn by its Head of Legal Mr Mathews Odero on June 30, 2022. In brief he deposes that the application is mischievous and an abuse of the court process because the grievants have been paid all their dues; that by the letter dated May 28, 2021, the grievants admitted through their union officials that their grievances had been settled and “there are no other claims” pending.



Submissions

4. The applicants submitted that the union had filed the suit on their behalf and since they have fallen out with it, they now want to take over their suit and prosecute it as provided under section 22 of the *Employment and Labour Relations Court Act* (ELRC Act). They further submit that the reason why the respondent is opposing the instant application is because of the allegation that the dispute was fully settled out of the court between it and their union. However, according to them, the only issue settled as between their union and the respondent was service pay leaving the issue of reinstatement, and costs still outstanding. In their view, if the application is dismissed, they will have been condemned unheard contrary to the rules of natural justice. Consequently, they urged the court to allow the application.
5. The respondent has on the other hand submitted that the claimant has not sworn any affidavit or provided any evidence to support the application. In the respondents' view the application is by strangers to the suit.
6. As regards the merits of the application, it was submitted that the dispute was settled amicably between it and the officials of the applicants' trade union one Moses K Chorio as per the letter dated May 28, 2021. According to the respondent the dispute was resolved and "there are no other claims" outstanding. That the said agreement was done after the suit was filed on May 21, 2021 and therefore the application is an abuse of the court process which should be stopped.
7. To fortify the above submissions the respondent placed reliance on document No 21 in its bundle of documents, namely the letter dated May 28, 2021 to show that all the issues raised by the claimant were settled through consensus. It was urged that the grievants should be estopped from resurrecting a claim that has been settled by consent. Consequently, the court was asked to dismiss the application with costs for lack of merits.

Analysis

8. Having considered the material placed before the court by the two sides, the main issue for determination is whether the 3 applicants should be allowed to substitute the claimant union as the representative of the 13 grievants herein. Although no law was cited in the motion as the basis for filing the application, the applicants have argued that the orders sought are availed to them by section 22 of the *ELRC Act*.
9. Section 22 of the *Act* provides that;

"In any proceedings before the court or a subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organization and, if the party is a juristic person, by a director or an employee specially authorized for that purpose."
10. The foregoing provision gives a party the right to representation by an advocate, trade union, employer's association or an officer of a juristic party to a suit. In this case the party in question is the allegedly the 13 grievants. They want to replace or substitute the claimant union because they have fallen out. They are not seeking for leave to act in person in the place of the authorized officers of their union. Consequently, I find and hold that section 22 cited by the applicants is not relevant in determining this application.
11. As it is clear from the motion, the applicants are seeking to replace the claimant union as the representative of the grievants in the suit. That requires authority from the other grievants but as things



stands now, there is no written authority filed in support of the application. The trade union has also not given its consent for the substitution. Finally the employer has not waived its right to engage the grievants collectively through their trade union as required by the collective agreement and the recognition agreement.

12. Besides, I have considered the bundle of documents filed by the two sides and there is evidence in the form of letters written by both parties showing a pattern of negotiations and conciliation. The said evidence is clear that the parties negotiated and agreed on separation dues and signed an agreement that all the grievances raised had been resolved and no claims were left outstanding.
13. The grievants were fully represented by their trade union to whom they surrendered their right to agitate for their claims. The union had all the time before represented the grievants without any complaint. Whereas the court appreciates their right to take over their case from the trade union, I must observe that such right should be exercised before the union pens a settlement agreement negotiated on their behalf collectively.
14. Allowing members of trade unions to fire their union after signing settlement agreements would result to untidy situation and could kill the collective bargaining. This view would not be changed even where the members of the trade union are alleging that the settlement agreement negotiated by their union is a bad bargain. The policy of the law should be that members of a trade union ought to be bound by the agreements negotiated for them by their trade unions. In this case, the grievants have been paid their negotiated dues, including service pay which signifies separation. Therefore the issue of reinstatement which is alleged to be still outstanding is obviously settled by their receipt of terminal dues.
15. In view of the foregoing, I do not hesitate to hold that the applicants here have not satisfied the court that there is any pending claims in the suit after the negotiated settlement except the issues of costs. Since the applicants did not personally incur any costs in the suit, it is only the claimant union which can raise the issue of costs.
16. Having considered all the reasons aforesated, I must, as I hereby do, reject the application by the applicants and dismiss it with costs since the dispute is fully settled.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF DECEMBER, 2022.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on April 15, 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

