



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 13 OF 2020

KENYA UNION OF SUGAR PLANTATION

AND ALLIED WORKERS

CLAIMANT

v

BUSIA SUGAR INDUSTRY LTD

RESPONDENT

RULING

1. On 13 February 2020, the Kenya Union of Sugar Plantation & Allied Workers (the Union) moved the Court alleging that Busia Sugar Industry Ltd (the Respondent) had declined to effect union deductions and/or grant it recognition.
2. In the same Memorandum of Claim, the Union alleged that the Respondent had unfairly terminated the contracts of some named 10 persons (Grievants).
3. Filed together with the Memorandum of Claim was a Motion seeking several orders.
4. On the same day, the Court issued an *ex-parte* order in the following terms
 2. **THAT** pending the hearing and determination of this suit, the Respondent, his agents or managers, and/or any other persons serving the interests of the Respondent is hereby restrained /stopped/restricted and prohibited from threatening, harassing, victimising, terminating and/or dismissing any of the employees on account of union membership or this litigation.
5. The Court fixed *inter-partes* hearing of the motion for 4 March 2020.
6. The Respondent filed a Response to the Memorandum of Claim and a replying affidavit in opposition to the Motion on 25 February 2020.
7. On 4 March 2020, the Court confirmed the *ex-parte* orders and directed that the Cause do proceed to hearing on the merits on 30 April 2020. The parties were directed to file and exchange witness statements (the hearing did not proceed due to COVID19 public health pandemic).
8. Nevertheless, on 4 May 2020, the Union filed another Motion seeking orders

1. ...

2. **THAT** the Respondent is declared to have violated and disobeyed lawful orders of this Honourable Court issued on 13th February 2020 by this Honourable Court (sic) thereby liable to punishment for contempt.

3. **THAT** the Human Resources Officer Mr. Caleb Anyula and the Administrator Mr. Mohamed Bajaber being senior servants/managers of the Respondent be summoned to appear before this Honourable Court on the earliest date possible to show cause why they should not be cited for court contempt.

4. **THAT** the purported terminations of the grievant employees listed herein be declared unfair terminations and the same be reversed by an order of reinstatement.

5. **THAT** this Honourable Court be pleased to issue orders of imprisonment or detention of the two Respondent managers named above for a period not less than 6 months or a fine of two hundred thousand each for disobedience to court orders.

6. **THAT** the Court be pleased to issue such other orders as may be necessary for the sake of safeguarding the dignity of this Honourable Court.

7. **THAT** cost of this suit is provided for by the Respondent.

9. When this latter Motion was placed before the Court on the same day, the Court ruled

The application dated 4th May 2020 is incapable of grant without hearing the termination suit on the merits. The main suit be served and it be responded to within 21 days. The Claimant to file a Reply if any within 14 days. Directions for hearing on notice.

10. The next time the parties appeared before the Court was on 12 October 2020. The Court directed that the recognition dispute be heard on a priority basis on 10 November 2020.

11. On 10 November 2020, the parties without informing the Court of previous orders indicated that what was coming up was an application.

12. The Court directed that the application be determined by way of the record and further that the County Labour Officer prepare and file a report within 30 days and that thereafter the parties file and exchange submissions.

13. The County Labour Officer filed a report on 14 December 2020, the Union filed its submissions on 30 November 2020 while the Respondent's submissions were not on record by the agreed timeline.

14. The Court has looked at the County Labour Officer's report. It is relevant for the main Cause and not any of the applications which had been filed.

15. Considering the peremptory orders by the Court on 4 May 2020, the Court vacates all the orders/directions given on 10 November 2020.

16. Fresh directions to issue on hearing of the Cause on the merits.

Delivered through Microsoft teams, dated and signed in Kisumu on this 27th day of January 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr. Akhonya, National Assistant Treasurer

For Respondent Ipapu P. Jackah & Co. Advocates

Court Assistant Chrispo Aura