



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 64 OF 2019

KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS.....CLAIMANT

VERSUS

WEST KENYA SUGAR COMPANY LIMITED.....RESPONDENT

RULING

1. Application dated 15/7/2019 seeks final Orders in prayers 3, 4, 6 and 7 which are not capable of grant in an interlocutory application.
2. The only interim Order sought is prayer 5 which is couched in the following terms:-
 - (a) That pending the hearing and determination of this suit, the respondent, his agents or Managers, and or any other persons serving the interest of the respondent be restrained/stopped /restricted from threatening, harassing, victimizing, terminating and/or dismissing any of the listed employees on account of joining union's membership or this litigation."
3. The application is premised on grounds set out on the face of the application and marked '1' to 8 the gravamen of which may be summarized that the respondent is interfering and limiting union membership and union activities by refusing to effect the check-off union dues from the listed employees.
4. That the matter was subject of a Court ruling and the Court indicated that some managerial grades could be allowed to join the union subject to the provisions of the recognition agreement and union Constitution.
5. That the employees listed in the forms have voluntarily and willingly chosen to exercise their freedom of association by choosing to join the Union.
6. That the members stand to suffer irreparable harm if an injunction is not issued.
7. The applicant has buttressed the said grounds in the supporting affidavit of Francis B. Wangara sworn to on 15/7/2019.
8. The respondent raised a Preliminary Objection to the suit to the effect that this suit is *res-judicata* in that the claimant filed a suit against the respondent in Kisumu Employment & Labour Relations Court No. 19 of 2013 – **Kenya Union of Sugar Plantation and Allied Workers –vs- Mumias Sugar Company**. The respondent herein was the 6th respondent in that suit.
9. That the issues and remedies raised in the instant suit and application were directly and substantially in issue in Kisumu Employment & Labour Relations Court No. 19 of 2013.
10. That the suit was determined by Maureen Onyango J. in a judgment dated 15/9/2016 in which the suit was dismissed.
11. The claimant did not apply for review of judgment and an appeal against the said judgment.
12. That the parties have most importantly not mutually amended the Recognition Agreement to bring into the Union purview the management staff.
13. In any event this prayer is final in nature and may only be determined upon hearing and determination of the suit.
14. The Court has read the judgment of the Court in Kisumu Employment & Labour Relations Court No. 19 of 2013 in which the claimant

Union and the respondent herein were parties and the issue in dispute in that suit was “**refusal by the respondent to include management staff as members of the union.**”

15. Upon hearing of the case Maureen Onyango J, found *inter alia*:-

“I have looked at the job description of the management staff who signed the check-off and **although most of them are excluded by virtue of Appendix C to the Industrial Relations Charter, there may well be some grades that parties can agree to become unionisable.**” However the claimant would have to look at each category and make an argument for the specific category that it may propose to be unionized. Insisting on unionization of all management staff without exception as determined by the union is not an option as I have already stated above. For these reasons I find and hold that the claimant has not proved that it has an omnibus right to represent all management staff without exception as prayed for.”

16. The Court has carefully considered the pleadings by the claimant union set out in the Memorandum of Claim dated 15/7/2019 and in particular in paragraphs 4,5,6,7,8,9,10,11,12,13,14,15,16,17,18 and 19 and the remedies sought in prayers 1 to 6 of the suit and has come to the conclusion that the present suit raises the same issues for determination as those determined by Maureen Onyango, J. in Kisumu Employment & Labour Relations Court No. 19 of 2013.

17. The dispute involved the same parties as those herein including others. The Court in Employment & Labour Relations Court No. 19 of 2013, upon hearing and dismissing the suit hinted on guidelines that must be followed by the parties in order to resolve the question whether some members of management cadre may by agreement which agreement must be through amendment of the Recognition Agreement and or contained in a collective Bargaining Agreement, be mutually allowed to join the union.

18. The Claimant did not apply for review of the judgment of Maureen Onyango, J. nor did the Union file an appeal against that decision.

19. There are no new issues raised in the present suit other than those heard and determined in Cause No. 19 of 2013.

20. The Court is satisfied that the matters raised in the present suit are *res judicata*. The respondent has satisfied the prerequisite of the defence of *res-judicata* in that the claimant union has filed a subsequent suit on the same matter, after having received a judgment in a previous case involving the same issues and same parties.

21. *Res-judicata* is important in that it seeks to assure an efficient judicial system and bring finality to litigation.

22. The Court upholds the Preliminary Objection by the respondent and holds the present suit to be *res-judicata*.

23. Accordingly, the entire suit is struck out.

Dated and delivered at Nairobi this 4th day of March, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Jeremiah Akhonya for claimant

Ouma for Respondent

Chrispo -Court clerk.