



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 206 OF 2017

DORCAS WAIRIMU.....CLAIMANT

VERSUS

EASTERN PRODUCE KENYA LTD.....RESPONDENT

RULING

1. For determination is a Motion dated 24 October 2018 by Eastern Produce Kenya Ltd (Siret Estate)(the Respondent) seeking orders:

1. ...

2. THAT the suit be transferred to the Employment and Labour Relations Court at Kericho for hearing and determination.

3. THAT the Claimant bears the cost of this application.

2. The grounds in support of the Motion were that the Kenya Plantation & Agriculture Workers Union had filed another Cause wherein the fairness of the termination of the Claimant's employment had been raised (see Kericho Cause No. 170 of 2016, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd*); that the Cause had been marked as settled by consent on 5 June 2018, and that the Union had filed another Cause on behalf of its members including the Claimant raising the same issues (see Kericho Cause No. 72 of 2018, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd*).

3. The Claimant filed a replying affidavit in opposition to the Motion on 27 November 2018.

4. In the affidavit, the Claimant deposed that she had not filed any other suit challenging the termination of her contract on 7 December 2016, nor had she given instructions to the Kenya Plantation & Agricultural Workers Union to file such a suit(s).

5. The Claimant also deposed that the instant suit was filed before the Union filed Kericho Cause No. 72 of 2018, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd*, and that by the time Kericho Cause No. 170 of 2016, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd* was being filed, her contract had not been terminated.

6. The Claimant further deposed that she had never been a member of the Kenya Plantation & Agricultural Workers Union.

7. Pursuant to directions by the Court on 19 January 2021, the Claimant filed her submissions on 19 March 2021. The Court directed the Respondent to file and serve its submissions together with all the pleadings in Kericho Cause No. 72 of 2018, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd*.

8. The Respondent's submissions and pleadings in Kericho Cause No. 72 of 2018, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd*, were not on record by the agreed timeline of 19 February 2021.

9. The Court has considered the Motion, affidavits and submissions on record and come to the view that the Motion lacks merit.

10. Although the Respondent had annexed a copy of the Statement of Claim in Kericho Cause No. 72 of 2016, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd*, it did not, despite Court orders on 19 January 2021, file a copy of the Appendix to the Statement of Claim which listed the members of the Union on whose behalf the Cause been presented.

11. Therefore, the Court is unable to determine whether the Claimant was part of the parties in the cause of action advanced by the Union in Kericho Cause No. 72 of 2016, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd*.

12. The Respondent also made reference to Kericho Cause No. 170 of 2016, *Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Ltd.*

13. Although the pleadings in this Cause were not filed, there is no doubt in the mind of the Court that the suit could not have been in relation to the termination of the Claimant's employment on 7 December 2017, over a year later.

14. In light of the foregoing, the Court finds the Motion without merit, and it is dismissed with costs to the Claimant.

15. In order to progress this Cause to hearing, the Court orders as follows:

(i) The Claimant to file and serve any further documents and witness statements on or before 21 April 2021.

(ii) The Respondent files and serves any further documents and witness statements before 28 April 2021.

(iii) Agreed Issues to be filed on or before 12 May 2021.

(iv) In default of Agreed Issues, the Claimant to file and serve its proposed Issues with evidence that the same was served upon the Respondent, for adoption by the Court.

(v) Hearing date to be scheduled after the filing of Agreed Issues.

Delivered through Microsoft teams, dated and signed in Nairobi on this 14th day of April 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Mwakio Kirwa & Co. Advocates

For Respondent Kaplan & Stratton Advocates

Court Assistant Chrispo Aura