



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 29 OF 2020

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

v

BUTALI SUGAR MILLS LTD.....RESPONDENT

RULING

1. For determination is Motion dated 25 February 2020, wherein the Kenya Union of Sugar Plantation & Allied Workers (the Union) seeks orders:

(i) ...

(ii) THAT pending the hearing and determination of this application and the main suit, the Honourable Court be pleased to grant temporary of stay/conservatory order lifting and cancelling the action of the Respondent of issuing notices of cessation of contracts to the following tractor drivers and any other from service, employment and duty and from taking any further disciplinary measures detrimental and prejudicial to their bona fide status as employees of the Respondent and that the said aggrieved applicant's/Claimant's members be retained in their respective job positions forthwith:

Wilson Njairi A0689.

Joseph Avomba A0682.

Praison Kulecho A0690.

Mulusa Numala A0673.

(iii) THAT pending the hearing and determination of the present Cause, the Respondent be barred from issuing further notices of cessation/terminations of contracts to tractor drivers and any other employee within its establishment.

(iv) THAT the Respondent be compelled to convert all contract employees who have served for a period of more than three months into permanent and pensionable.

(v) THAT the Respondent, his agents or managers or supervisors and or any other persons serving the interests of the Respondent be restrained/stopped from threatening, victimising, terminating and or dismissing any of the mentioned employees or any other employee on account of this or its proceedings.

(vi) THAT the cost of this suit be provided for by the Respondent.

2. Butali Sugar Mills Ltd (the Respondent) caused to be filed a replying affidavit in opposition to the Motion on 19 May 2021, and pursuant to further Court orders, the Union filed a further affidavit and submissions on 29 June 2021. The Respondent had filed its submissions on 23 June 2021.

3. The Union's case is that the decision of the Respondent to issue cessation of contract notices to the 4 named Grievants through letters dated 2 April 2020 was unlawful and devoid of a legitimate cause.

4. According to the Union, the nature of work of the Grievants was of a permanent nature and, therefore, it was an unfair labour practice to

place the Grievants on fixed-term contracts instead of permanent and pensionable terms.

5. The decision, the Union urged, was contrary to clause 3 of the Collective Bargaining Agreement between the parties.
6. The Respondent resisted the Motion by contending that the Grievants were on fixed-term contracts commencing on 1 November 2019 and ending on 30 April 2020 and that when the end dates approached, it issued the notices as a matter of good practice.
7. The Motion, the Respondent, submitted was overtaken by events because the 4 Grievants had ceased being employees.
8. The Court has considered the Motion, affidavits and submissions.
9. The Employment Act, 2007 contemplates different types of contracts, including contracts of a definite duration. Such contracts are therefore lawful, and the Court would be usurping the parties' autonomy by purporting to convert such contracts into a type the parties did not agree to.
10. The Grievants contracts were to expire on 30 April 2020, and the Respondent gave due notice to the Grievants on 2 April 2020.
11. However, the Union moved the Court, and the contracts were sustained beyond the expiry date on the strength of a court order.
12. The Court order was vacated on 18 February 2021, and thus by the time the Union moved the Court on 25 February 2021, there were no contracts the Court could preserve in whatever form.
13. Before concluding, the Court observes that the Union initially filed a Motion that was not anchored on a Statement of Claim. The Court struck out the Motion.
14. Subsequently, the Union filed a Memorandum of Claim under the same register number instead of a fresh registry number. It is doubtful whether such a course was open to the Union.
15. The Court finds the Motion dated 25 February 2021 without merit, and it is dismissed with costs.
16. The Court regrets the Ruling could not be delivered on 27 October 2021 due to other official engagements.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF NOVEMBER 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr Lincoln Aveza, Industrial Relations Officer

For Respondent L.G. Menezes & Co. Advocates

Court Assistant Chrispo Aura