



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT**

**KERICHO**

**CAUSE NO.55 OF 2019**

**KENYA PLANTATION & AGRICULTURAL WORKERS UNION .....CLAIMANT**

**VERSUS**

**JAMES FINLEYS (Kenya) LIMITED (Finleys Flowers) .....RESPONDENT**

**RULING**

The claimant by application dated 4<sup>th</sup> November, 2019 is seeking for orders that following the respondents' letter dated 18<sup>th</sup> October, 2019 announcing the final closure of Finleys Flowers (K) Limited on 25<sup>th</sup> December, 2019 the court do stay and set the same aside and also issue a declaration that all employees declared redundant vide letter dated 25<sup>th</sup> April, 2018 and 18<sup>th</sup> October, 2019 are entitled to the outcome of Civil Appeal No.47 of 2017 – Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union.

The application is supported by the affidavit of Henry Omasire the national organising secretary of the claimant and on the grounds that by letter dated 25<sup>th</sup> April, 2018 the respondent issue notice to terminate the employment on account of redundancy and closure of Chemirei and Tarakwet Farms within 2 years starting from 1<sup>st</sup> May, 2018 and final closure on 31<sup>st</sup> December, 2020. As a result of the of the notice the parties herein have engaged in negotiations regarding the applicable Collective agreement (CBA) that is now subject of **Civil Appeal No.47 of 2017 - Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union.**

The respondent has re-issued a noting to bring forward the final closure date from 31<sup>st</sup> December, 2020 to 25<sup>th</sup> December, 2019 which will prejudice the claimant members to miss out on the terminal dues payable in line with the outcome of the CBA under litigation before the Court of Appeal. It is likely the respondent will compute the terminal dues based on the 2012-2013 CBA instead of the 2014-2015 CBA which is the core subject of **Civil Appeal No.47 of 2017 Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union** and unless the orders sought are issued the claimant members will suffer injustice.

The respondent filed Grounds of Opposition and a Replying Affidavit of Daniel Kirui the human resource director on the grounds that the claimant is seeking to pre-empt the outcome of Civil Appeal No.47 of 2017 - Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union and the orders sought cannot be practically issued as there is no existing order and the principles for the grant of injunctive orders have not been met and the application should be dismissed.

In his affidavit, Mr Kirui avers that the parties have held several discussions and resolved that the flower farm operations at Chemirei and Tarakwet farms ought to be closed due to difficult business environment in Kericho actuated by high costs of labour and frequent industrial actions which have made the farm operations uneconomical. The closure was planned in two and a half years as communicated vide letter dated 25<sup>th</sup> April, 2018.

The claimant filed Nakuru ELRC [No.111 of 2018 and in a ruling of 4<sup>th</sup> June, 2018 the application was dismissed for want of merit as the respondent had complied with the mandatory provisions of section 40 of the Employment Act. the suit was then compromised after the parties reported to the court on 7<sup>th</sup> October, 2019 that the redundancy process was in its final stages.

The respondent expected to conclude the process by 31<sup>st</sup> December, 2020 but this was brought forward to 25<sup>th</sup> December, 2019 due to continued business losses and an offer to pay all employees their terminal dues.

There exists Civil Appeal No.47 of 2017 - Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union which remains pending and should not be pre-empted herein.

Both parties filed lists of cases and made oral submissions in court.

The gist of the claimant's application is letter and Notice dated 18<sup>th</sup> October, 2019 where the respondent announced the closure of Finlays Flower (K) Limited on 25<sup>th</sup> December, 2019 and also in issue is **Civil Appeal No.47 of 2017 - Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union** where the claimant is seeking that *an order do issue declaring that all the employee(s) declared redundant vide the letters dated 25<sup>th</sup> April, 2018 and 18th October, 2019 are entitled to the outcome thereof.*

With respect to the parties, the outcome of **Civil Appeal No.47 of 2017 - Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union** and the resulting orders therefrom is not for this court to address. As this is the appellat court following orders of this court, all issues before the appellat court should be addressed on the merits. The parties shall be guided thereon.

With regard to the issue of the notice dated 18<sup>th</sup> October, 2019 the court reading of this letter, it is interlinked and intertwined with the notice and letter dated 25<sup>th</sup> April, 2018 subject of Nakuru Cause No.111 of 2018 and the core issue in **Civil Appeal No.47 of 2017 - Finlays Flowers (K) Limited versus Kenya Plantation & Agricultural Workers Union**. In the letter the respondent notifies the claimant as follows;

*RE: FINAL CLOSURE OF FINLAY FLOWERS*

*This is to notify you that further to our letter dated 25<sup>th</sup> April, 2018 announcing the phased closure of Finlays Flowers, Kericho ... the final closure date has been brought forward to 25<sup>th</sup> December, 2019. All Finlays Flowers employees including those seconded to Murara Plants Limited, totalling 1,088 shall be affected by this closure. ..*

*The decision has been necessitated by the on-going difficult business environment, keeping the farms operational up to 31<sup>st</sup> December, 2020 as earlier envisaged is not sustainable. ...*

Save to note this notice relates and associated to the earlier notice, the notice having issued to the claimant union is in tandem with section 40(1) of the Employment Act, 2007 which requires the employer before effecting a redundancy to notify the trade union representing the employees together with the labour officer responsible for the area the employer is placed. In this regard the respondent notified the labour officer at Kericho.

Without going to the merits of the main claim, the substance of the orders sought cannot issue where the respondent has complied with the mandatory provisions of the applicable statute, section 40 of the Employment Act, 2007 in issuing the applicable notice(s) to the claimant and the labour office.

**Accordingly, orders sought in application dated 4<sup>th</sup> November, 2019 shall not issue. Costs in the cause.**

Delivered at Nakuru this 23<sup>rd</sup> day of January, 2020.

**M. MBARU**

**JUDGE**

In the presence of: .....