



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 708 OF 2019

(Before Hon. Lady Justice Hellen S. Wasilwa on 28th May, 2020)

KENYA UNION OF COMMERCIAL,

FOOD & ALLIED WORKERS.....CLAIMANT

VERSUS

KAMOTHAI COFFEE GROWERS.....RESPONDENT

RULING

1. Pending before me for determination is the Notice of Motion Application dated 24th October, 2019. The same is brought under Certificate of Urgency under Section 3 & 12 of the Industrial Court Act, 2007, Section 18 & 19 of the Employment Act, 2007, Rule 16 of the Employment and Labour Relations Procedure Rules 2016. Seeking Orders that:-

1. This Application be heard exparte in the first instance and certified urgent (Spent).

2. The Honourable Court in the first instance do issue an order directing the Respondent to pay their employees' salaries for the months of January to July 2018 pending the full hearing and determination of this suit.

3. The Honourable Court do issue an order directing the Respondent to pay statutory deductions not remitted with interest upto 30th July, 2018 to relevant institutions.

4. The Hon. Court be pleased to issue such orders as it may deem fit and just to grant to meet the ends of justice including interest accrued until payment are paid up to date.

5. The Respondent to bear cost of this suit.

2. The Application which is premised on the grounds that:-

i. The 37 permanent employees of the Respondent have not been paid their salaries for a period of 7 months January to July, 2018.

ii. The Respondent has been holding and using the money meant for salaries for its trading at the expense of the employees contrary to the Labour laws.

iii. The Claimant members are suffering and will continue to suffer irreparable loss which cannot be compensated retrospectively or otherwise if this application is not granted.

iv. The Respondent have failed to pay their employees' wages salaries as from January 2018 upto July 2018 which amount to Kshs. 8,110,407 while the workers continued working to generate income.

v. The Respondent in December, 23rd 2018 dismissed 27 workers after they demanded their salaries without paying them.

vi. The Claimant's effort to convince the Respondent to pay their employees' wages on time have not been considered.

vii. The Respondent failed to remit statutory deduction to all relevant institutions even after deducting the same from the

claimant members' salaries.

viii. The Claimant has suffered and will continue to suffer irreparable loss if this application is not granted.

ix. By the time the claimant is filing this application the total salaries unpaid is for 12 months though the dispute which was reported in August, 2018 was for 7 months.

3. The Application further supported by the Affidavit of **FRANCIS KINYANJUI NJUGUNA**, the chief shop steward in the Respondent Company sworn on 24th October, 2019, in which he reiterates the averments made in the Notice of Motion Application.

4. In response to the Application the Respondent filed a Replying Affidavit deposed by **DANIEL NJUGUNA KIUNYU**, the Chairman of the Respondent on 24th January, 2020, in which he avers that the instant Application is misconceived, incompetent, an abuse to the court process, premature and urged this Court to dismiss the same with costs to the Respondent.

5. It is further contended that the 7 months' salary that the Applicant seeks to have an order issued by this Court on its payment is disputed. It is further contended that most of the employees that the Claimant union purportedly represent are still under the Respondent's employment and continue to receive their salaries as are due.

6. The Respondent further contended that any arrears owed to its employees are being cleared through an agreed plan with the affected employees.

7. The Respondent maintained that it has never failed to pay its employees as alleged in the instant Application.

8. The Respondent further maintained that the Orders sought in the instant Application cannot be granted prior to the hearing and determination of the main Claim on merit.

9. The Respondent therefore urged this Honourable Court to dismiss the instant Application with costs to the Respondent.

10. In a brief rejoinder the Claimant union through its Secretary General, **BONIFACE M. KAVUVI** filed a Replying Affidavit on 24th February, 2020, in which he averred that there exists a valid Collective Bargaining Agreement between the Claimant and the Respondent herein that is duly signed and registered in this Honourable Court.

11. He further averred that on 29th July 2018 all the 37 employees of the Respondent informed that union of their unpaid salaries. Subsequently, pursuant to the provisions of Section 62 of the Labour Relation Act, 2007 the union reported the trade dispute. The Claimant further averred that the said dispute was accepted and on 19th September, 2018 a conciliator was appointed by the Thika Labour Office.

12. The Secretary General further averred that the parties were invited for the first meeting on 24th October, 2018. He further averred that the meetings as convened by the conciliator were not fruitful as no agreement was reached between the parties and a referral certificate issued by the Conciliator.

13. He further contended that the dispute before this Honourable Court is totally on unpaid salaries and not dismissal and that the Respondent has not filed in this Court any evidence confirming the payment of the said salaries for a period of 12 months.

14. The Claimant urged this Honourable Court to allow their instant Application and direct the Respondent to pay the Claimant union to total of Kshs. 10,915,115/- being unpaid salaries for its 30 employees for the period between January 2018 and December 2018. The Claimant further prayed for costs of this Application.

15. The Claimant union further urged this Honourable Court to strike out the Respondent's Replying Affidavit dated 24th January, 2020.

16. Parties agreed to dispose of the Application by way of written submissions.

Submissions by the Parties

17. The Claimant union submitted that it is entitled to the reliefs sought in its Application dated 24th October, 2019 and therefore urged this Honourable Court to allow the same as prayed.

18. There are no submissions on record filed on behalf of the Respondent herein.

19. I have considered the averments of both Parties. The Applicant contends that their members have not been paid their salaries for over a year, a fact which the Respondent deny.

20. There is however no proof that the Respondents have paid the moneys in contention. In determining this application at this stage, the entire claim may be determined without hearing the Parties. This would prejudice the Respondents since the Applicant seeks similar orders as in the Main Claim. I therefore direct that the Parties proceed to prosecute the Main Claim instead so that the issues pending can be resolved once and for all.

21. Costs in the cause.

Dated and delivered in Chambers via zoom this 28th day of May, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Nyumba holding brief Macharia for Claimant – Present

Lesaigor for Respondent – Present