



**REPUBLIC OF KENYA**

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

**CAUSE NO.449 OF 2017**

**KENYA PLANTATION AND**

**AGRICULTURAL WORKERS UNION.....CLAIMANT**

**VERSUS**

**AGRICULTURA EMPLOYERS ASSOCIATION.....1<sup>st</sup> RESPONDENT**

**KENYA EXPORT FLORICULTURE,**

**HORTICULTURE & ALLIED WORKERS.....2<sup>nd</sup> RESPONDENT**

**RULING**

The 2<sup>nd</sup> respondent, Kenya Export Floriculture, Horticulture & Allied Workers is seeking the court to direct the 1<sup>st</sup> respondent to file important document(s) of a comprehensive list of its members so that the respondent can it to protect its rights and fundamental freedoms in regard to the suit herein.

The basis of the orders sought is article 35(1) of the Constitution, 2010 and Rule 14(10) of the Employment and Labour Relations Court (Procedure) Rules, 2016.

The 1<sup>st</sup> respondent opposed the application by the 1<sup>st</sup> respondent on the grounds that on 5<sup>th</sup> December, 22018 the representative of the 2<sup>nd</sup> respondent was at their offices and was supplied with a list of 180 members which is a list narrowing down those members relevant to the 2<sup>nd</sup> respondent's concern and from the sector covered by the parties. The 1<sup>st</sup> respondent has a wider membership comprised of ranchers and associate members not growers or in agriculture. Other members include trainers, educational institutions and have no relevance herein with regard to matters being addressed by the parties or of interest to the 2<sup>nd</sup> respondent.

The reason for which the 2<sup>nd</sup> respondent is seeking for lists of all 1<sup>st</sup> respondent members is not disclosed and such demands are interfering with the rights of the 1<sup>st</sup> respondent. Where the 1<sup>st</sup> respondent representative was not satisfied with the provided list, there are further details on [www.agriemp.co.ke](http://www.agriemp.co.ke) where such details are published for the public. The claimant opposed such application on the grounds that the list of 1<sup>st</sup> respondent members sought by the 2<sup>nd</sup> respondent are public knowledge and published on the respondent's web page where any party keen to know the membership can have access.

Article 35(1) of the Constitution provides that;

**1) Every citizen has the right of access to—**

**a) information held by the State; and**

**b) information held by another person and required for the exercise or protection of any right or fundamental freedom.**

Parliament has also enacted the Access to Information Act, 2016 and Section 4 of the Act which is material, herein provides for the procedure to access information held by the state or private persons. Section 4(2) and (3) provides;

**2) Subject to this Act, every citizen's right to access information is not affected by—**

**a) any reason the person gives for seeking access; or**

*b) the public entity's belief as to what are the person's reasons for seeking access.*

3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.

In this regard, the 2<sup>nd</sup> respondent is seeking for the list of all 1<sup>st</sup> respondents' members for the purpose of addressing the claims made against it herein by the claimant in the cause herein. The 1<sup>st</sup> respondent's case is that such information has been provided when the 2<sup>nd</sup> respondent attended at its offices on 5<sup>th</sup> December, 2018 and in any event, on the website all such details is available.

The 2<sup>nd</sup> respondent representative asserted in court that he has not been able to access the website of the 1<sup>st</sup> respondent so as to study the list of its members as published.

The argument of the 2<sup>nd</sup> respondent that they require the list of members of the 1<sup>st</sup> respondent so as to protect their rights is secured under article 35 of the Constitution, 2010 and also under the Access to Information Act, 2016. Such right(s) however carry a responsibility. To access any required information by an applicant, it must be at their reasonable cost.

Where the 1<sup>st</sup> respondent has published its list of members on the website, such information is available to any citizen and the cost is to access the website and access such information. The 1<sup>st</sup> respondent has further provided the 2<sup>nd</sup> respondent with a list of 180 of its members in the sector covered by the 2<sup>nd</sup> respondent.

The court has taken time to navigate the 1<sup>st</sup> respondent's website at [www.agriemp.co.ke](https://www.agriemp.co.ke) [https://www.agriemp.co.ke/ last accessed 20<sup>th</sup> December, 2018] and therein accessed the following details;

- Flower growers members;
- General agriculture members; and
- Associate members.

The above settled the cause of action leading to the claim herein and the orders sought against the respondents by the claimant relate to the recognition agreement dated 17<sup>th</sup> August, 2017 signed between the Respondents and which is challenged by the claimant. Such matter(s) addressed in their context, the exercise of rights under article 35(1) of the constitution, 2010 set out above, and putting into account section 4 of the Access to Information Act, 2016 the application to have all the list(s) of the 1<sup>st</sup> respondent members filed with the court or provided to the 2<sup>nd</sup> respondent is an overreach. Even where such information, material or records are required, the relevant material(s) and information are now provided with the list issued to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent and the website is open for any further details.

**Application by the 2<sup>nd</sup> respondent is well addressed with the relevant information provided. Parties shall take a mutual hearing date for the main suit.**

Delivered at Nakuru this 5<sup>th</sup> day of February, 2019.

**M. MBARU JUDGE**

In the presence of: .....