



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 374 OF 2018

(Before Hon. Justice Mathews N. Nduma)

ALEX OKELO OCHOLA & 99 OTHERS.....CLAIMANTS

VERSUS

DOMINION FARMS LIMITED.....RESPONDENT

RULING

1. Cause No. 182 of 2018 was consolidated with Cause No. 374 of 2018. Pending before court are two Notice of Motion applications to wit;
 - (i) Application dated 13/1/18 seeking mandatory injunction for payment of admitted terminal benefits due and owing to the Claimants and
 - (ii) Application by the Respondent dated 2nd February, 2018 seeking to set aside or review the order of this court made on 31st October 2018 granting a mandatory injunction compelling the Respondents to pay 3rd, 4th, 6th, 7th, 10th, 11th, 13th, 17th, 20th, 23rd, 28th, 29th and 30th Claimants salary arrears for the period January 2018 to May 2018 in Cause No. 182 of 2018. In this matter the application was not opposed.
2. The application dated 13/11/2018 in Cause No. 374 of 2018 seeks similar orders. The only difference is that the application is opposed vide a Replying Affidavit of Moses Oduor, the Human Resource Manager of Dominion Farms limited.
3. The crux of this application is that the court grants mandatory injunction compelling the Respondent to pay the Claimants cumulative terminal dues in the sum of Kshs.40,557,558.00.
4. Respondent filed Grounds of Opposition dated 5/12/2018 to the application admitting liability to the claim by the Claimants but sought to be allowed to deduct statutory payments from the Claimant's terminal dues and adds that some of the Claimants in Cause No. 182 of 2018 have been partly paid.
5. The issue for determination in this matter is whether the claim by the Claimants in the consolidated suit having been admitted, presents a clear case capable of being decided at once.
6. The court notes that the 1st application is wholly premised on the Respondent's own computation of terminal dues it agreed to pay the Claimants upon declaring them redundant. The compensation is clearly presented before court for all the Claimants.
7. The court is of the considered finding that there is no issue in dispute in respect of the mandatory orders sought by the Applicant.
8. The Applicant has also demonstrated the special circumstances necessitating seeking of mandatory orders due to the established apprehension by the Claimants that the Respondent has delayed inordinately in paying the terminal dues admitted to be owed to the Claimants who are ex-employees of the Respondent.
9. Furthermore, the Respondent has admitted in Cause No. 374 of 2018 that the Respondent is in the process of selling its assets to West Kenya Sugar Company Limited and West Kenya Sugar Company Limited is not a party to this suit.
10. The apprehension by the Claimants that they may end up with paper judgment is real.
11. The court is guided by the rendition by Mbaru J. in **Emphraim Murithi Kangeji –vs- Chairperson Teachers Service Commission &**

another, Nairobi ECRC Petition No. 70 of 2015 (2015) eKLR in which the court stated that whilst the principles for grant of mandatory interim injunction are set out in *Giella –vs- Casman Brown Limited and Mrau Limited* case, special regard is to be had in Employment matters in that, unlike in the context for sale of goods.

“An employment context affect the livelihood of a human person, the offer of human labour for which a person has to eke a living, support himself and to live a dignified life.” The court also the considered the case of ***Kenya Breweries Limited and Another –vs- Washington O. Okeyo, Nairobi CA No. 332 of 2000 (2002), eKLR*** on point of mandatory injunction.

12. The court is satisfied that a clear case that must not await full hearing of the suit has been made out by the Applicant.
13. The court therefore grants the mandatory injunction sought in the application dated 13/11/2018.
14. Furthermore, the application to set aside the mandatory injunction granted by the court on 31st October 2018 lacks merit based on the stated admission by the Respondent that it owes the named Claimants terminal benefits and that it was in the process of selling its assets to a 3rd party, which 3rd party is not a party in this suit.
15. Those orders were granted exparte in default of the Respondent filing a Replying Affidavit to the application.
16. The Applicant has not satisfied the conditions for setting aside and/or review of the orders of the court granted on 31st October, 2018. In any event the Respondent is in the process of paying and has recently paid partly the decretal sum following orders of the court above said.
17. Accordingly, the application dated 13th/11/2018 is granted whereas the application to set aside dated 2nd/12/2018 is dismissed.
18. In the final analysis the court makes the following orders:-
 - (a) Application dated 2/12/2018 is dismissed.
 - (b) An order of mandatory injunction is issued compelling the Respondent to pay the claimants terminal dues amounting to kshs.40,557,558 as per the computation set out under prayer (iii) of the Notice of Motion dated 13/11/2018.
 - (c) The Respondent, Dominion Farms Limited to bear the costs of the suit.

Ruling Dated, Signed and delivered this 11th day of December, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Okoth for Claimants

M/s. Rauto for Respondent

Chrispo - Court Clerk