



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS OF KENYA AT NAKURU

CAUSE NO.449 OF 2017

KENYA PLANTATION & AGRICULTURAL WORKERS UNION CLAIMANT

VERSUS

AGRICULTURAL EMPLOYERS ASSOCIATION.....1ST RESPONDENT

KENYA EXPORT FLORICULTURE & ALLIED WORKERS UNION.....2ND RESPONDENT

RULING

1. The ruling herein relates to the 2nd respondent's [Kenya Export Floriculture & Allied Workers Union] application and Notice of Motion dated 15th March, 2018. There is a pending application by the claimant and dated 9th April, 2018 which shall not be addressed herein.

2. The 2nd respondent is seeking for orders that;

1. *Spent.*

2. *An interim order be issued directing the 1st respondent acting on behalf of Equinox Horticultural Ltd, to resume negotiations for Collective Bargaining Agreement with the 2nd respondent covering employees of Equinox Horticulture Ltd.*

3. *An interim order be and is hereby issued directing Equinox Horticulture Ltd to immediately resume deduction and remittance of trade union dues from members of the 2nd respondent to the designated account as has been the practice.*

4. *The court be pleased to direct that Equinox Horticulture Ltd be enjoined in this suit and be accordingly served with pleadings by parties.*

5. *Costs of this application be provided for.*

3. The application is supported by the **Affidavit of David Omulama** the National Secretary General of the 2nd respondent and on the grounds that 2nd respondent is duly registered to represent employees in the floriculture and horticulture industries and has been recognised by the 1st respondent who is acting for Equinox Horticulture Ltd. Without any reasons the 1st respondent has stopped negotiations with the 2nd respondent and which would have allowed for a Collective Bargaining Agreement (CBA) between the respondents and this has affected the activities of the 2nd respondent.

4. Other grounds are that the orders obtained claimant in Cause No.13 of 2018 at Nakuru do not stop the 1st respondent acting on behalf of Equinox Horticulture Ltd to engage with the 2nd respondent to conclude a CBA. Such orders also do not stop the deduction and remittance of trade union dues to the 2nd respondent pursuant to section 57(1) of the Labour Relations Act and the failure by Equinox Horticulture Ltd to deduct and remit union dues to the 2nd respondent offends section 48(1) of the Act. The continued non-payment of trade union dues by 2nd respondent members through the employer and Equinox Horticulture Ltd risks rendering them non-members of the 2nd respondent in terms of section 48(1) of the Act.

5. The 2nd respondent's other grounds in support of the application are that the actions of 1st respondent and Equinox Horticulture Ltd amounts to infringement of the fundamental rights of the 2nd respondent and its members in Equinox Horticulture Ltd as enshrined under article 41(5) of the Constitution. The orders secured by the claimant in Cause No.13 of 2018 do not bind the 1st respondent and Equinox Horticulture Ltd to stop negotiations for a CBA and remittance of trade union dues as Equinox Horticulture Ltd is not a party to such suit and there exists a valid recognition agreement with the 2nd respondent. The application dated 10th November, 2017 filed by the claimant seeking to stop the respondents from negotiating a CBA for Equinox Horticulture Ltd was dismissed and a ruling is on record.

6. In reply the claimant filed a **Replying Affidavit of Henry Omasire** and who avers that as the National Organising Secretary of the Claimant he is conversant with matters herein. The 2nd respondent has filed several causes against the claimant and in Cause No.402 of 2017 – Kenya Export Floriculture, Horticulture & Allied Workers versus Shalimar Flowers Limited & 2 Others has filed an application dated 4th September, 2017 seeking for orders for deduction and remittance of union dues against Shalimar Flowers Limited a member of the 1st respondent who has recognition and CBA with the claimant. The 2nd respondent has also filed application dated 8th March, 2018 in Cause No.401 of 2017 – Kenya Plantation & Agricultural Workers Union versus Agricultural Employers Association & 2 others seeking its prosecution but the claimant has since withdrawn such suit and such fact was disclosed by the claimant herein.

7. Mr Omasire also avers that the 2nd respondent has under Cause No.171 of 2014 – Kenya Export Floriculture & Allied Workers Union versus Maridadi Flowers & 2 others filed suit seeking orders that the claimant therein to deduct union dues and remit to the 2nd respondent despite the fact that such firm being a member of the 1st respondent and has recognition with the claimant and is part of orders issued by the court under Cause No.13 of 2018 and until such Cause is heard, the orders sought herein cannot issue. There are common issues between the parties which can be consolidated and heard under Cause No.18 of 2018, Nakuru.

8. The 1st respondent in reply filed **Replying Affidavit of Wesley Siele**, the Chief Executive Officer and who avers that there exists a Recognition Agreement on behalf of all the members of the 1st respondent including Equinox Horticulture Ltd, Maridadi Flowers Limited and there is judgement in Civil Appeal No.141 of 2014 which suspended registration of the 2nd respondent which had been issued with certificate to operate in the same sector as the claimant union.

9. Mr Siele also avers that following the registration of the 2nd respondent they recruited employees from Equinox Horticulture Ltd and demanded a recognition agreement which was signed between the 1st respondent for the firm on 17th August, 2017. The 2nd respondent then demanded for negotiations for a CBA and aggrieved by the activities of the 2nd respondent the claimant filed Cause No.401 of 2017 seeking for orders that the 1st respondent be restrained from signing recognition agreement with the 2nd respondent before modification of agreement existing with the claimant. Upon realisation that an agreement had already been signed between the respondents, the claimant withdrew Cause No.401 of 2017 as it had been overtaken by events.

10. Mr Siele also avers that the claimant filed this cause seeking to invalidate the recognition agreement between the respondents and such cause had not been heard in its substance.

11. The 2nd respondent has filed Cause No.171 of 2014 against Maridadi Flowers Ltd, a member of the 1st respondent and seeking to compel the firm to commence deduction and remittance of union dues and such matter is still pending hearing.

12. The 2nd respondent has in Cause No.402 of 2017 filed the same against Shalimar Flowers Ltd, a member of the 1st respondent and seeking deduction and remittance of union dues and the same is pending hearing.

13. Both Maridadi and Shalimar firms are covered under the Recognition Agreement between the 1st respondent and the claimant. Under Cause No.13 of 2018 the claimant obtained orders barring the 2nd respondent from holding any workers meetings with the 1st respondent members pending the determination of matters between the parties. The 1st respondent has since advised its members with regard to the court orders and there is compliance. Out of precaution, the 1st respondent also advised Equinox Horticulture Ltd not to violate the court orders and thus halt the CBA negotiations with the 2nd respondent.

14. Mr Siele also avers that the matters now filed with regard to the same cause of action and predicated on the same parties is prejudicial to the 1st respondent. There should be a consolidation of suits to have the main cause of action heard. Once parties have filed List of Agreed Issues it will become clear that all matters can be heard under this cause.

15. All the parties made oral arguments in court.

Determination

16. The cause of action herein commenced with the claimant filing the Memorandum of Claim on 16th November, 2017 and the issue in dispute being *singing of Recognition Agreement contrary to the mandatory provisions of Section 54(2) of the Labour Relations Act, 2007*.

17. The claimant is seeking for orders that;

1. *A declaratory order be and is hereby issued that the Recognition Agreement dated 17th August, 2017 signed between Agricultural Employers Association and Kenya Export Floriculture, Horticulture & Allied Workers Union is null and void ab initio.*

2. *A declaration order be and is hereby issued that Agricultural Employers Association perpetuated an illegality by signing a Recognition Agreement with Kenya Export Floriculture, Horticulture & Allied Workers Union contrary to the mandatory provisions provided in section 54(2) of the Labour Relations Act, 2007.*

18. Such is the background to the suit herein.

19. Without losing the background, the 2nd respondent is seeking for orders that the 1st respondent on behalf of Equinox Horticulture Ltd be directed to resume CBA negotiations with the 2nd respondent and that Equinox Horticulture Ltd be ordered to deduct and remit union dues to

the 2nd respondent.

20. Section 12 of the Employment and Labour Relations Court Act, 2011 read together with Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2016 allow parties with an employment and labour relations dispute to file the same with the court. Once such claim is lodged with the court, reasons demands that the court hear the claimant(s) and the respondent(s) on their merits. Where a respondent is aggrieved by the manner of the claimant's approach to court, such grievance can only be articulated at the hearing or file an interlocutory application seeking audience over the matter. However, the cause of action cannot be changed, altered or reviewed by a respondent. The claimant as the one commencing the suit must be given a fair chance to urge its case.

21. The 1st respondent has confirmed that Equinox Horticulture Ltd is its member and therefore attending herein for and on behalf of such entity. Section 6 of the Labour Relations Act, 2007 give every employer the right to association and to participate in the activities under the association of federation;

6. Employer's right to freedom of association

(1) Every employer has the right to—

(a) participate in forming an employers' organisation or a federation of employers organisations; and

(b) subject to its constitution, join an employer's organisation or a federation of employers' organisations.

(2) Every member of an employers' organisation has the right, subject to the constitution of that employers' organisation to— ...

22. Therefore, where Equinox Horticulture Ltd has asserted her right to association protected under the law and under article 35 of the constitution and joined the 1st respondent, such right thus being protected cannot be faulted. The option by Equinox Horticulture Ltd to enjoy association under the 1st respondent and be represented in these proceedings, be represented in negotiations with the 2nd respondent and over other matters as agreed under the 1st respondent constitution is a right under the Bill of Rights.

23. The claimant has moved the court to challenge the recognition of the 2nd respondent by Equinox Horticulture Ltd a member of the 1st respondent. the respondents herein and thus direct and correct parties herein in the court addressing the cause of action before it. To issue orders allowing the resumption of CBA negotiations, allowing for the deduction and remittance of trade union dues in the interim and pending the hearing of the main suit would be to circumvent the very essence of the cause of action.

24. Noting the matters now addressed by the parties herein and particularly with regard to the application by the 2nd respondent, by the court hearing the main claim, such will address all matters between the parties herein and render a decision without issuing interim orders which will cloud the issue(s) in dispute.

25. From the records, the 2nd respondent has not filed a defence. Such shall be addressed for the court to issue hearing directions.

26. As the matters herein are closely linked with **Cause No.13 of 2018, Nakuru** as noted by all the parties herein and on the court observation and in view of Rule 23 of the Employment and Labour Relations Court (Procedure) Rules, 2016 the suits shall be consolidated for hearing directions.

Accordingly, application by the 2nd respondent dated 15th March, 2018 is hereby dismissed. Costs in the cause.

Delivered in open court at Nakuru this 2nd day of October, 2018.

M. MBARU JUDGE

In the presence of: