



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO. 451 OF 2016

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

v

P P FLORA LIMITED.....RESPONDENT

RULING

1. The Kenya Plantation & Agricultural Workers Union (Union) moved Court through a certificate of urgency on 9 November 2016 against P P Flora Ltd (Respondent) seeking orders

1.

2. This Honourable Court be pleased to prohibit and/or restrain the Respondent from victimizing, harassing, threatening to dismiss and/or dismissing and/or terminating its employees who have joined the Claimant/Applicant from employment pending the hearing and determination of this application and/or cause.

3. This Honourable Court be pleased to compel the Respondent to deduct and remit union dues from the emoluments of the sixty two (62) employees of the Respondent or any number thereof who have signed into the Claimant/Applicant union's membership and remit the dues so deducted to the Claimant/Applicant.

4. This Honourable Court be pleased to compel the Respondent to sign a recognition agreement with the Claimant/Applicant herein.

5. This Honourable Court be pleased to compel the Respondent to reinstate Joseph Kinuthia and five (5) other employees to employment without loss of benefits pending the hearing and determination of this application and/or cause.

6. Costs of this application be borne by the Respondent.

2. On the same day, the Court directed that the application be served upon the Respondent for an *inter partes* hearing on 21 November 2016.

3. According to an affidavit of service filed in Court on 18 November 2016, the Respondent was served on 11 November 2016, but when the motion was called out on 21 November 2016, the Respondent was absent. There was also no legal representation (firm of Mongeri & Co. Advocates filed a Notice of Appointment of Advocates on the same day).

4. Because there was evidence of service, the Court allowed Ms. Omwaka (Industrial Relations Officer) to prosecute the motion.

5. The Court has given due consideration to the motion, the supporting affidavit of Thomas Kipkemboi and the oral submissions tendered in Court and come to following conclusions.

Restraining Respondent's disciplinary control over employees

6. Order 2 as proposed in the motion is too general and if granted would restrain the Respondent from taking disciplinary action in regard to *misconduct, performance or incapacity* by employees under circumstances which can only be speculative.

7. Further, such an order would result in the Court impeding and hamstringing an employer from exercising its disciplinary control/ prerogative as employer, unnecessarily.

8. The Court therefore declines to grant the said order.

Deduction of union dues

9. The Union exhibited Form S (check-off forms) indicating the employees who had exercised their associational rights to join it. The recruitments appear to have been carried out in September 2016 when the forms were also delivered to the Respondent.

10. The forms also refer to the Ministerial Order made through Gazette Notice and advised the Respondent of the bank account details.

11. In terms of sections 48 of the Labour Relations Act and 19(1)(g) & (i) of the Employment Act, 2007, the Respondent ought to have complied with the instructions evinced by the employees in appending their signatures to the Forms.

12. The Respondent should therefore start deducting and remitting the dues with effect from February 2017.

Recognition Agreement

13. It is not appropriate for a Court to issue an order requiring an employer to grant a Union recognition at an interlocutory stage.

Reinstatement

14. Reinstatement, generally in employment law is a final remedy and therefore the Court is unable to consider such an order on the papers.

15. Further, in the view of the Court, it is incompetent for a party to mix a cause of action for unfair termination of employment with a cause of action relating to associational and organizational rights as the applicable legal essentials are completely different.

Conclusion and Orders

16. The upshot of the foregoing is that the Court only grants proposed order 3 with effect from February 2017.

17. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 27th day of January 2017.

Radido Stephen

Judge

Appearances

For Claimant Ms. Omwanda, Industrial Relations Officer

For Respondent no representation during application

Court Assistant Nixon