



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

Cause No 2423 Of 2012

**KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL AND INSTITUTIONS
WORKERS UNION.....CLAIMANT**

VERSUS

KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS).....RESPONDENT

JUDGMENT

Introduction

1. On 3rd November 2012, the Claimant, Kenya Scientific Research International Technical and Institutions Workers Union, filed a Memorandum of Claim together with a Notice of Motion alleging the following against the Respondent:

- a. Refusal to allow union officials access to company premises;
- b. Refusal to allow workers to talk to union officials;
- c. Refusal to allow workers to join and participate in union activities.

2. The Respondent filed a replying affidavit on 17th December 2012. When the matter came up for hearing on 3rd April 2017, there was no appearance for the Respondent. The Claimant opted to rely on its Memorandum of Claim dated 16th November 2012 without calling any witnesses.

The Claimant's Case

3. The Claimant states that on diverse dates in 2012, there was an exchange of correspondence between the parties on access to the Respondent's centres by the Claimant Union. Following a joint meeting held on 21st June 2012, the Claimant forwarded a workers engagement programme to the Respondent.

4. The Respondent did not act on the programme hence this claim in which the Claimant seeks the following:

- a. An order directing the Respondent to allow the Claimant access to its Centres for membership recruitment;
- b. An order directing the Respondent to allow its workers to join the Union.

The Respondent's Case

5. The Respondent's response is contained in a replying affidavit sworn by its Managing Director, Dr. James Onsando on 14th December 2012. He denies the Claimant's allegations that the Respondent has refused to allow the Union access to its premises.

6. Dr. Onsando depones that upon receipt of the Claimant's letter dated 3rd April 2012, a meeting was scheduled for 10th May 2012 but the Claimant's representatives did not attend. A further meeting was scheduled for 21st June 2012 when the parties held discussions on recruitment of members.

7. The Claimant was tasked to propose a schedule of meetings with the Respondent's employees at various branches across the country. By its letter dated 25th June 2012, the Claimant submitted a schedule of meetings starting 10th July 2012, which was duly considered.

8. Dr. Onsando states that the Respondent undertakes field activities in the area of agriculture and most of its centres need sufficient time to re-arrange prior planned events. Suitability of such meetings depends on farming seasons.

9. It is further deponed that on 6th July 2012, the Respondent's Ms. Karimi called the Claimant's Mr. Oduor and informed him that the notice given was too short to arrange for the proposed meetings. It was agreed that the Claimant would propose new dates, which was not done.

Findings and Determination

10. Evidently, considerable time has passed between the filing of the Claimant's claim and the writing this judgment. That being the case and in view of the fact that no new pleadings have been filed by the parties, the Court could not tell whether the dispute, which was initially brought under certificate of urgency still exists.

11. Moreover, even assuming that the facts of the case have remained constant, the pleadings before the Court do not disclose any dispute for adjudication by the Court. I say so because there is evidence on record that the parties have engaged in written correspondence and one on one meetings. Reading from the replying affidavit sworn by the Respondent's Managing Director, there does not appear to be any dispute as to the Claimant's right to access the Respondent's premises for the purpose of membership recruitment.

12. The issue as I understand it, has to do with an agreeable programme for such access. Surely this is a matter that the parties, as social partners, should be able to resolve without intervention by the Court. I therefore find the Claimant's claim to be without merit and proceed to dismiss it with no order for costs.

13. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF AUGUST 2017

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JUDGE

Appearance:

Mr. Oduor (Union Representative for the Claimant)

No appearance for the Respondent