



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.218 OF 2015

(BEFORE D. K. N. MARETE)

KENYA PLANTATION & AGRICULTURAL WORKERS UNION...CLAIMANT

VERSUS

SOTIK HIGHLANDS TEA ESTATES LIMITED.....RESPONDENT

RULING

This is an application by way of Notice of Motion dated 29th September, 2016. It seeks the following orders of court;

1. *That the firm of Moerwa Omwoyo & Company Advocates be allowed to come on record after judgment to act for the decree holder/applicant in this matter in place of Khisa Advocates/Kenya Plantation and Agricultural Workers Union, Temoh Plaza, 3rd floor Kijabe road, P.O.Box 1161-20100, Nakuru.*
2. *That costs of this application be in the cause.*

The application is grounded as follows;

- a. *The decree holder/applicant herein has instructed the firm of Moerwa Omwoyo & Company Advocates to act for him in place of Khisa Advocates/Kenya plantation and agricultural workers union, Temoh Plaza, 3rd Floor Kijabe Road, P.O.Box 1161-20100, Nakuru.*
- b. *That the decree holder/applicant is desirous of executing the judgment herein and the appointment of the firm of Moerwa Omwoyo & Company Advocates is for the purpose of executing the judgment decree.*
- c. *It is mete and just for the said firm of advocates to come on record and proceed with this matter.*

The claimant/respondent and respondent in their replying affidavits sworn on 4th November, 2016 opposes the application on grounds, *inter alia*, that the applicants herein are not decree holders in this suit and neither do they have any instructions to this extent from the decree holder.

The respondents further aver and submit that this suit was filed and prosecuted by the union: Kenya Plantation and Allied Workers Union (KPAWU) and that the applicant's allegations that this was by

Khisa Advocates/KPAWU are not entirely true. It is the respondent's submission that Khisa advocates is not and has never been a recognized law firm to go on record for the claimant.

She further denies and distances herself from the authority of Mr. Omwanza in the issuance of instructions for the replacement Mr. Khisa in the representation of the union. This would stir this litigation and confuse the entire suit as it sets to come to fruition.

The respondent in the penultimate argues and submits that a grant of this application would inconvenience and prejudice the respondent in the event of disrupted representation of the claimant. She prays that this application goes by the wayside and is dismissed with costs.

The claimant/respondent in her replying affidavit filed on 4th November, 2016 opposes the application and prays that the same be dismissed with costs.

It is the claimant's averment and submission that she is the decree holder in this suit and has not instructed the firm of Moerwa Omwoyo & Co. Advocates to take over the conduct of this cause on their behalf. It is her further submission that none of the 252 grievants and employees of the respondent have authorised the advocates to come on record.

The claimants further submit that a grant of his application would prejudice them as they are now in pursuit of an appeal arising out of this cause. It is her penultimate submission that this application is frivolous, vexatious and an abuse of the process of court and therefore ought to be dismissed with costs.

The application came for hearing on 7th November, 2016 when the parties submitted in reiteration of their respective cases. The respondent further submitted that she is the proverbial grass the other parties are fighting and this would be unfair and prejudicial to their interest in this cause.

The applicant in a final stab on the matter presented her case but nevertheless conceded that Mr. Omwanza is not the decree holder but a chairman of the grievants. She further submitted that it is the right of the claimants to instruct an advocate of their choice. I agree.

This is a very unfortunate piece of litigation. The firm of advocates seeking to come on record after judgement had the capacity to understudy this situation and establish their authority for filing this application. They did not.

The end result of this sad affair is that it is not authorised by the decree holder; the appropriate authority for issuing such instructions. This inaction ruins the pie. It is not sustainable, or at all.

The application therefore fails for lack of competency and authority. I would also agree with the claimant/respondent that this is absolute frivolity, vexation and abuse of the process of court. It must be nibbed at the bud.

I am therefore inclined to dismiss this application with costs to both respondents.

Delivered, dated and signed this 8th day of December,2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Obosso holding brief for Moerwa, instructed by Moerwa Omwoyo & Company Advocates for the Applicant.
2. Miss Woodward holding brief for Mrs. Opiyo instructed by Kaplan & Stratton Advocates for the

Respondent.

3. Mr. Kihisa for the claimant union.