



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**CAUSE NO. 32 OF 2015**

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

**v**

**MIGOTIYO PLANTATION LIMITED.....RESPONDENT**

**RULING**

1. The Kenya Plantation & Agricultural Workers Union (Union) filed a Memorandum of Claim against Migotiyo Plantation Ltd (Respondent) and the issue in dispute was stated as *unlawful redundancy of one hundred and thirty (130) employees* who were named.
2. Together with the Memorandum of Claim, the Union filed a motion seeking orders
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  2. That this Honourable Court be pleased to prohibit and/or restrain the Respondent from declaring its one hundred and thirty (130) employees or any number of employees thereof redundant pending the hearing and determination of this application and/or cause.
  3. That this Honourable Court be pleased to refer the parties herein to conciliation with regard to the intended redundancies of one hundred and thirty (130) employees or any number of employees thereof.
  4. That costs be in the cause.
3. On 5 February 2015, the Court granted temporary restraining orders at the *ex parte* hearing and directed that the motion be served for *inter partes* hearing on 19 February 2015.
4. The Respondent was served and on 19 February 2015, it filed a Replying Affidavit sworn by its Human Resource Manager Lucy Karimi Njagi.
5. The motion proceeded to hearing on the scheduled date.
6. The Union's case on the motion is that the Respondent served it with a Notice to Declare redundancies on 22 January 2015, and that the notice fell short of the statutory requirements of section 40(1) of the Employment Act, 2007, because the effective date of redundancy was not indicated, the Local Labour Officer was not notified, the selection criteria was not specified and that the reasons for redundancy were suspect.

7. The Respondent's case on the other hand is that the motion is incompetent and brought in bad faith and that the redundancy is not a creation of the Respondent and was involuntary and the same was caused by mismanagement by Respondent's previous management leading to serious financial crisis.

8. The Respondent also asserted through its Human Resources Manager's affidavit that some of the employees to be affected had not authorised the Union to commence these proceedings.

9. On behalf of the Respondent, Ms. Fatma submitted that the notice to the Union gave the reasons for the redundancies and that it had complied with both the requirements of section 40 of the Employment Act, 2007 and clause 15 of the Collective Bargaining Agreement between the parties.

10. The Court has looked at the redundancy notice. On the face of it, it does not state the effective date of redundancy. There is no indication it was copied to the local labour officer or that he was notified separately. The criterion for the selection of the 130 named employees is also not indicated.

11. The Court is satisfied that the Respondent has not complied with the peremptory conditions in section 40(1) of the Employment Act, 2007.

12. The Court therefore allows the motion and grants prayers 2 and 3 thereof pending further directions.

13. The Court further directs that the parties do proceed to conciliation before the County Labour Officer responsible for the area the Respondent operates and that a report be filed with the Court on or before 20 April 2015.

14. Costs in the cause.

15. The Cause to be mentioned on 20 April 2015.

**Delivered, dated and signed in open Court in Nakuru on this 13<sup>th</sup> day of March 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Muli, Legal Officer, Kenya Plantation & Agricultural Workers Union

For Respondent Ms. Fatma, instructed by Gordon Ogola, Kipkoech & Co. Advocates