



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 31 OF 2014

(Before D. K. N. Marete)

UNILEVER TEA (K) LIMITED.....CLAIMANT/APPLICANT

VERSUS

KENYA PLANTATION & AGRICULTURAL

WORKERS UNION.....RESPONDENT

RULING

This is an application by way of Notice of Motion dated 9th October, 2014 by the Claimant in which she prays for orders *inter alia* that her forty-nine (49) former employees, who are members of the Respondent union be ordered to vacate the Claimant's allocated residential premises and costs.

The Respondent vide a Replying Affidavit sworn on 5th December, 2014 opposes the application and prays that the same be dismissed and disallowed.

The Claimant/Applicants case is that her cited employees, who are members of the respondent union proceeded on an illegal strike on 22nd September, 2014 and in the course of this committed various criminal activities including uprooting of tea bushes, destruction and burning of various company property leading to loss of property amounting to Kshs.15,301,700.59.

The Claimant further submits that the said employees were issued with various warnings and ultimatums to return to work but refused to heed the same. The strike was unprocedural, unjustified and in all ways unreasonable and further that no dispute had been declared or notice issued for the strike. This court further on 24th September, 2014 issued orders restraining the strike and directed employees to return to work but this was ignored.

The Claimant, as a consequence of the continued strike action issued notice to show cause letters to the ring leaders and held hearings in which they were represented by the union and these were subsequently dismissed in accordance with the law and subsisting Collective Bargaining Agreement entered into by the parties. The dismissed employees were notified of the need to vacate their premises within two (2) days but have altogether declined to so vacate. This is a benefit accruing as employees and is therefore not befitting of them in the circumstances of their dismissal.

The respondent in opposition to the application denies the allegations brought out in the application. She claims that she sought audience with the claimant in tandem with the orders of court of 23rd September, 2014 but this was declined. The show cause letters against her members were seen way after the dismissals had been effected. The respondent further submits the irregularity of the dismissal in the midst of a pending application by the claimants on the strike.

The Respondent further denies criminal activity and destruction by the employees and further submits that no demonstration of the same has been made by the claimant. There is no evidence to this extent. In the absence of a determination of the suit touching on the reinstatement of these employees, they should be allowed to occupy the premises allotted to them.

The Claimant/Applicant, in her written submissions reiterates a case of summary dismissal of the respondents members for gross misconduct after open hearing of their respective cases. They should therefore vacate the premises allocated to them as such.

The respondent, in their written submissions dated 10th April, 2015 submits that the claimant in instituting this application is in total disregard of court orders directing that all matters relating to the strike in issue be resolved in accordance with the grievance procedure as agreed by the parties. This order was made on 23rd September, 2014.

As noted and expressed by my brother, Radido, J. in his ruling on this matter delivered on 21st November, 2014 this matter is unduly convoluted. It is riddled with applications and counter applications by the parties thereby shrouding the issue (s) in dispute. This is unfortunate. Moreover, most of the issues and evidence thereof is disputed. It would be insecure to determine the issue in dispute at this stage but instead allow the parties to prosecute these to a logical end.

Further, it is obvious that in instituting disciplinary proceedings that culminated in the dismissal of these employees, the claimant disregarded the orders of court aforesaid which were as follows;

2. That the parties to comply with the agreed grievance and conflict management and resolutions pending inter parties hearing or further orders of court (23rd September, 2014).

1. That the Claimant/Applicant by themselves, their agents, servants and assigns and or representatives are hereby restrained from terminating, suspending, locking out and or dismissing any employee on account of the strike pending inter parties hearing on 9th September, 2014 (6th October, 2014).

It would further appear that throughout these proceedings, facts are disputed. The parties version and position on these do not tally. The claimant's quest for removal of the dismissed employees from their allotted living quarters is therefore not feasible in the absence of a clear determination of the veracity of their employment status. I therefore dismiss this application with costs to the respondent.

Delivered, dated and signed this 29th day of April 2015.

D.K.Njagi Marete

JUDGE

Appearances

1. Mrs Opiyo instructed by Kaplan & Stratton for the Claimant/Applicant.

2. Mr. Khisa for the Union.