



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO. 101 OF 2015

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

v

P.J. DAVE FLOWERS LTD.....RESPONDENT

RULING

1. This ruling is in respect of the motion by Kenya Plantation & Agricultural Workers Union (the Union) dated 13 April 2015 seeking

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2. THAT, an order do issue restraining the Respondent by themselves, their agents, assigns, servants, any officer and or representatives from intimidating, victimizing, coercing, locking out, suspending, dismissing, terminating any employee who is a member of the union pending hearing and determination of this application.

3. THAT, an order do issue restraining the Respondent by themselves, their agents, assigns, servants, any officer and or representatives from interfering with the employees' right to join, engage and participate in the activities of Kenya Plantation & Agricultural Workers Union..

2. The Court certified the motion urgent on 14 April 2015 and also granted prayer 2 pending *inter partes* hearing on 30 April 2015.

3. When the motion was served upon the Respondent, in an unprecedented move and which move should strongly be discouraged because it confuses the real issues which the Court should determine at the interlocutory stage, it filed 2 counter applications.

4. Parties must also be alive to the fact that judicial time must be optimally applied/used.

5. One application sought an order prohibiting the Claimant from conducting a demonstration on 1 May 2015, while the other application sought an order discharging, varying or setting aside the orders granted to the Union on 14 April 2015.

6. This application seeking the discharging of the injunctive orders should not have been filed at all. A party served with a motion seeking injunctive relief at the interlocutory stage should file grounds of opposition and or replying affidavit.

7. The natural and legal consequence of an *inter partes* hearing at an interlocutory stage will see the orders granted *ex parte* either confirmed or vacated after hearing both sides. It serves no useful legal purpose to file a counter application(s).
8. It is within this background that the Court only certified the Respondent's 2 applications urgent but declined to give any other directions so that the Union's application could be dispensed with. The Court also directed the Respondent to file grounds of opposition/replying affidavit to the Union's motion.
9. Prayer 2 as sought in the Union's motion was of a transient nature and it sought orders pending the *inter partes* hearing of the motion. As worded, the prayer is already spent or became spent on 30 April 2015, when the parties made their submissions on the motion. The Court will say no more.
10. As regards prayer 3 it can be determined shortly. But a brief background.
11. The Union and the Respondent (employers association of which the Respondent is a member) have a Recognition Agreement.
12. Around January 2015, the Union sought to have its membership elect shop stewards. The Respondent, through the Agricultural Employers Association, proposed that the elections be held on 26 March 2015 and not 17 February 2015 as suggested by the Union.
13. In short time, the Respondent again proposed the elections to be held on 27 March 2015.
14. On 1 April 2015, the Union complained to the Respondent about harassment and victimisation of its members, and even the arrest of some members and gave notice of a strike for 8 April 2015.
15. On 9 April 2015, the Respondent dismissed *Grace Lourine Makokha, James Andove Anyonyi, Dalmus Omuse Barasa, Patrick Mukhwana Handah and Josphat Wathome Mutiso*.
16. The individual dismissal letters did not give any reason at all for the action taken by the Respondent, except in respect of *Grace Makokha*.
17. The dismissals appear to have prompted the Union to commence the present proceedings.
18. A perusal of the Form S annexed to the motion show that *Grace Makokha, Josphat Mutiso, Patrick Handah and James Anyonyi* are among those who signed the check-off forms as Union member numbers 5383, 2797, 5443 and 1447 respectively.
19. On 13 April 2015, the Union informed the Respondent that named employees had been elected as workers representatives on 26th and 27th March 2015.
20. On the same day, the Union forwarded to the Respondent Form S (check-off forms) bringing to its attention newly recruited members and asking the Respondent to commence deduction of monthly union subscriptions.
21. The Respondent's General Manager, one Niall Deacon filed a replying affidavit on 28 April 2015. It was deposed in the said affidavit that no workers representatives were elected on 26th /27th March 2015, no check-off forms had been forwarded, that the Union gave a different list of workers representatives on 21 April 2015, the Union had not exhausted agreed dispute resolution mechanisms, prematurity and the pendency of Nairobi Cause No. 356 of 2015 between *Everline Nambacha & 311 Ors v Kenya Plantation & Agricultural Workers Union*, where the employees accused the Union of fraudulently procuring their signatures in check-off forms; that the employees had voluntarily resigned from the Union through letters dated 11 February 2015, 13 February 2015, 17 February 2015 and 20 February 2015. The resignation letters were not annexed as stated in the affidavit.
22. The affidavit also deposed that the temporary injunctive orders granted had led to massive indiscipline

and that the order interfered with the Respondent's prerogatives/discretion as an employer.

23. Individual employees have a constitutionally guaranteed right to associate (Article 36), to form, join or participate in the activities and programmes of a trade union (Article 41(2)(c)); while trade unions have the right to organise and engage in collective bargaining (Article 41(3)(b)).

24. The Respondent dismissed about 4 employees around 9 April 2015 and on the face of the dismissal letters, no reason has been offered. It is around the same time that the Union purports it made a round of recruitments (though Respondent has denied receipt of the check-off forms).

25. Earlier, if the Respondent is to be believed, several employees voluntarily resigned from the Union and moved to Court seeking refunds of union subscriptions already paid to the Union.

26. It is equally around the same time that the Respondent was hesitating in allowing the Union membership to elect shop floor union representatives.

27. All these point to the fact that the Union was exercising its right to organise but something was seething underground.

28. The dismissals without reasons and the mass resignations from the union in the circumstances presented here point to some undue influence from the Respondent, which merit further investigations. Coupled with the constitutionally guaranteed rights of employees, the Court is satisfied that this is a fit case to grant prayer 3 as sought in the motion.

29. The order as proposed by the Court shortly will not interfere with the Respondent's prerogatives as an employer to exercise control over the employees. Disciplinary control becomes implicated only when there is specific misconduct, poor performance or physical incapacity (or other indiscretion) on the side of the employee, and should such a case arise, the Respondent can exercise control but in compliance with the statutory and contractual provisions on due process and validity of reasons.

30. However, the order as sought and worded would result in an order issued in perpetuity at the interlocutory stage without examining each party's respective cases on the merits.

31. The Respondent raised the issue of another Cause pending in Nairobi.

32. The Court has perused the limited documentation produced regarding Nairobi Cause No. 356 of 2015, and is of the view that near similar issues arises. Further, the Respondent is domiciled within the immediate vicinity of Nairobi.

33. The Court therefore directs that this Cause be transferred to Nairobi to be placed before the Principal Judge for further directions on the pending applications and possible consolidation with Nairobi Cause No. 356 of 2015.

34. The parties may address the issue of internal mechanisms for dispute resolution before the Court in Nairobi.

Conclusion and Orders

35. In conclusion the Court orders

1. THAT an order is hereby issued restraining the Respondent by themselves, their agents, assigns, servants, any officer and or representatives from interfering with the employees right to join, engage and participate in the activities of Kenya Plantation & Agricultural Workers Union pending the hearing of the Cause.

2. THAT this Cause be transferred to Nairobi to be placed before the Principal Judge for further

directions.

36. Claimant to have costs of the motion.

Delivered, dated and signed in Nakuru on this 8th day of May 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Khisa, Organising Secretary, Kenya Plantation & Agricultural Workers Union

For Respondent Ms. Wachira instructed by Wachira Wanjiru & Co. Advocates

Court Assistant

Nixon