



**REPUBLIC KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1912 OF 2014**

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

**VERSUS**

**RED LANDS ROSES LTD ..... RESPONDENT**

**RULING**

1. The matter herein commenced in the Employment and Labour Relations Court at Nakuru as Cause No. 326 of 2014. On 16<sup>th</sup> October 2011, the Court made directions transferring the same to the Employment and Labour Relations Court, Nairobi as both parties had a matter with similar issues. Before this Court was Industrial Cause No.140 of 2014 as well the was transferred to Nairobi and registered as Cause No. 830 of 2014.
2. The new file is registered under this file Cause No.1912 of 2014, formerly Cause No.326 of 2014, Nakuru.
3. On **19<sup>th</sup> December 2014**, the respondent, Red Lands Roses Limited, made application seeking leave to amend their application dated **29<sup>th</sup> August 2014** and for the Court to make further orders as deemed fit and just. The application is supported by the annexed affidavit of Esther Kinyenje-Opiyo, and on the grounds that the amendment now sought was omitted in the application dated 29<sup>th</sup> August 2014 and the supporting affidavit of Magdalene Kamunya which is now included in the supporting affidavit herein. The Claimant has also responded to the application through the affidavit of Thomas Kipkemboi sworn on 1<sup>st</sup> October 2014 indicating that the same is an agreed issue and there will be no prejudice where the application is allowed. The amendment is sought for the purpose of having all the issue between the parties be addressed.
4. In the Affidavit of Mrs Opiyo, it is averred that as the advocate for the respondent, upon review of application dated **29<sup>th</sup> august 2014** it was noted that the order seeking the consolidation of this suit and Industrial Cause No. 715 of 2014, Red lands Roses Limited versus Kenya Plantation and Agricultural Workers Union was inadvertently left out. The Respondent is therefore seeking to amend the application to include and additional prayer that of a consolidation of Industrial Cause No.715 of 2014 with this suit. The matter of having both suits heard together has been agreed by the parties herein as stated in the affidavit of Thomas kipkemboi sworn on 1<sup>st</sup> October 2014. There will be no prejudice where the application is allowed as prayed.
5. In the application dated 29<sup>th</sup> august 2014, the Respondent is seeking for orders that that **Industrial Cause No. 326 of 2014, Kenya Plantation and Agricultural Workers union versus Red Lands Roses Limited** be transferred to Nairobi for hearing and disposal on the grounds that the facts and issues arising

in the suit are substantially similar to those in **Industrial Cause No. 715 of 2014, Red Lands Roses versus Kenya Planarization and Agricultural Workers Union**, and in a ruling delivered on 4<sup>th</sup> June 2014 in Cause No. 715 of 2014, the Court held that it would decide on the issue of whether the strike was illegal in the main suit. To avoid conflicting Court decisions, suits herein should be consolidated. Another ground for seeking the transfer of Cause No.326 of 2014 to be heard together with Cause No.715 of 2014 is that, under Cause No.715 of 2014, there is a consolidation with Cause No.140 of 2014 (Nakuru) now registered as Cause No.830 of 2014 (Nairobi), **Kenya Planation and Agricultural Workers union versus Red Lands Roses Limited**, which the Claimant union had filed in Nakuru on 6<sup>th</sup> May 2014.

6. Therefore, the order sought to be included in the amendment is to have all the suits herein between the parties be consolidated by having one file. The parties in Cause No. 140 of 2014, Cause No.326 of 2014, and Cause No.517 of 2014 are the Kenya Plantation and Agricultural Workers union and Red Lands Roses Limited. The issues involved relate to similar facts and the issues arising in the suits are substantially similar.

7. In reply, the Claimant herein, the Kenya Plantation and Agricultural Workers Union filed Replying Affidavit sworn by Thomas Kipkemboi and averred that though the parties are the same in both Causes, the Claimant is opposed to a consolidation as one case relate to an alleged illegal strike the this matter relate to the illegal and wrongful dismissal of ten (10) employees and members of the Claimant union. He also avers that the events of 6<sup>th</sup> May 2014 can be separated by having the case of the claimants heard where its members were wrongfully dismissed as this is separate and different from the claim filed by the respondent.

**8. Application dated 19<sup>th</sup> December 2014 was agreed upon by consent of both parties.**

9. with regard to application dated 29<sup>th</sup> August 2014, the Respondent submitted that the suits herein should be consolidated as the events subject of the suits are events that were on the same date and relate to similar events. The Court will have to determine what happened on this date. Under Cause 715 of 2014, the Court made a ruling on 4<sup>th</sup> June 2014 and at paragraph 30 notes that the events of 6<sup>th</sup> May 2014 require more evidence to determine those who participated in the strike, those who observed and the employees prevented from working. That there are material facts that require a determination for the Court to arrive at its judgement. The events of 6<sup>th</sup> May 2014 are disputed and in the Court ruling, the question as to whether there was an illegal strike or lockout has to be determined in a full hearing. The Claimant has stated that the issues in both suits are different and to determine the suit herein will not affect the suit filed by the respondent. However, an assessment of the orders sought in both suit indicate that the Court can address all the issues in both suits once there is a consolidation. The Respondent relied on **Supreme Court Petition No. 14 of 2013, Law Society of Kenya versus The Centre for human Rights and Democracy & Others**, and **High Court Case No.992 of 1994, Nyati Security Guards 7 Services Ltd versus Municipal Council of Mumias** on the guideline that the Court can assess in an application for consolidation.

11. In reply, the Claimant submitted that they are opposed to the application for a consolidation of the suits as Cause No. 715 of 2014 and Cause No. 326 of 2014 are not similar in any manner. Because 715 of 2014 relate to an alleged strike and Cause 830 of 2014 relate to a lockout. Cause 326 of 2014 relate to dismissal of employees on account of participating in a strike. In cause No. 326 of 2014, the Claimant is not challenging the substance of the dismissal but rather the procedure applied. To thus consolidate the suits, the issues will be clouded. An employee is entitled to a fair process of hearing and the consolidation of the suits will not achieve the ends of justice.

## **Determination**

2. There are several suits between the parties herein;

- a) Cause No.140 of 2014 (Nakuru) – Kenya Plantation and Agricultural Workers Union versus Red lands Roses Limited;

b) Cause No. 326 of 2014 (Nakuru) - Kenya Plantation and Agricultural Workers Union versus Red lands Roses Limited;

c) Cause No. 715 of 2014 (Nairobi) - Red lands Roses Limited versus Kenya Plantation and Agricultural Workers Union;

13. Upon the filing of these suits, Cause No.140 of 2014 (Nakuru) was transferred to Nairobi under Cause No.830 of 2014. Cause No. 326 of 2014 (Nakuru) was registered in Nairobi as Cause No.1912 of 2014.

14. Cause No. 140 of 2014 (Nakuru) was transferred to Nairobi and became Cause No.830 of 2014, now consolidated under Cause 715 of 2015.

15. Cause No. 715 of 2014 (Nairobi) has already been consolidated with Cause No.140 of 2014 (Nakuru). Both Cause No. 715 of 2014 and 830 of 2014 are consolidated under Cause No.715 of 2014.

16. Cause No.326 of 2014 (Nakuru) has been transferred to Nairobi and placed together with Cause No. 715 of 2014 (Nairobi).

17. I have perused all these suits, the applications relating to the same seeking interim orders and indeed all revolve around events before, leading to or as a result of 6<sup>th</sup> May 2014. These are events that took place at the premises of Red Lands Roses farm and or business premises on the material date which events were the main subject of the Court ruling on 4<sup>th</sup> June 2014. As noted in a matter such as this one in **Kenya Planation and Agricultural Workers Union versus Kenya Tea Growers Association, Cause no. 1997 of 2014;**

*... The Court on its own motion under Rule 23 of the Industrial Court (Procedure) Rules can direct the consolidation of suits where it appears that such suits address the same question of fact or law and hear such suits/claims together. Rule 23 states;*

*23. Consolidation of cases.*

*The Court may consolidate suits if it appears that in any number of suits*

*(a) Some common question of fact or law arises; or*

*(b) It is practical and appropriate to proceed with the issues raised in the suits simultaneously.*

18. The Rule as set out above is to facilitate an efficient and expeditious handling of disputes before any Court and particularly this Court which has set objective that are distinct and exceptional unlike any other Court of the land as under section 3 of the Industrial Court Act. Such consolidation as under Rule 23 is not meant in any way to take away the requirements of due process, the procedures required at a hearing or to deny any party a chance to be heard on any matter relevant to their case, to the contrary such a consolidation is meant to bring all facts together and where similar matters that affect the rights of any party are relevant, for the Court to be seized of the same so as to arrive at a good analysis of the same while making a decision. A consolidation should not however be meant to confer an advantage or a disadvantage to any party, far from it, it is a mechanism of justice where the Court has all facts at hand all in before it. Then and only then can the judgement made upon such facts be said to be fair and just as the Court had the advantage of hearing a holistic case.

19. I therefore find, there are common questions of law and facts in all the suits now sought to be consolidated, such matters arise out of the same series of events and it is only desirable to make an order for consolidating the suits herein. To thus seek a consolidation of all the subject suits in one file is reasonable, judicious and fit.

In conclusion therefore, Application dated 29<sup>th</sup> august 2014 is hereby allowed subject to the amendments agreed upon in allowing application dated 19<sup>th</sup> December 2014. Cause No. 715 of 2014 is more progressed and the subject ruling of 4<sup>th</sup> June 2014 contained therein and only right to have all matters herein addressed under this file to avoid the multiplicity of suits and to enable any Judge dealing with the substantive issues have all the pleadings so far filed under one file – Cause No. 715 of 2014, Red lands Roses Limited Versus Kenya Agricultural and Plantation Workers Union. such consolidation shall now comprise;

Cause No. 1912 of 2014;

Cause No. 830 of 2014; under

Cause No.715 of 2014.

Such consolidation shall take into account the transferred and consolidated files from Nakuru under the new registered Numbers at the Court Registry, Nairobi.

It is equally important to make the following directions;

- a) Parties shall attend a trial conference;
- b) An audit of all pleadings filed shall be undertaken;
- c) Parties shall each draw a list of Issues that shall be consolidated during the trial conference;
- d) Noting the efforts made by each party towards the hearing and disposal of the main suits, parties shall take a mention date to address (a) and (b) above;
- e) A hearing date shall be allocated on priority basis;
- f) Costs in the cause.

Delivered in open Court dated and signed at Nairobi on this 30<sup>th</sup> day of June 2015.

M. MBARU

JUDGE

In the presence of

Lilian Njenga: Court Assistant

.....

.....