



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 116 OF 2013

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

-VERSUS-

ELFARM LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 28th March, 2014)

JUDGMENT

The claimant union filed a memorandum of claim on 10.05.2013 and prayed for judgment against the respondent for:

- (a) The court to order the respondent to enter into fresh negotiations with the claimant within 14 days from the date of determination of the suit.**
- (b) The court to make an order compelling the respondent to meet the claimant for a series of meetings leading to conclusion and subsequent registration of collective bargaining agreement within 3 months from the date of determination of this suit.**
- (c) The court to order the respondent to pay costs of the suit.**

The respondent company filed the affidavit of Margaret Kamar to support the respondent's memorandum of reply in opposition to the claimant's case. In the memorandum of reply filed on 21.06.2013 through P. M. Kinyanjui, the Industrial Relations Officer for the Agricultural Employers' Association, the respondent prayed that:

- (a) The court to find the suit as an abuse of court process and dismiss the suit.**
- (b) The court to find that the applicant's demand to negotiate a direct CBA with the respondent without a representative of its employers' association to be unconstitutional.**
- (c) The claimant to pay costs of the suit.**

Parties agreed not to call witnesses but to rely on the pleadings, documents on record, and their respective submissions.

It is not disputed that the respondent is a member of the agricultural employers' association known as the Agricultural Employers' Association (AEA). It is not disputed that the claimant entered into a recognition agreement and relevant collective agreement with the Agricultural Employers' Association that bind the respondent.

On 24.06.2006, the respondent and the claimant concluded a recognition agreement. The respondent's director, Margaret Kamar in her affidavit of 21.06.2013 states that she signed the recognition agreement by mistake in view of the respondent's membership in Agricultural Employers' Association. The respondent has allowed its employees to unionise and has always submitted the relevant union dues. Further, the director has stated that the respondent is in the business of growing of maize and wheat and has adhered to the provisions of the Regulation of Wages (Agricultural Industry) Order issued from time to time. The respondent therefore had withdrawn from direct negotiation of a collective agreement with the claimant because the recognition agreement was mistaken and the arrangement of the negotiations under Agricultural Employers' Association was to be upheld by the parties.

The main issue for determination is whether the parties can validly enter into a direct recognition agreement and negotiation of a collective agreement in circumstances whereby there is a valid and subsisting recognition agreement between the claimant and Agricultural Employers' Association where the respondent is a member.

For the claimant, it was submitted that in **Kenya Plantation and Agricultural Workers Union –Versus- E.A Tanning Extract Company Limited, Cause No. 29 of 1970**, *Cockar J* took the opinion that where the Agricultural Council had set minimum wages as published in the Gazette, the union was not precluded from seeking improvements to the minimum standards. It was submitted that Agricultural Wages Council recommends relevant wages orders that only sets out minimum standards of employment as provided for in section 47 of the Labour Institutions Act, 2007. Thus, parties in this case were at liberty to conclude a collective agreement with a view of improving the minimum standards as may have been set out in the relevant wages order. For the respondent, it was submitted that *Cockar J* in the same cited case, held that any improvement to the minimum standards of employment in the wages orders can be negotiated by the union but subject to the negotiating machinery as agreed in the agreement between the union and the employers' association.

For the respondent, it was submitted that *clause 2(a)* as read with *clause 2 (b)* of the recognition agreement between the claimant and AEA was clear that the claimant undertakes not to enter into negotiations with any other organisation or individual other than AEA. Thus, the recognition agreement between the parties in this suit was not valid and the parties could not validly negotiate a collective agreement.

The court has considered the submissions. The court finds that the parties were bound by the provisions of the wages orders, are at liberty to negotiate improvement on the provisions of the wages orders but subject to the parties' prevailing negotiation arrangements. In the present case, the parties in the suit were bound by the negotiation provisions in the recognition agreement between the claimant and the Agricultural Employers' Association. The court finds that the recognition agreement between the claimant and the respondent and the intended collective agreement would be in breach of *clause 2* of the recognition agreement between Agricultural Employers' Association and the claimant.

It is not disputed that the claimant and Agricultural Employers' Association are members of the Agricultural Wages Council established by the relevant cabinet secretary in accordance with the provisions of section 43 of the Labour Institutions Act, 2007. Section 43(7) empowers the Council to recommend minimum remuneration and conditions of employment in the agricultural sector; or any sector in which no other wages order is applicable. The court holds that the claimant may take advantage of the opportunity offered by the Council to negotiate and urge specific wages and terms of service for any specific employer or category of workers within the recognition agreement between the claimant and the Agricultural Employers' Association.

The court further finds that the recognition agreement between the claimant and the AEA provides a good

platform for the claimant to negotiate and urge specific wages and terms of service for any specific employer or category of workers under the recognition agreement. As long as the recognition agreement precludes the claimant from directly negotiating with employers who are members of AEA, any recognition or collective agreement between the claimant and any such employer like in the present case would be invalid.

In conclusion, the claimant's suit is dismissed with costs.

Signed, dated and delivered in court at **Nakuru** this **Friday, 28th March, 2014**.

BYRAM ONGAYA

JUDGE