



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 377 OF 2014

KENYA PLANTATION AND

AGRICULTURAL WORKERS UNION..... CLAIMANT

VERSUS

KARUTURI LIMITED (in Receivership).....1ST RESPONDENT

KIERAN DAY & IAN SMALL

(JOINT RECEIVERS AND MANAGERS).....2ND RESPONDENT

Mr. Mokori for Respondent / Applicant

Meshack Issa for Claimant / Respondent

RULING

1. The Application dated 3rd October, 2014, seeks to have cause No. 377 of 2014 be struck out for the reason that the issues raised in the statement of Claim are similar to those raised in Nakuru Petition No. 12 of 2014.
2. That the Orders sought in the Application dated 18th August, 2014, restraining Karuturi Limited (in receivership) 1st Respondent and Kieran Day and Ian Small (joint receiver and managers) 2nd Respondent from locking out, terminating, dismissing, suspending and/or declaring the shopstewards named pending hearing and determination of the application were granted in **Petition No. 12 of 2014**.
3. That Petition No. 12 of 2014 is still pending determination before the Nakuru Industrial Court and therefore this Suit is an abuse of Court process.
4. That there was material non-disclosure of the existence of Petition No. 12 of 2014, and the injunction order obtained by the Claimant / Applicant therein.
5. **Response**

The Claimant filed a Replying Affidavit deposed to by the Deputy General Secretary of the Claimant Union Mr. Thomas Kipkemboi dated 20th October, 2014. The Claimant states that Cause No. 377 of

2014 is distinct from Petition No. 12 of 2014 dated 30th July, 2014.

6. The deponent does not elaborate the difference between Nairobi Industrial Court Cause No. 377 of 2014 and Petition No. 12 of 2014 beyond that bare statement.

7. The Court however, notes that some of the grounds upon which the Application dated 18th August, 2014 and in particular grounds No. 6 - 12 thereof constitute an admission that on 30th July, 2014, Hon. Ongaya J. issued an interim order in Nakuru Industrial Court Petition No. 12 of 2014, which deals with the same subject matter raised in this matter and against the same Respondents.

8. The Claimants have alleged that the 1st and 2nd Respondents were served with the said order on 31st July 2014, but have in defiance of the same continued to lock out the named shopstewards.

9. Instead of moving an application seeking leave to commence contempt proceedings against the 1st and 2nd Respondents, the Claimant has filed another suit seeking the same orders granted in Petition No. 12 of 2014.

10. Clearly, this suit constitutes an abuse of the process of the Court. If this practice is condoned by the Court it would unnecessarily clog the Court's diary hence denying worthy causes expeditious hearing and determination.

11. In view of the foregoing, Nakuru Cause No. 377 of 2014 is dismissed with costs.

Dated and Signed at Nairobi this 11th day of December, 2014.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE

Signed, Dated and Delivered at Nairobi

this 17th day of December, 2014.

NZIOKI WA MAKAU

JUDGE

Delivered in the presence of:

ADVOCATE FOR THE PETITIONER

ADVOCATE FOR THE 1ST RESPONDENT

ADVOCATE FOR THE 2ND RESPONDENT