



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1933 of 2011

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

VERSUS

PRIMA ROSA FLOWERS LIMITED.....RESPONDENT

Rika J

CC. Elizabeth Anyango

Mr. Khisa for the Claimant;

Respondent absent

AWARD

1. Evans Obongo Ratemo served as the Chief Shop Steward at the Respondent Company. He called an employees' meeting on 24th October 2011 from 12.00 p.m. to 2.00 p.m. He informed the Respondent, through the Human Resources Manager.
2. The meeting went on well, and minutes were recorded, and passed onto the Respondent after the meeting. On 4th November 2011, the Respondent asked the Chief Shop Steward to clear and vacate the company premises.
3. This necessitated the filing of an application by the Claimant Union dated 18th November 2011. The application seeking to restrain the Respondent from locking out, suspending or terminating the services of the Chief Shop Steward, was dismissed by the Court on 27th July 2012.
4. The main dispute was fixed for hearing by the Claimant on 16th August 2012, in the absence of the Respondent. Hearing was scheduled for 4th December 2012. The Respondent's Advocates M/s. V.A. Nyamondi & Co. Advocates were served with the hearing notice through Mr. Jacob S.A. Obulemire, an authorized Process Server. The affidavit of service is in the Court record, and indicates the hearing notice was received and stamped by V. A. Nyamondi & Co. Advocates on 25th September 2012.
5. The Respondent did not attend Court on 4th December 2012. Mr. Khisa gave submission on behalf of the Claimant, and closed the Claimants case on the same date, 4th December 2012. He urged the Court to reinstate the Grievant, or give an Order for payment of 12 months' salary in compensation, and full terminal benefits.

The Court Finds and Awards:-

6. It is not necessary to evaluate the Grievant's narrative in full; there is on record a ruling in which the facts were evaluated. The ruling was based on the fact that the Respondent issued the Grievant a letter of summary dismissal, predating the application seeking to stop dismissal. There was nothing to restrain, and the Law does not allow for interim reinstatement. The Claimant has pursued the remedies in the main claim.

7. Section 43 and 45 of the Employment Act 2007 require employers to give valid reason for termination of employment contracts. The Respondent kept out of the proceedings and has not, on the strength of its pleadings in the file, discharged its obligations under the Employment Act 2007. It avers that there was a strike on 14th November 2011, at the Respondent's Farm. The strike was declared illegal by the Ministry of Labour, which confirms that the Chief Shop Steward was fairly and justifiably dismissed. This assertion is not sufficient discharge of the employer's obligation under Section 43 and 45 of the Act. A declaration of a strike as being illegal by the Ministry, would be a starting point, for the employer to begin the disciplinary hearing, make specific charges against the employee and hear the employee's response and explanation, before making the termination decision. These minimum statutory disciplinary procedures are completely absent from the process leading to the Grievant's loss of employment.

8. The Court does not think it would be a suitable remedy to grant the order of reinstatement. The Grievant was caught up in a strike action. The employer felt the strike was illegal. The Grievant was a Chief Shop Steward, and summoned the meeting that may, or may not, have led to the strike. The lingering perception that the Grievant led in whipping up discord at the Industry, would not make a him trusted employee. It would not be easy to reconstruct the qualities of mutual trust and confidence, which are the key pillars in an employment relationship. Reinstatement or re-engagement are not suitable remedies in the circumstances of this dispute. The Court is satisfied that Evans Obongo Ratemo merits and Award of compensation for unfair termination. He shall also receive all terminal benefits due to him under the CBA governing the parties as at 4th November 2011.

IT IS HEREBY ORDERED:-

- (a) Termination of the Grievant's contract of employment was unfair;***
- (b) The Respondent shall pay to the Grievant 12 months' salary in compensation;***
- (c) The Respondent shall pay to the Grievant all terminal benefits under the CBA as at 4th November 2011;***
- (d) All the payments shall be made in full within 30 days of the delivery of this Award; and***
- (e) No order as to costs.***

Dated and delivered at Nairobi this 15th day of March 2013

James Rika
Judge