



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 12 N OF 2009

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

v

**TAVETA SISAL ESTATE KENYA
TRADE DEVELOPMENT CO. LTD.....RESPONDENT**

JUDGMENT

1. Kenya Plantation & Agricultural Workers Union (Union) filed a Memorandum of Claim against Taveta Sisal Estate Kenya Trade Development Co. Ltd (Respondent) on 13 January 2009. Together with the Claim was a Notice of Motion filed under certificate of urgency.
2. The Union sought an order declaring a lock out by the Respondent as illegal and further to direct the Respondent to allocate duties to all staff.
3. The Motion was dealt with by Chemmutut J (as he then was) and a ruling delivered on 27 January 2009. In the ruling the Court directed the Union and the Respondent to appear before the Chief Industrial Relations Officer, Ministry of Labour and Human Resource Management for conciliation in good faith.
4. Regarding the main claim, the Union made submissions before Chemmutut J on 12 July 2010 in the absence of the Respondent and the Court ordered that an award in terms of the Unions prayers would be made on notice.
5. Chemmutut J ceased to hold office as a judge of the Industrial Court sometime in July 2012 before he could pronounce an award. The circumstances are in the public domain.
6. As a result, the file was allocated to me and after several notices to the parties Ms. Dauphine appeared before me on 15 July 2013 and requested that I proceed to determine the Cause on the basis of the proceedings taken before Chemmutut J.
7. There is no statute for that explicitly provided for how to deal with Causes which had been heard by the previous Industrial Court and wherein awards were pending. It is in this regard that several notices were sent to the parties to appear in Court to take directions on the way forward.
8. Rule 21 of the Industrial Court (Procedure) Rules, 2010 allow the Court to determine a suit before it based on the pleadings, affidavits and documents filed and submissions if the parties agree. There was no such agreement.
9. Rule 22 on the other hand permits the Court to proceed with a case in the absence of a party if after due notice, the party fails to appear without providing any reasons.
10. The parties were notified by letter dated 13 May 2013 through EMS recorded delivery by the Deputy Registrar of this Court to appear in Court on 4 June 2013. None of the parties appeared. Again through a letter dated 4 June 2013 the Deputy Registrar notified the parties to appear in Court for directions on 15 July 2013. Only the Union was represented.

Union's case

11. The Union filed an affidavit sworn by Issa Werukha Wafula on 13 January 2009. The affidavit simply stated that on 20 December 2008, the Respondent stopped activities on its farm without official communication to the employees. It was further deposed that the lock out was contrary to section 76 of the Labour Relations Act.
12. On 7 July 2010 the Union filed a supplementary Memorandum of Claim outlining each of the 311 grievants terminal dues.

Respondent's case

13. The Respondent's director, Basil Criticos in his affidavit sworn on 13 March 2009 deposed to the fact that the Respondent's parcel of land No. 5865/2 Taveta was mortgaged to the National Bank of Kenya and was later acquired under unclear circumstances by the Settlement Fund Trustees sometime in 2008 thus crippling the Respondent's operations.

Evaluation

14. The Court in its ruling/orders of 27 January 2009 directed the parties to go for conciliation before the Chief Industrial Relations Officer. None of the parties deemed it fit to inform the Court, either orally or through an affidavit what became of the conciliation process. This information would have been material because of the time lapse from 2009 to now when judgment is being delivered. The claim could as well have been resolved.
15. It is not disputed that the government acquired the land which the Respondent used for farming activities by force of law. This is what occasioned the lay-offs and subsequent termination of the grievants. In the circumstances the lay-offs or terminations were bona fide and fair on the face of it.
16. But unfortunately the Union did not place enough material before the Court to enable me make a determination that the lock-out was illegal.
17. There was no prayer in the Memorandum of Claim for terminal benefits. The Union however filed a Supplementary Memorandum of Claim with computations of what each grievant was entitled to, pursuant to leave of Court and the Respondent informed the Court on 13 May 2009 that the grievants were entitled to terminal benefits. But the Memorandum of Claim was not amended to seek a prayer for terminal benefits.
18. I would therefore dismiss the Cause without any orders as to costs.
19. Deputy Registrar to transmit this file back to Nairobi.

Delivered, dated and signed in open Court in Mombasa on this 27th day of September 2013.

Justice Radido Stephen

Judge