



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 359 OF 2013

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

VERSUS

SHALIMAR FLOWERS (K) LTD.....RESPONDENT

JUDGMENT

The claimant is **Kenya Plantation & Agricultural Workers Union** and the respondent is **Shalimar Flowers (K) Limited**. The claimant filed the memorandum of claim on 22.10.2013 and prayed for judgment against the respondent for:

- (a) setting aside, dismissing or discharging the letters of transfer dated 11.10.2013 for the transfer of the employees to the new farm in Rumuruti, within Laikipia county;
- (b) a declaration that the new farm in Rumuruti within Laikipia County is not Shalimar Flowers (K) Limited, therefore the transfer under clause 26 of the CBA of employees of Shalimar Flowers (K) Limited to the new farm is in outright breach of the said clause;
- (c) a declaration that the respondent do forthwith comply with clause 26 of the C.B.A. in effecting any transfers of any employee within Shalimar Flowers (K) Limited; and
- (d) Costs of the suit to be provided for.

The memorandum of response was filed on 12.11.2013. In view of the urgency of the matter taking into account the productivity concerns, the parties agreed that the case be heard on Thursday 14.11.2013 at 2.30 p.m. At the hearing as scheduled, the parties agreed that the only issue for determination was whether the respondent has a lease over the suit land covering the area known as Mwanzi farm in Rumuruti, Laikipai County in which event the C.B.A. will apply to the transfers in issue.

For the respondent, it was submitted that the relevant lease is exhibit IW1 on the further affidavit of Issa Wafula filed on 12.11.2013. The claimant's only objection is that the lease between Mwanzi Limited and Shalimar Flowers Kenya Limited has been executed between the two companies by their directors and who are the same persons namely Mamta Mahajan and Peeush Mahajan.

For the respondent, it has been submitted that the lease is valid as concluded between the two companies which are legal persons separate from their respective directors.

It is a well established legal principal that a company is a legal person separate from its directors. In view

of that principle, the court finds that the respondent has established a valid lease over the farm it has transferred its staff to known as Shalimar farm in Rumuruti, Laikipia County as referred to in the inter office memorandum being exhibit 4 on the memorandum of claim as, thus “**...our new farm in Rumuruti, within Laikipia county**”.

In conclusion, judgment is entered for the parties for:

1. a declaration that upon transfer the respondent's employees also being the claimant's members will continue in the employment of the respondent; the respondent having concluded a valid lease agreement with Mwanzi Limited for the respondent's new farm over **Marmaret/North Rumuruti Block II (Ndurumo)/195** per lease dated 2.9.2013 and filed in court.
2. A declaration that the collective agreement and the recognition agreement and specifically provisions on housing and transport costs consequential to the transfer shall be upheld by the respondent; and
3. each party to bear own costs of the suits.

Signed, dated and delivered in court at **Nakuru** this **Thursday 14th November, 2013**.

BYRAM ONGAYA

JUDGE