



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 357 of 2009

KENYA PLANTATION AND AGRICULTURAL

WORKERS UNION CLAIMANT

VS

LAUREN INTERNATIONAL FLOWERS LTDRESPONDENT/APPLICANT

RULING

This is a ruling in relation to the Respondent Applicant's application dated 12th October, 2012. The application was filed by the firm of V. Chokaa and Company Advocates and they seek orders that:

1. **THAT this application be certified urgent and service thereof be dispersed with in the first instance.**
2. **THAT this Honourable court be pleased to review, set aside and/or vary the award dated 10th January, 2011 and all consequential orders.**
3. **THAT the costs of this application be provided for.**

The application is based on the grounds that:

- (a) The suit herein proceeded *ex parte* without the participation of the Respondent.
- (b) It is in the interest of justice and fairness that the award be set aside and the matter be heard on merit in accordance with Articles 50(1) and 159(2) (d) of the Constitution.
- (c) The Respondent was never notified of the hearing of this case and was never served with summons in respect of the case.
- (d) The Respondent has a good defence to the claimants claim.

The Claimant Respondent were served with the copies of Notice of Motion and supporting affidavit on 17th October, 2012 at their head office in Nakuru as per the affidavit of service by the process server sworn on 30th October, 2012. However, they did not attend court for the hearing of the application on 30th October, 2012. The application was therefore heard in their absence. A look at the court record

shows that this cause proceeded for hearing on 18th August, 2010 before Justice Kosgei. On this day, the Respondent were not in court and it was indicated that they had never made an appearance. The claimant alleged that they had refused to file their memorandum of defence despite being served with the memorandum of claim. Evidence of service of this memorandum of claim was however not exhibited in court and this court record does not show evidence of service. It appears that there was an assumption that Respondents had been served whereas such evidence is apparently not on record. Without such evidence, I find that the Respondents have not been served and it would be in breach of rules of natural justice to proceed and hear the case in their absence.

The basic rule of natural justice demand that a man should not be condemned unheard.

Article 50 (1) of the Constitution provides for their right in the following terms;

“Every person has a right to hearing any dispute that can be resolved by the application of law decided in a fair and public hearing before court or, if appropriate another Independent and impartial tribunal or body”.

Since the Respondent were not accorded this right to be heard, I allow the application, I set aside the judgment and all consequential orders herein.

I order that the case proceeds afresh in the presence of both parties.

Dated, signed and delivered this 14th day of November, 2012.

HELLEN WASILWA

JUDGE

Appearances:

Mr. Githii holding brief for

V. Chokaa and Company Advocates

Rachael Gichuki

for Respondent/Applicant

Court Clerk