



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 313 OF 2014

KENYA PLANTATION & AGRICULTURAL

WORKERS UNION

CLAIMANT

v

WILHAM KENYA LIMITED

1st RESPONDENT

RIFT VALLEY VEGETABLES

2nd RESPONDENT

RULING

1. The Kenya Plantation & Agricultural Workers Union (Union) commenced legal proceedings against Wilham Kenya Ltd (1st Respondent) and *Rift Valley Vegetables* (2nd Respondent) on 14 July 2014 and the issue in dispute was stated as

1. Wrongful dismissal of 23 employees and

2. Refusal to deduct and remit trade union dues.

2. Together with the Memorandum of Claim, the Union filed a motion under certificate of urgency seeking orders

1. **THAT**, this application be certified urgent and be heard ex-parte in the first instance.

2. **THAT**, an order do issue restraining the 1st & 2nd Respondent, its agents, assigns, servants and/or representatives from terminating, suspending and or dismissing any employee pending hearing and determination of the application inter partes.

3. **THAT**, an order do issue restraining the 1st & 2nd Respondent, its agents, assigns, servants and/or representatives from victimizing, intimidating, coercing, interfering and/or infringing on the rights of any of its employees from Freely Associating with the Claimant.

4. **THAT**, an order do issue directing the 1st & 2nd Respondent to forthwith deduct and remit trade union dues of all unionisable employees who are members of the Claimant.

5. **THAT**, costs of this application be provided for.

3. The motion was placed before Ongaya J on the same day and he granted prayer 1 of the motion and a further order that pending *inter-partes* hearing or further orders of the Court, the Respondent to maintain the status quo. He directed that the motion be served for *inter partes* hearing on 22 July 2014.
4. The motion was served and on 22 July 2014 Wekesa & Simiyu Advocates filed a Notice of Appointment of Advocates on behalf of the 1st Respondent.
5. The affidavit of service filed on the same day did not clarify whether both Respondents had been served.
6. When the motion was called out on 22 July 2014, Mr. Malebe holding brief for Mr. Simiyu sought for time to file a reply to the motion. The request was granted and the interim orders were extended until 23 September 2014.
7. The 1st Respondent filed a Replying Affidavit to the motion on 5 September 2014. It also filed a Response to the Memorandum of Claim on the same day.
8. On 23 September 2014, the parties disclosed to the Court that the motion could be disposed off through written submissions. The Court again extended the interim orders and directed that the parties file their written submissions. The 1st Respondent filed its submissions on 16 October 2014 and authorities on 23 September 2014, while the Union filed its submissions and list of authorities on 23 October 2014. The motion was heard on 5 November 2014.

Union's case/submissions on the motion

9. The Union's case is that it recruited unionisable employees of the Respondents between June and July 2014 and sent the requisite Form S to the Respondents but the Respondents refused to commence deduction of monthly union subscriptions but instead started to summarily dismiss some of the employees.
10. The Union also submits that the Respondents were in disobedience of sections 48 and 50 of the Labour Relations Act and that the Respondents resorted to victimizing and confronting the employees for their joining the union and coercing them to withdraw from the Union.
11. The Union in paragraph 29 of its submissions contended

Just like Shalimar Farm in Rumuruti, Laikipia County the 1st Respondent herein is part of Shalimar that has a Recognition Agreement and CBA with the Claimant in this matter (See appendix TK9,TK10 and TK11 attached herewith).

12. The Union also made submissions in regard to some 23 employees who were allegedly dismissed for participating in an illegal strike. Because these employees were already dismissed, the Court will not discuss the dispute concerning the fairness or unfairness of their dismissal at this interlocutory stage.

1st Respondents case/submissions

13. The 1st Respondent's case is that the Union wrote to the 2nd Respondent forwarding to it Form S and requesting the 1st Respondent to commence deduction of union dues but that the employees named in the Form S had not consented to the deductions and that the employees wrote to it denying that they had signed the Form S, or membership of the Union.
14. The 1st Respondent also submits that because of the denial by the employees it made a report to Kongoni Police Station.
15. On the effective date of deductions, the 1st Respondent submitted that pursuant to section 48(3) of the Labour Relations Act, the same could only be effected from 1 July 2014.
16. The 1st Respondent further submitted that a claim for deduction for union dues should not be

mixed with a claim for unfair termination of employment and that the Union had no locus standi to bring a case on behalf of the dismissed employees because of lack of a Collective Bargaining Agreement between it and the Union.

Evaluation

17. The Court has examined the annexures to the supporting affidavit sworn by Thomas Kipkemboi. Exhibit TK 1 is a letter addressed to Human Resources Manager, *Shalimar Vegetables*. It is the Form S. The Form S was sent to the said *Shalimar Vegetables* through G4S and copy of the delivery dispatch is annexed as TK 2. The said *Shalimar Vegetables* is not a party to the present suit.
18. The relationship between the said *Shalimar Vegetables* and Wilham Kenya Ltd and/ or *Rift Valley Vegetables* has not been explained in the supporting affidavit or in the description of the parties in the Memorandum of Claim. However, the Court has seen a few contracts on the letter head of an entity referred to as *Rift Valley Vegetables (K) Ltd*.
19. The Union has not exhibited any Form S addressed to Wilham Kenya Ltd (1st Respondent- a juristic person) or *Rift Valley Vegetables*. Further the Union has not shown either in the pleadings or through evidence/documentation any legal nexus between the Respondents herein and *Shalimar Vegetables* except in the instances where some contracts to the same persons for different times are made on the letter heads of Wilham Kenya Ltd and *Rift Valley Vegetables (K) Ltd*, like in the case of Evans Wabwire Walubengo at pages 36 and 38 of the Union's bundle. This will require keen examination during hearing on the merits.
20. In paragraph 6 of the Response and in paragraph 6 of the replying affidavit sworn by Enock Cheruiyot on 1 September 2014, the 1st Respondent pleaded that it received the Form S but its employees denied signing the forms or consenting to deduction of union dues.
21. The Employment and Labour Relations Court is now a superior Court of record. It acts and adjudicates on the basis of material placed before it.
22. In the present case, no legal nexus has been shown through evidence between Wilham Kenya Ltd, *Rift Valley Vegetables* and *Shalimar Vegetables*. Such nexus cannot be established through submissions.
23. On this ground the Court is unable to accept the invitation by the Union to grant any of the orders sought in the motion dated 14 July 2014.
24. The Court is also concerned that there is no indication as to whether the 2nd Respondent is a juristic person capable of being sued or whether and how it was served.
25. In my view, there is a fundamental incongruency between the motion and the material placed before the Court to support the prayers sought.
26. The Court therefore declines to grant the orders sought and dismisses the motion with no order as to costs. The Cause should be fixed for hearing on the merits to unravel what appear to be serious matters relating to labour practices.

Delivered, dated and signed in Court in Nakuru on this 18th day of December 2014.

Radido Stephen

Judge

Appearances

For Claimant Mr. Khisa, Organising Secretary, Kenya Plantation & Agricultural Workers Union

For Respondent Mr. Malebe instructed by Wekesa & Simiyu Advocates



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