



REPUBLIC OF KENYA.

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Before: Charles P. Chemmutut, J.,

O.A. Wafula & J.M. Kilonzo, Members.)

CAUSE NO. 120 OF 2005.

(In the matter of an amended order arising from the award of Murtaza Jaffer, J., P. M. Osero & J.G. Ngolo, Members.)

KENYA HOTELS & ALLIED WORKERS' UNIONClaimants.

v.

SOUTHERN PALMS BEACH RESORT.....Respondents.

and

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,

HOSPITALS & ALLIED WORKERS.....Interested Party.

Issue in Dispute:-

“Refusal to sign Recognition Agreement”.

Mr. Walter Musi for the Claimants (hereinafter called the first Union).

Mr. H. Okeche for the Respondents (hereinafter called the Resort).

Mr. Festus Mutunga for the Interested Party (hereinafter called the second Union).

AMENDED ORDER.

In its award in this case, dated 16th December, 2005, the Court, *inter*

alia, made the following order:-

“1.

- (a)
- (b)
- (c)
- (d)

2. The Economic Planning Division of the Ministry of Labour in conjunction with the Registrar of this Court and with the support of the Provincial Labour Office, Coast Province DO SUPERVISE AND CONDUCT A SECRET BALLOT by all unionisable employees of the Respondent Employer, be they permanent or seasonal, casual or otherwise, whether on-duty or off-duty on the date and time of the said ballot. The ballot be conducted on or before 30th March, 2006, and file their returns in this cause.

3.”

The ballot was conducted on 9th March, 2006, under the supervision of Mr. Benson Okwayo, and in his report which was submitted to the Court on 16th March, 2006, the second Union was declared the rightful or appropriate union to represent the employees of the Resort on matters relating to their terms and conditions of service or employment. Meanwhile, the first Union had filed a notice of motion, dated 21st February, 2006, mainly on the ground that the Resort used unfair labour practices and exercised undue influence, duress in an attempt to ensure that its employees remained members of the unwanted union (second Union), and the poll thus suffered from serious irregularity and the result of the referendum was, therefore, vitiated.

Having heard the representatives of the parties and carefully perused the Economic Planning Division (hereinafter called the EPD) report, we are of the view that the order and the report are seriously defective chiefly on two grounds, namely:-

(i) The order for the ballot contravened the industrial relations practice in this country as it inco-operated non-unionisable employees, i.e seasonal and casual workers e.t.c., for purposes of recognition.

(ii) The Provincial Labour Officer, or his representative was admittedly absent during the ballot – this was a fatal omission.

Conflicting claims for recognition by trade unions generally tend to create a confused state in which an employer is unable to decide as to which trade union he should deal with. In the circumstances, the purpose of conducting a poll is to find out as to which union commands the largest support among the unionisable employees of the establishment or a group of establishments. The principle of determining the rightful or proper union, or collective bargaining agent, by means of a secret ballot has been visualized in the “*Workers Educational Manual*” issued by the **International Labour Office** at **Geneva** in the year 1960, and at page 23 of the *Manual* it is observed that all workers, *whether* union members or not (unionisable), had a right to vote, and the union which obtained the largest number of votes is given the right to represent the workers concerned for purposes of collective bargaining.

With the foregoing discussion in view, the Court deems it fit or proper to find out the exact and true wishes of the unionisable employees regarding their union membership; and the best way to do this is by giving the unionisable employees another opportunity to express their wishes through a secret ballot. Accordingly, the Court directs Mr. Benson Okwayo of the EPD to repeat the exercise and find out through a secret ballot and with reasonable access to the unionisable employees (excluding seasonal and casual workers) and in the presence of both parties’ representatives, the Registrar of this Court or his representative and the Provincial Labour Officer or his representative, to which of the two trade unions the majority of the unionisable employees wish to belong. The exercise should be completed within **one month** from the date of this amended or modified order, and the Court will make its final decision immediately on receipt of the results of the secret ballot.

Both members of the Court agree.

DATED and delivered at Nairobi this 13th day of July, 2006.

Charles P. Chemmutut, MBS.,

JUDGE.

J.M. Kilonzo,

MEMBER.

O.A. Wafula,

MEMBER.