



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Before: Charles P. Chemmutut, J.,

M.M.M. Jahazi & M.A. Warrakah, Members.)

CAUSE NO. 46 OF 2003.

KENYA UNION OF NATIONAL RESEARCH INSTITUTES STAFF OF KENYA.....Claimants.

v.

KENYA AGRICULTURAL RESEARCH INSTITUTE (KARI).....Respondents.

Issue in Dispute:

“Recognition Agreement.”

Zachariah Achacha, Secretary General, for the Claimants (hereinafter called the Union).

No appearance for the Respondents (hereinafter called KARI).

A W A R D.

The Minister for Labour referred this dispute to the Court for consideration and determination on 14th May, 2003, under powers conferred upon him by Section 8 of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is henceforth referred to as the Act); and his reference, together with the statutory certificate from the Labour Commissioner under Section 14(9)(e) of the Act, were received by the Court on 19th May, 2003. Mr. Achacha for the Union submitted his memorandum on 23rd June, 2003, but KARI neither appeared nor filed its reply thereto, despite being duly notified and properly served. The case was, therefore, heard *ex-parte* on 23rd September, 2003.

KARI was established as a corporate body under Section 13 of the Science and Technology Act, Cap.250, Laws of Kenya, to carry and undertake agricultural research activities and also to disseminate the findings thereof. The Union was registered as such on 13th May, 1998, under Section 11 of the Trade Unions Act, Cap.233, Laws of Kenya, *vide* Certificate of Registration No.135, to recruit and represent all unionisable employees of Research Institutes on matters pertaining to their terms and conditions of service. According to Rule 3(a) of the Constitution of the Union, membership of the Union is “open to all staff engaged in all National Research Institutes”, namely, Kenya Agricultural Research Institute (KARI), Kenya Industrial Research Institute (KIRDI), Kenya Medical Research Institute (KEMRI), Kenya Forestry Research Institute (KEFRI), International Centre for Insect Physiology and Ecology (ICIPE), Kenya Veterinary Vaccine Research Production Institute (KEVEVARPI), Kenya Trypanosomiasis Research Institute (KETRI), International Plant Genetic Research Institute (IPCRI), Kenya Marine and Fisheries Research Institute (KEMFRI), International Crop Research Institute for Semi-Arid Tropics (ICRISAT), International Livestock Research Institute (ILRI), e.t.c.

On 16th June, 1998, the Union approached KARI for recognition on the following grounds:-

(a) that it was the sole and right or appropriate Union to represent the unionisable employees of KARI as enshrined under Article 80(1) of the Constitution of Kenya and the ILO Convention No.98 on matters relating to their terms and conditions of employment;

(b) that there was no rival union claiming representation or recognition, and

(c) that it had recruited more than 51% simple majority, i.e. 1790, or 59%, out of 3,000 unionisable employees as its members.

On 30th September, 1998, the Union forwarded a model of a recognition agreement to KARI and suggested that the parties should meet on 8th October, 1998, at 2.30 p.m. to sign the same; but the latter demanded that, before the proposed recruitment was undertaken, the following be availed to it:-

(a) A copy of the (Union's) Constitution.

(b) Category or categories of employees who would be recruited (by the Union) as members.

The Union forwarded the information as requested but KARI procrastinated in according it recognition.

On 14th October, 1998, the Union reported a formal trade dispute to the Minister for Labour in accordance with Section 4 of the Act. The Minister accepted the dispute and, under Section 7 thereof, appointed Mr. J.N. Mwanzia of Ministry of Labour Headquarters to act as the Investigator; and arrangements to settle the matter inter-parties aborted or failed. Therefore, on 30th July, 2002, the Minister for Labour released his investigation report to the parties wherein he found and recommended, *inter alia*, as follows:-

“FINDINGS.

..... that the union of National Research Institutes of Kenya is the right union to represent industrial interests of KARI employees. It was also confirmed that the union had recruited 1,790 employees out of a total unionisable force of 3,000 employees. This number is representative of 59% of the workforce and is above the simple majority rule requirement.

.....that although KARI is for all intent and purpose a public institution which is reliant on public funds from the central government, its management has semi-autonomous powers in running the day to day activities of the institute. The management can make decisions without reference to the parent Ministry or the Central Government. These powers are granted under Cap.250 of the Laws of Kenya, through which the Institute is established.

KARI's position is not unique as there are numerous parastatals and institutes which are substantially funded by the government but still have union representation of unionisable employees. Some of these organizations include Teachers Service Commission, Tea Research Foundation and National Universities.

In the circumstances, denial of formal recognition to the union is unjustifiable and untenable.

RECOMMENDATION.

..... the management is directed to sign a recognition agreement with the union immediately so as to pave way for negotiations of better terms and conditions of employment.”

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of this matter. The Union accepted the recommendation, but KARI rejected it and also refused to sign the Notification of Dispute, Form 'A'. Hence the reference of the dispute by the Minister for Labour to the Court as stated at the outset of this award for consideration and

determination (see Union Apps. I to XXII).

In a nutshell, Mr. Achacha submitted that most of the other research institutes, which have been registered under the said Research and Technology Act, Cap. 250, Laws of Kenya, have since accorded formal recognition to the Union, but KARI, which is one of the largest research institutes, has continued to frustrate the efforts of the Union to recruit and deny the employees their freedom of association and the right of union representation, contrary to Article 80(1) of the Constitution of Kenya and the ILO Convention No.98. He strongly castigated the management of KARI for their non-cooperation and negative attitude towards the Union and also for ignoring legal advice by the relevant authorities of the Government, e.g. Ministry of Labour and Human Resource Development and the Registrar of Trade Unions, on union representation.

Finally, Mr. Achacha prayed that KARI be ordered to accord formal recognition to the Union for purposes of collective bargaining.

There is nothing in rebuttal in this case; and I have, therefore, no reason to disbelieve the Union's case. The conditions precedent for recognition of a union by an employer under Section 5(2) of the Act are:-

- (a) that the trade union seeking recognition has in its membership a simple majority of the employees eligible by virtue of the union's constitution to join that particular union in a particular undertaking or a group of undertakings, and
- (b) that there is no rival union claiming recognition or to represent such employees.

In this case, the Union is the right or appropriate one to represent the unionisable employees of KARI and there is no rival union claiming to represent them. The Union has also recruited more than 51% simple majority, i.e. 1,790, or 59% out of 3,000, of the unionisable employees of KARI as its members. In the circumstances, I am satisfied that the Union has fulfilled the requirements under Section 5(2) of the Act. Accordingly, I uphold the Minister's findings and recommendation and award that KARI accord formal recognition to the Union forthwith, and the parties must sign a recognition agreement within three (3) months from the date of this award for purposes of collective bargaining.

Both members of the Court are in full agreement with this decision.

DATED and delivered at Nairobi this 10th day of December, 2003.

Charles P. Chemmutut,

JUDGE.