



IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI.

(Before: Charles P. Chemmutut, J.,

H.B.N. Gicheru & A.K. Kerich, Members.)

CAUSE NO.78 OF 2001.

UNION OF NATIONAL RESEARCH INSTITUTES STAFF OF KENYAClaimants.

- v -

KENYA FORESTRY RESEARCH INSTITUTE (KEFRI).....Respondents.

Issue in Dispute:-

“Recognition”.

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

L. Muiruri Ngugi, State Counsel, on behalf of the Attorney-General, for the Respondents (hereinafter called the Institute).

A W A R D.

On 14th August 2001, the Minister for Labour referred this dispute to the Court for consideration and determination under powers vested in him by Section 8 of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act). The Minister's reference, together with the statutory certificate from the Labour Commissioner under Section 14, subsection (9)(e) of the Act, were received by the Court on 20th August 2001, and the dispute was listed for mention on 6th September 2001. On this occasion, Mr. Achacha appeared for the Union but there was no appearance for the Institute although it was notified to attend. In the circumstances, the dispute was listed for another mention on 13th September 2001 and the parties were duly notified. Mr. Achacha again appeared for the Union but there was no appearance for the Institute. But despite the absence of the latter's representative, the Union was directed to submit its memorandum on or before 12th October 2001 and the Institute was ordered to file its reply statement on or before 12th November 2001, and the dispute was fixed for hearing on 24th January 2002. The Union submitted its memorandum on 18th October 2001 and the Attorney General, on behalf of the Institute, belatedly filed his reply statement on 3rd January 2002. The dispute was heard as aforesaid, i.e. on 24th January 2002.

The Institute was established as a corporate body under Section 13 of the Science and Technology Act, Cap.250, Laws of Kenya, to undertake research in forestry and allied natural resources and also to disseminate research findings. The Union was registered as such on 13th May 1998 under Section II of the Trade Union Act, Cap. 233, Laws of Kenya, to recruit and represent all unionisable employees of Research Institutes on matters pertaining to their terms and conditions of employment. For this reason, the Union approached the Institute for recognition on the following grounds:-

(a) that it was the sole and rightful or appropriate Union to represent the unionisable employees of the Institute 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 has recruited more than 51% simple majority, i.e. 600, or 60%, out of 1000 unionisable employees as its members.

After fulfilling the afore-mentioned conditions, the Union forwarded a model of a recognition agreement to the Institute and suggested that the parties should meet and sign the same. The latter pointed out that its hands were tied because it was “yet to receive a policy guideline on union representation” from the parent Ministry of Research and Technology (see Union Apps.I to IV).

On 4th March 1999, 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 Miss W.A. Otieno of Nyayo House Labour Office to act as the Investigator. The parties attended the meeting but were unable to settle the matter. Therefore, on 4th August 2000, the Minister released his investigation report to the parties, wherein he found “that the Union has recruited more than 51% of the unionisable staff of KEFRI” and “ that the same members of staff are already paying union dues by way of check-off system every month”. In the circumstances, the Minister recommended “that the Union should be accorded recognition by the management of KEFRI”, and finally appealed to the parties to accept the recommendation as a basis of settlement of the dispute. The Union accepted the recommendation, but the Institute refused to sign both the recognition agreement and 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 V to XIX).

Mr. Achacha submitted that other research institutes which have been registered under the said Research and Technology Act, Cap. 250, Laws of Kenya, e.g. Coffee Research Foundation, Tea Research Foundation, etc., have since accorded recognition to the Union, but the Institute has continued to frustrate the efforts of the Union 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 also cited and relied on *Cause No.95 of 1999* between the same Union and the Kenya Trypanosomiasis Research Institute (KETRI), which is registered under the same Act, in which the Union was accorded recognition. Mr. Achacha strongly castigated the management of the Institute for their negative attitude towards the Union and also for ignoring legal advice by relevant authorities of the Government, e.g. the Permanent Secretary, Ministry of Labour and Human Resource Development and the Registrar of Trade Unions, on union representation (see Union Apps XXII to XXVI).

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

In his brief submission, the learned counsel for the Institute, Mr. Ngugi, submitted that the action by the Union was non-suit or non-starter because of misjoinder of the Institute. Therefore, the Union has no cause of action against the Institute in view of the fact that the latter was not a corporate body but only mandated to discharge administrative duties. Furthermore, its employees were civil servants, and the right union to represent them is the Civil Servants Union. He asserted that the right or proper party to the dispute was the Ministry of Environment and Natural Resources; but even if the Institute was the right party to the dispute, the parent Ministry had not given its consent to the Board to sign a recognition agreement with the Union. Mr. Ngugi submitted further that the findings and recommendation by the Minister for Labour were evidently baseless and that any recognition agreements accorded to the Union by other research institutes were extraneous to the case at hand. He, therefore, prayed that the demand for recognition by the Union be rejected.

The conditions precedent for recognition of a union by an employer under Section 5, subsection (2) of the Act are:-

(a) that the trade union has in its membership simple majority of 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 to represent such employees.

In this case, there is no dispute that the Union is the right or appropriate one to represent the unionisable employees of the Institute and that there is no rival union claiming to represent them. The Union was specifically registered to recruit and represent all the unionisable employees and Rule 3(a) of its constitution specifically covers all research institutes in Kenya (see Union, Apps. XX and XXI). It is also not denied “that the Union has recruited more than 51% of the unionisable staff of KEFRI” who “are already paying union dues by way of check-off system every month” (see Union App.IX), which means that the Institute has in principle accorded recognition to the Union. This being the case, the contention of the learned counsel, Mr. Ngugi, to the contrary has no legal force.

In the result, I am satisfied that the Union has fulfilled the requirements for recognition under Section 5, subsection (2) of the Act. I, therefore, uphold the Minister’s findings and recommendation, and award that the Institute accord formal recognition to the Union and that the parties must sign a formal recognition agreement within three months from the date of this award.

Both members are in full agreement with this decision.

DATED and delivered at Nairobi this 2nd day of May, 2002.

Charles P. Chemmutut,

JUDGE.