

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E239 OF 2023**

**TRANSPORT WORKERS**

**UNION.....CLAIMANT**

**- VERSUS-**

**POLLMANS TOURS & SAFARIS LIMITED.....**

**RESPONDENT**

**KENYA GAME CONSERVANCY TOURS  
& SAFARI WORKERS**

**UNION.....INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. The Claimant lodged this suit through a Memorandum of Claim dated 22<sup>nd</sup> March, 2023, and filed on 24<sup>th</sup> March, 2023. The Claimant's prayer is that the Respondent be compelled to conclude the CBA negotiations with the Claimant union within a reasonable time as to pave the way for the CBA adjustment.
2. The Respondent filed a Response to the Memorandum of Claim dated 23<sup>rd</sup> January, 2024, denying the Claimant's claim.

3. Several applications filed by the parties were dispensed with, paving the way for the hearing of the suit.
4. Both the Claimant's and the Respondent's cases were heard on 26<sup>th</sup> March, 2025. A Mr. Dan Mihadi, the General Secretary of the Claimant, testified in support of the Claimant's case, while a Mr. Naftali Ndege, the Human Resources Officer of the Respondent, testified in support of the Respondent.
5. Both parties filed submissions in the matter, and the submissions have been duly considered.

### **The Claimant's Case**

6. The Claimant's case is that the Respondent's unionisable employees are members of the Claimant union, and none has resigned from the union. It avers that it has a valid Recognition Agreement and multiple registered CBAs with the Respondent company, with the current CBA covering the period from 15 May 2019 to 31 December 2020.
7. The Claimant's further case is that the Recognition Agreement and ongoing CBA negotiations are being endangered by the Respondent's alleged unlawful attempts to persuade unionisable employees to join another union, thereby weakening their bargaining power.
8. It avers that during the COVID-19 pandemic, the Claimant union agreed to salary freezes and reductions for some employees from 1st January 2021 to 30th April 2022, which

was an entire 16 months. It states that after the pandemic, and once operations normalized, the Claimant submitted its CBA review proposals to the Respondent in July, 2022.

9. It is the Claimant's case that it took the Respondent over five months to respond to the proposal, when it eventually sent an email on 14th November 2022 indicating that they were preparing counter proposals and would revert.
10. It avers that the Respondent failed to revert as promised, prompting the Claimant to write again on 28th November 2022, to which the Respondent replied on the same day, stating that their Director, Mr. Hotta, was out of the country until 14th December 2022.
11. The Claimant further states that on 15th December 2022, it requested the Respondent for confirmation of the CBA negotiation date, and that the Respondent proposed 20th December 2022 for negotiations, which it later rescheduled to 21st December 2022.
12. The Claimant avers that eventually the parties managed to hold three (3) negotiation meetings and recorded their respective position for further review. It states further that on 2nd February, 2023, it wrote to the Respondent requesting another meeting to finalize the CBA negotiations, but the Respondent has continued to delay the process.
13. It is the Claimant's case that it learned from the Respondent's employees/it members that the Respondent

has been coercing union members to sign check-off forms for another union in an attempt to undermine and circumvent the ongoing CBA negotiations, but despite this interference, none of the Claimant's members has resigned.

14. It further avers that the Respondent's interference has escalated, with shop stewards being threatened and told they are not recognized.

15. The Claimant states that it reported a trade dispute to the Ministry of Labour, which appointed a conciliator who invited the parties to meetings, but the Respondent disregarded this invitation.

16. It avers that the Respondent is in violation of labour laws and procedures by refusing to attend the scheduled conciliation meeting, leading the conciliator to issue recommendations and a certificate of an unresolved dispute.

17. The Claimant states that the Respondent's Company is financially capable of meeting the Claimant's proposals, as evidenced by its recent payment of bonuses to employees despite the CBA remaining unconcluded, actions viewed as attempts to influence unionisable employees to abandon the Claimant union.

18. On cross-examination, the Claimant's witness told the court that it is not true that the CBA between the parties herein is expired, considering that Clause 45.1 of the said CBA provides that the CBA will be in force until 31<sup>st</sup> December,

2020, and the requirement for notice, which notice has not been issued.

19.CW1 further confirmed that a ruling earlier issued stayed the registration of the CBA. It is his position that the Claimant's union members have not left the union, but he does not know whether the Interested Party Union has the simple majority of the employees of the Respondent's unionisable workers.

20.On re-examination, CW1 clarified to the court that the outgoing CBA is in force until another CBA is registered pursuant to clause 45.2, and that, besides the 2020 CBA, no other is in place. It is his further position that the intention of the parties was to amend the CBA and not to terminate the same, and that the amended proposals were shared with the Respondent.

21.It is CW1's submission that he has not received any resignation from its members working for the Respondent. He further clarified that what the court stayed was the registration of a CBA between the Respondent and the Interested Party.

22.CW1 averred that, though dues are being deducted from its membership, they have not been remitted since April 2023. He confirmed that remittances stood at Kshs.139,998/- per month.

23.The Claimant prays that its claim be allowed.

### **The Respondent's Case**

24.The Respondent states that its unionisable employees voluntarily resigned from the Claimant Union and joined Kenya Game Conservancy, Tour & Safari Workers Union, the Interested Party herein, exercising their legal rights under Section 4(1)(c) of the Labour Relations Act.

25.The Respondent further states that it did not influence, coerce, or induce employees to change unions. It avers further that following the employees' change of union, it negotiated and signed a new CBA with the Kenya Game Conservancy, Tour & Safari Workers Union on 24th March 2023, which is pending registration.

26.The Respondent denies that there is any valid recognition agreement or current Collective Bargaining Agreement (CBA) with the Claimant, asserting that the alleged CBA expired on 31<sup>st</sup> December 2020.

27.The Respondent denies the allegations that it is interfering with employees, coercing them to sign check-off forms, or undermining CBA negotiations with the Claimant. It maintains that the employees' decision to leave the Claimant union was entirely voluntary.

28.It is the Respondent's case that on 23rd October 2023, the Employment and Labour Relations Court (ELRC), presided

over by Hon. Justice Dr. Gakeri, delivered a ruling in CBA No. E106 of 2023 involving Kenya Game Conservancy, Tour & Safari Workers Union, Pollmans Tours and Safaris Ltd, and Transport Workers Union Kenya, which ruling addressed an application dated 11th May 2023 in which the Claimant sought to set aside the registration of a CBA between the Respondent and the interested Party.

29. It is its case that the court determined that the Claimant did not have a simple majority of the Respondent's unionisable employees, and further that the said employees had resigned from the Claimant union and had joined the Kenya Game Conservancy, Tour & Safari Workers Union.

30. The Respondent states that it executed a binding CBA with the Interested Party (**Kenya Game Conservancy, Tour & Safari Workers Union**), which prevents it from entering into any other agreement with the Claimant or any other union.

31. The Respondent further states that all its unionisable employees are now members of the Kenya Game Conservancy, Tour & Safari Workers Union, and the Claimant no longer has any members in the Respondent's workforce.

32. It avers further that the Recognition and CBA processes are contractual, that a court cannot compel parties to enter into such agreements, and, finally, that the alleged CBA with the Claimant expired on 31<sup>st</sup> December, 2020.

33. The Respondent's witness told the court in his oral testimony that the Interested Party has a membership of 153 staff. In contrast, the Claimant has 87 members from its unionisable staff out of a total of 283 unionisable staff; hence, the Interested Party has more members. It avers that the union deductions were deposited with the court on 16th July, 2024, and that it is ready to comply with the court's orders in relation to the deductions.

34. On cross-examination, RW1 confirmed that the Respondent has a recognition agreement with the Claimant entered on 1<sup>st</sup> January 2009, which agreement has neither been revoked nor terminated. He confirmed further that Clause 2 of the agreement makes the Claimant the sole representative of its unionisable employees and further provides a 3 month' notice requirement before termination of the agreement, and no such notice has been issued.

35. RW1 told this court that negotiations to register another CBA were had, but they did not bear fruit. He confirmed that although the Claimant sent a proposal, the Respondent did not make any proposals.

36. It is RW1's evidence that the Respondent deducted union dues and agency fees and that the deductions related to the CBA between the Claimant and itself entered into in 2019.

37. RW1 told the court on cross-examination that when members of a union resign from the union, they do so through a letter to the employer, who, in turn, writes to the

union to inform them of such resignation. He confirmed that the Respondent did not write to the Claimant to inform them that their workers had resigned from the Claimant union.

38. It is RW1's further testimony that another CBA was negotiated and signed between the Respondent and the Interested Party, but that no minutes of such discussions/negotiations were produced in evidence before this court.

39. RW1 confirmed being aware of ELRC Cause No. 109 of 2023, where the court found that neither the Claimant nor the Interested Party had a simple majority. He states that the current list of union membership is not before the court.

40. RW1 avers that no court order stopped deductions and remittance of union dues, and that though it is still deducting union dues, the dues are not being remitted to the Claimant union.

41. The Respondent prays that the Claimant's claim be dismissed in its entirety with costs.

### **Analysis and Determination**

42. I have considered the pleadings, the oral evidence by the two witnesses, and the rival submissions. The following issues arise for determination:-

- i. Whether the Claimant remains the lawful representative union of the Respondent's unionisable employees.

- ii. Whether the Recognition Agreement and CBA between the Claimant and the Respondent remain valid and enforceable.
- iii. Whether the Respondent unlawfully interfered with the Claimant's union membership.
- iv. Whether the Respondent can be compelled to conclude CBA negotiations with the Claimant.
- v. Whether the Claimant deserves the remedies sought.

**Whether the Claimant union remains the lawful representative of the Respondent's unionisable employees**

43. The Respondent's position is that all its unionisable employees voluntarily resigned from the Claimant union and joined the Interested Party, Kenya Game Conservancy, Tour & Safari Workers Union.

44. The Respondent, through their witness, RW1, admitted under cross-examination that the Respondent did not issue any resignation notifications to the Claimant union as required under standard industrial relations practice, that no resignation letters were produced in evidence, and further that no updated union membership list was produced in evidence before the court.

45. The Claimant's position is that no resignation has ever been received from any of its members or the Respondent pursuant to Section 48(8) of the Labour Relations Act. Further, the Respondent did not produce the current union membership records, as required under the Labour Relations

Act, which places the responsibility on the employer to document union dues, membership, and remittances.

46. In ***Kenya Chemical & Allied Workers Union v. Bamburi Cement Ltd (ELRC)***, the court held that where an employer alleges mass resignation, it must demonstrate this through objective documentary proof, and not by mere assertion.

47. Section 54 of the Labour Relations Act, provides that a Recognition Agreement remains in force until formally terminated with notice. In ***Transport Workers Union v. Multiple Hauliers (K) Ltd [2015] eKLR*** the court held that a union remains recognized and retains bargaining rights until the employer terminates recognition formally in accordance with the Labour Relations Act.

48. In my considered view, the Respondent failed to prove voluntary resignation of the Claimant's members, which then confirms that the Claimant union remains the recognized union unless and until proper revocation of recognition is undertaken.

**Whether the Recognition Agreement and CBA between the parties remain valid**

49. The Claimant's position is that a Recognition Agreement dated 1<sup>st</sup> January 2009 exists between the parties as the same has never been revoked. RW1 confirmed to this court that while the Recognition Agreement between the parties provides a three months' notice of termination, no such notice was ever issued by the Respondent to the Claimant union.

50. The Respondent further confirmed that it has continued making deductions of both union dues and agency fees on account of the CBA between the Claimant union and the Respondent, but which dues it has not been remitting to the Claimant union. It is the Respondent's position that though it negotiated a CBA with the Interested Party, the same has not been registered.

51. Section 59(5) of the Labour Relations Act, provides that:-

***“The terms of the collective agreement shall continue to be binding on the parties until a new collective agreement is concluded.”***

52. Further, Clause 45.2 of the 2019/2020 CBA between the parties herein provides that the CBA remains in force until a new one is registered. This principle was affirmed in ***Kenya Union of Commercial Food & Allied Workers v. Reliable Freight Services [2016] eKLR***, where the court held that a CBA continues in force until replaced, and that lapse of its term does not terminate it automatically.

53. It then follows that in the absence of a new or amended CBA, the CBA entered into in 2019 between the Claimant union and Respondent is still in force.

54. In the premise, it follows that the Recognition Agreement and the 2019-2020 CBA remain valid and binding, and continue to apply until replaced within the law.

## **Whether the Respondent interfered with the Claimant's union membership**

55. The Claimant alleged coercion of her members to join the Interested Party's union, which allegation the Respondent denied. While no direct evidence of threats was produced, it is not disputed that the Respondent stopped remitting union dues without any court order, even when it confirmed that it continues to deduct the same to date.

56. It is also not disputed that the Respondent proceeded to negotiate another CBA with a rival union while a recognition agreement with the Claimant remains in force.

57. Further, the Respondent did not produce minutes of the alleged negotiations with the Interested Party, and did not notify the Claimant of any of its unionisable employees who were said to have purportedly resigned from the union.

58. Section 5(3)(a) of the Labour Relations Act prohibits employers from interfering with internal union affairs or union membership. In ***Banking Insurance & Finance Union (BIFU) v. Co-operative Bank [2015] eKLR***, the court held that failure to remit union dues and engaging a rival union while recognition stands, amounts to interference.

59. In my considered view, the totality of the Respondent's conduct constitutes interference with the Claimant union's rights under Sections 4, 5, and 54 of the Labour Relations Act.

**Whether the Respondent can be compelled to conclude CBA negotiations with the Claimant**

60. The Claimant's prayer is that the Respondent be compelled to conclude the CBA negotiations with its union within reasonable time to pave the way for the CBA adjustment. Section 54 of the Labour Relations Act demands that an employer with a valid recognition agreement with a union must bargain in good faith.

61. In ***Kenya Game Hunting & Safari Workers Union v. Lewa Wildlife Conservancy [2019] eKLR***, the court compelled an employer to conclude CBA negotiations where a valid recognition agreement existed.

62. In the instant case, the Respondent admitted that although it received proposals from the Claimant union, it did not issue any counter proposals, despite various reminders and prodding to respond by the union. The Respondent delayed responses for months and even proceeded to divert the negotiations to a rival union contrary to a standing recognition agreement.

63. For the reason that the recognition agreement remains valid and no new CBA has since been lawfully registered, the Respondent is obligated to conclude negotiations with the Claimant union.

64. Accordingly, I find and hold that an order compelling the Respondent to resume and conclude the CBA negotiations is justified and is hereby granted.

65. In the upshot, the Claimant's claim is found to have merit and is allowed in terms of the following orders:-

- a) That the Claimant remains the recognized union of the Respondent's unionisable employees,
- b) That the 2019-2020 CBA between the parties remains in force and binding until a new CBA is registered.
- c) That the Respondent is hereby ordered to resume and conclude CBA negotiations with the Claimant, and to do so within 60 days of this judgment.
- d) That the Respondent be and is hereby directed to cease all acts of interference and/or victimization of the Claimant union membership.
- e) That the parties, being social partners, I order that each bear their own costs of the suit.

66. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4<sup>TH</sup> DAY OF DECEMBER 2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Ibrahim Oduor present for the Claimant

Mr. Kongere h/b for Mr. Karina for the Respondent

Mr. Nyumba present for the Interested Party

Ms. Esther S- C/A