



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1561 OF 2012

KENYA HOTELS & ALLIED WORKERS UNION....CLAIMANT

v

ZOMENI LION HILL CAMP.....RESPONDENT

JUDGMENT

1. The Kenya Hotels & Allied Workers Union (the Union) instituted proceedings against Zomeni Hill Lion Camp (the Respondent) on 4 September 2012 (amended Memorandum of Claim was filed on 2 December 2013) and the issue in dispute was stated as Refusal by the Respondent to deduct and remit union dues and to sign recognition agreement and victimisation of the Claimant's members
2. In terms of section 74 of the Labour Relations Act, disputes relating to recognition agreement ought to be accorded priority.
3. The rationale for this may be because recognition disputes implicate numbers at a particular point in time.
4. Some employees who have joined a Union may leave or cease being employees. The numbers do not remain constant and therefore in order to meet the threshold set out in section 54 of the Labour Relations Act, despatch on the part of the Court is expected.
5. It is obvious that there would be inherent risks when such disputes are not determined expeditiously.
6. In the instant case, the recognition dispute has been in the Court system for about 8 years. It would therefore not be prudent for the Court to rely on recruitment/form S carried out nearly a decade ago.
7. As the Court of Appeal stated in *Civicon Ltd v Amalgamated Union of Kenya Metal Workers* (2016) eKLR, recognition disputes require full cooperation, full disclosure and utmost good faith on the part of the employer.
8. In order to balance the rights and interests of the parties considering the time lapse and do justice, the Court will therefore order and direct that
 - (a) County Labour Officer for Taita Taveta conduct a ballot to establish how many of the Respondent's unionisable employees have joined the Union.
 - (b) The Respondent to allow access to both the County Labour Officer and the Union to its premises without hindrance for the purposes of conducting the ballot.
 - (c) The County Labour Officer to file a report with the Court within 45 days.
9. No order as to costs.

Delivered, dated and signed in Nairobi on this 30th day of November 2018.

Radido Stephen

Judge

Appearances

For Union Mr. Simiyu, Deputy Secretary General, Kenya Hotels & Allied Workers Union

For Respondent Kinyua Muyaa & Co. Advocates

Court Assistant Lindsey