



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1217 OF 2013**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 17<sup>th</sup> January, 2017)**

**KENYA GAME HUNTING AND**

**SAFARI WORKER'S UNION..... CLAIMANT**

**VERSUS**

**AFRICAN QUEST SAFARIS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This claim was filed by the Claimants herein against the Respondent on 1/1/2013 through the Claimant's General Secretary. The issue in dispute is the refusal of the Respondents to sign a recognition agreement with the Claimants while the Claimants had simple majority.
2. The Claimants have told the Court that on 27<sup>th</sup> August 2012, the employees of the Respondent joined the Claimants Union which is the Union registered to represent them.
3. They signed check off system forms authorizing the Respondents to deduct Union dues from their wages. That the Respondent started deducting the Union dues as per the check off forms but started terminating the Claimant members due to Union activities.
4. The Respondent also refused to sign a recognition agreement with the Respondent despite the Claimants registering simple majority of members.
5. The Claimant opted to report a dispute to the Minister for Labour. The dispute was accepted and the Minister appointed a Conciliator.
6. The Parties attended the reconciliation meeting and the Respondent requested to be allowed to sign the recognition agreement at the next meeting but which they failed to attend.
7. The Conciliator then signed a Certificate of Parties failing to agree and allowed them to proceed to Court for a solution.
8. The Claimants have annexed the check off forms, the deduction of the Union dues, report of Conciliator and Conciliator's Certificate as exhibits.

9. The Claimants want this Court to order the Respondents to recognize them and they have submitted that they have a simple majority of members to warrant the same.

10. The Respondents on the other hand filed their Memorandum of Response on 8/5/2014 through the Federation of Kenya Employers (FKE).

11. The Respondents aver that the Claimants have not attached a copy of its Constitution to confirm that it makes provision for representing employees in the transport and tourism industry which covers the Respondents' business.

They also aver that the Claimants have not recruited a simple majority of its unionisable employees. The Respondents annexed Appendix 1 which is a list of their employees as against those who had joined the Union as their evidence.

13. They aver that as at January 2013, when the Claimant reported a dispute, the Respondent had a total unionisable staff establishment of 39 employees out of which only 18 had joined the Claimant Union being 46.15%.

14. The Respondents also aver that the lists of check off are all undated and misleading for reasons that they contain names of staff who left the Respondents employment before January 2013. The Respondents annexed Appendix 2 – their staff establishment for October 2012 to July 2013. They singled out 3 names Sylvester Ng'weno, Hamad Noor Isaak and Marzuk O. Suleiman as those who were not in Respondents employment as at January 2013. They attached Appendix 3 a, b and c – the certificates of service for the named employees.

15. The Respondents aver that they have continued to remit all Union dues and will continue to proceed and remit all Union dues for all Claimants' members but will not sign a recognition agreement once the Claimant recruits a majority of its unionisable staff.

16. The Respondents want the Claimants case against them dismissed accordingly.

17. I have considered submissions from both parties. The Claimants have submitted that the check offs were signed in August 2012 and are dated 27.8.2012 and they required the Respondents to start deducting the Union dues on 30<sup>th</sup> October 2012.

18. They also submit that the Respondent has 20 unionisable staff and out of these 12 are their members making 60% membership.

19. In their submissions, the Respondents have stated that the Claimants have not demonstrated that they are the right Union to represent staff in this sector because they didn't provide the Court and the Respondent with a copy of its Constitution.

20. Section 54 of the Labour Relations Act 2007 states as follows:

**1) ... "An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.**

**2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, shall recognize a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation within a sector.**

**3) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.**

- 4) The Minister may, after consultation with the Board, publish a model recognition agreement.**
- 5) An employer, group of employers or employers' association may apply to the Board to terminate or revoke a recognition agreement.**
- 6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.**
- 7) If the dispute referred to in subsection (6) is not settled during conciliation, the trade union may refer the matter to the Industrial Court under a certificate of urgency.**
- 8) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.”**

21. For a Trade Union to be recognized, the above conditions must be fulfilled.

22. The condition required is to have a simple majority of unionisable members joining the Union. The Claimants have insisted they have met this qualification by having 60% of unionisable staff as their members. They submitted their Appendix 1 to show they had 23 members signing the check off systems on 27/8/2012.

23. The Respondents made deductions for these members from October 2012 as per Appendix B.

24. The Respondents on their part deny that the Claimants had reached the simple majority. They even attach their Appendix 3 that are certificates of service for 3 employees who left work in 2012. The Appendix 3 are however not signed and so are of no effect. There is no evidence that the three singled out were not in the employment of Respondents in 2013 and in any case, the check off had started in August 2012.

25. This matter went for conciliation before the Labour Officer and the Labour Officer's report is attached as Appendix C. The Labour Officer confirmed that the Claimant was the correct Union to represent workers in this industry. The officer also confirmed that 23 out of a total unionisable force of 40 workers in December 2012 had been recruited by the Union. He finally concluded that the Union had managed to recruit a simple majority of workers.

26. It is my finding that at August 2012 the Claimants had recruited a simple majority of unionisable workers. The Respondents even started remitting Union dues as per their Appendix C.

27. Despite the assertion by the Respondents that the Claimants have not recruited a simple majority, this Court finds that they have and this was way back in 2012.

28. I find the Claimants have established their case as required under Section 54 of Labour Relations Act. I find for Claimants and order that the Respondent do sign a recognition agreement with the Claimant within 30 days as prayed.

29. Costs to the Claimants.

Read in open Court this 17<sup>th</sup> day of January, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Claimant

No appearance for Respondent