

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 130 OF 2015

KENYA GAME HUNTING AND SAFARIS WORKERS UNION.....CLAIMANT

VERSUS

NGARE NDARE FOREST TRUST LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday, 14th April, 2016)

JUDGMENT

The claimant filed the memorandum of claims on 28.07.2014. The claimant prayed that the respondent be ordered to enter a recognition agreement with the respondent and for the respondent to be ordered to deduct and remit union dues. The claimant also prayed for costs of the suit.

The respondent filed the memorandum of defence on 23.09.2015.

The court has considered the material on record and the written and oral submissions made for the parties. The following findings by the court are pertinent:

1. The respondent does not dispute that the claimant has recruited over simple majority (50% plus 1) of the unionisable workers in the respondent's establishment.
2. There is no dispute that the respondent has served the relevant forms signed by the recruited employees authorising the respondent to deduct and to pay union dues.
3. The respondent disputes that it falls in the game hunting, wild animals' conservancy and safaris sector that the claimant is registered to represent workers as a trade union. The respondent says that it falls in the agricultural sector under which a different union would be the relevant union. It is the claimant's case that there has been no demarcation dispute between the claimant and the Kenya Plantation and Agricultural Workers Union (responsible for agricultural workers) about recruitment of the respondent's employees. The court has considered the evidence and the submissions and returns that there is no good reason to doubt that the claimant is entitled to recruit and represent the workers in the respondent's establishment. Indeed, the respondent in the oral submissions admitted that there was no evidence on record to show that it was a member of the Agricultural Employers' Association under which the respondent purported to allege there had been a recognition agreement with the Kenya Plantation and Agricultural Workers Union. Further, RW confirmed that the respondent works closely with the Kenya Wildlife Service in matters of capacity building. The court returns that taking such and all other evidence on record into account, there is no reason to find that the respondent does not engage in wildlife conservation, the claimant's sector of operation. The objects of the respondent as set out in its memorandum of association filed in court confirm that position.

The court returns that the claimant has satisfied the requirements for deduction of union dues under section 48 of the Labour Relations Act, 2007 and for recognition under section 54 of the Act.

In conclusion judgment is entered for the claimant against the respondent for:

- a. The respondent to deduct and pay the relevant union dues by the employees in issue effective end

of April 2016 in default, the respondent to pay all due union dues out of its own resources effective the date of the suit 12.10.2015 plus interest at court rates till full payment.

b. The parties to negotiate in good faith and to conclude the recognition agreement by 01.10.2016 and as per section 54 of the Act.

c. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nyeri this Thursday, 14th April, 2016.

BYRAM ONGAYA

JUDGE