



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 72 OF 2016

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS
AND ALLIED WORKERS..... CLAIMANT**

-VERSUS-

THE MANAGEMENT OF SEGERA LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 29th July, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 14.04.2016 claiming the respondent's refusal to sign a recognition agreement with the union.

The claimant's case is that the respondent owns a registered hotel that is known as Segera Retreat Resort situated in the fenced conservancy in Laikipia County. The hotel offers accommodation, food and beverages and other hospitality services and products. The claimant has recruited 30 employees out of the 50 employees the respondent has engaged in the tourism or hospitality undertaking. The claimant's case is that it is the right union to represent the workers in the hospitality sector under section 54 of the Labour Relations Act, 2007. The claimant therefore seeks recognition and has prayed for judgment against the respondent for:

- a. The respondent to sign the recognition agreement.
- b. The respondent to negotiate and complete a collective bargaining agreement within sixty days after signing the recognition agreement.
- c. Costs of the suit.
- d. Any other order that the honourable court may deem fit and just.

The memorandum of defence was filed on 20.05.2016 through the Agricultural Employers Association. The respondent's case is that it is a commercial ranch in the business of rearing beef cattle. It owns 3,500 heads of cattle and a workforce of 111 fully dedicated to take care of the cattle but the employee population is about 200. The respondent's further case is that due to remoteness of the ranch, it has put up a lodge to cater for its visitors and that the venture is not commercial. The lodge is not an employer and the respondent is the only employer. The respondent is a member of the Agricultural Employers' Association (AEA) which has recognized the Kenya Plantation and Agricultural Workers Union (KPAWU) under section 54 (2) of the Labour Relations Act and KPAWU has recruited 73 members and receives union dues from the respondent. The claimant has recruited only 37 out of the 210 employees of the respondent and of the 37 employees as recruited the respondent has been deducting and remitting

union dues to the claimant. The respondent prayed for orders:

- a. That the court to uphold the findings of the conciliator.
- b. That the court to order the claimant to pay the respondent's costs.

The court has perused the conciliator's report. The report found that the respondent employed 200 workers eligible to join a trade union and the workers were spread out in five sectors namely tourism 50 employees, livestock 70 employees, technical services 44 employees, security 41 employees and administration 10 employees. The conciliator then concluded that the respondent predominantly engaged in rearing of livestock for beef and the conciliator recommended that the respondent recognizes KPAWU in order to avoid friction that may be generated by parallel union membership.

The court has considered the material on record and the parties' respective submissions and makes findings as follows.

First, section 54 (2) of the Labour Relations Act, 2007 provides that a group of employers, or an employers' organization, including an organization 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' organization within the sector. The court holds that in deciding the eligibility of a trade union for recognition under the section, the court looks first at the sector, then the number of unionisable employees the employer has employed in that sector and, if the sector's union has recruited a simple majority, then the union must be recognized. In this case, the respondent as the employer has employed 50 employees in the tourism or hotel or hospitality sector represented by the claimant union and which has already recruited 30 or 37 of the 50 employees. The court returns that the claimant is therefore entitled to recognition under section 54 (1) and (2) and (3) of the Act. While making the finding, the court considers that the law does not provide for the predominant business or sector the employer is involved in and for as many as the sectors for which unions have been registered and the employer is involved in, the court holds that as many unions that meet the threshold for recognition will be entitled to be recognized and subsequently be entitled to conclude a collective agreement with the employer. Needless to cite examples of employers who recognize several unions, (such as universities, hospitals and others) in the opinion of the court, seeking to recognize the union in the so called predominant or core sector or undertaking of the employer will invariably, and unconstitutionally so, unreasonably chain the rights to fair labour practices under Article 41 of the Constitution. In the opinion of the court the sector system appreciates the different circumstances that confront the employees in those sectors and where an employer engage staff in the diverse sectors it is reasonable that as many trade unions are allowed to negotiate with such an employer in furtherance of the special circumstances of their members. Thus nurses or security guards or other workers engaged by an employer whose predominant business is not provision of nursing or security or such other special service should not thereby be barred from negotiating as a nurse, security guard or such other special worker in the circumstances of the case. In the court's opinion, if such workers were barred from their sector's trade union activities and representation on account of the employer's predominant undertaking, then their right to fair labour practices; to fair remuneration; to reasonable working conditions; to form, join or participate in the activities and programmes of a trade union; and to go on strike, as conferred under Article 41 of the Constitution, would be seriously impaired as contravened irreparably. In the further opinion of the court, the price an employer pays for engaging in multiplicity of sectors of businesses in the chosen undertaking is to recognize and negotiate collective agreements with several unions so that arguments based on inconvenience, convenience, frictions, competition and other operational consequences cannot be validly advanced to deny any of the workers their right to fair labour practices and representation by a preferred union.

Second, under section 57 (1) of the Act, a trade union that is recognized by an employer is entitled to conclude a collective agreement with the employer.

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

1. The respondent to sign the recognition agreement with the claimant as per section 54 of the Labour Relations Act, 2007.
2. The respondent to negotiate and complete a collective bargaining agreement with the claimant as per section 57 of the Labour Relations Act, 2007 and within sixty days after signing the recognition agreement.
3. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 29th July, 2016**.

BYRAM ONGAYA

JUDGE