



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.81 OF 2013 CONSOLIDATED WITH CAUSE 82 OF 2013

KENYA GAME HUNTING &

SAFARIS WORKERS UNION..... APPLICANT

-VERSUS-

ENASOIT RANCH LIMITED.....1ST RESPONDENT

OLJOGI CONSERVANCY.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2015)

RULING

The applicant filed applications against the respondents seeking orders that the respondents deduct and remit union dues from the employees who had acknowledged their union membership as reflected in the check off system served upon the respondents by the applicant. It was further prayed that the court restrains the respondents from victimising, intimidating, harassing, coercing, terminating, dismissing or otherwise disciplining the applicant's members on account of their trade union membership. The applicant prayed for the application to be heard on priority basis and for costs of the proceedings.

The dispute came up for hearing on 13.08.2013 and the court took the view that the parties had not exhausted the preliminary conciliatory resolution mechanisms under the Labour Relations Act. The court therefore directed the parties to submit to the conciliatory proceedings before the labour officer at Nanyuki and the conciliator to file his report in court by 30.09.2013. The court enjoined the Kenya Plantation and Agricultural Workers Union (KPAWU) as an interested party. The applicant declined to participate in the conciliation proceeding because the conciliator had allowed KPAWU to participate but, in the opinion of the applicant, KPAWU was a stranger to the dispute. The conciliator filed a report, parties were given opportunity to make their final submissions and the court rendered its decision by the ruling delivered on 26.09.2014.

The applicant was dissatisfied with the ruling and filed for review on 27.10.2014. The applicant's grounds for seeking review are as follows:

- a. The dispute was determined by the court without the parties being heard as envisaged in Article 50 of the Constitution of Kenya, 2010. The applicant's case was that the court decided the case upon the conciliator's report without hearing the parties on the issues in dispute. In particular, the applicant's case was that the issues of deduction of union dues and the issue of victimisation of the

applicant's members that were in issue were not resolved and the ruling decided upon the issue of recognition which was not before the court. The applicant was aggrieved because the dispute had been resolved by adopting the conciliator's report without hearing the parties and in circumstances whereby the applicant was dissatisfied with the report and the report was not final as it was not an award. The KPAWU did not file any submissions in court. Thus the applicant urged that there was an error apparent on the record occasioning injustice and review should be allowed.

- b. That once employees had asked employers to deduct union dues, the employers had to comply and that was independent of recognition and as far as the applicant was concerned, it was not heard on this serious point of law upon which the court proceeded to decide the case.
- c. The labour officer had invited the interested party to attend conciliation proceedings even before the court had admitted the interested party on record.

The applicant prayed that the court reopens the case for hearing and to determine the suit taking into account all the issues in dispute.

The respondent relied upon the grounds of opposition filed on 21.11.2014. The respondent urged that the applicant had not established any of the grounds for review as provided for in rule 32 of the Industrial Court (Procedure Rules) 2010. It was submitted that section 20 of the Labour Institutions Act expressly empowered the court to refer a dispute for conciliation and the court's referral powers were independent of the Minister's powers to appoint a conciliator. Further, whereas the parties were not heard by the court after the conciliator's report was filed and before the ruling was delivered, the parties had made comprehensive submissions before the conciliator and such was sufficient to meet fairness in the case.

The court has considered the matters in dispute and the submissions made by the parties. Parties agree they were not heard after the conciliator filed the report in court. The court holds that the conciliation proceedings could not supplant a hearing before the court. The court has revisited the record and observes that it could be that some of the issues in dispute such as victimisation of the applicant's members remained unresolved. In the opinion of the court those are errors on the record that would occasion parties perceived or real injustice. If a review is allowed, in the opinion of the court, the ends of justice will be served and no serious prejudice will be suffered by any of the parties.

The court has weighed the justice for the parties and in conclusion makes orders as follows:

- a. The ruling delivered on 26.09.2014 is set aside and parties to take directions in the case for hearing and determination of the suit on priority basis.
- b. The costs of the application for review to be in the cause.

Signed, dated and delivered in court at Nyeri this Friday, 6th March, 2015.

BYRAM ONGAYA

JUDGE