



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 & SAFARI WORKERS UNION.....
CLAIMANT**

-VERSUS-

ENASOIT RANCHING LIMITED.....1ST RESPONDENT

OLJOGI CONSERVANCY.....2ND RESPONDENT

AND

**KENYA PLANTATION & AGRICULTURAL WORKERS
UNION.....INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Friday 8th May, 2015)

JUDGMENT

The claimant trade union filed on 30.07.2013 two separate statements of claim against the respondents. The claims were subsequently consolidated. In the statements of claims as consolidated, the claimant prayed for orders against the respondents for:

1. The honourable court certifies this matter as urgent.
2. The honourable court to order the respondents to deduct and remit union dues from the employees who have acknowledged their union membership as reflected in the check off system send to respondents on 1.01. 2011 and on 10.10.2010 respectively.
3. The honourable court be pleased to issue orders restraining the respondents from victimising, intimidating, harassing, coercing, terminating, dismissing or otherwise disciplining the claimant's members on account of their union membership.
4. The court to set the matter for hearing on priority basis.
5. The costs of the application be provided for.

The application was supported by the affidavit of Isaac Mutua Nguu and the exhibits filed together with the statements of claims.

The claimant's case is that the respondents engage in the business of wildlife conservation which is within the claimant's sector of registration as a trade union so that the claimant was entitled to recruit and demand the union dues. The claimant's further case is that the issue of recognition and collective agreement which do not subsist between the parties is no bar to the recruitment and entitlement to union dues. The claimant concluded that the act of recruitment will eventually lead to recognition and then

negotiation of the collective agreement once the law on recognition is complied with. The claimant filed the relevant authorisation for deduction of union dues by check of system as prescribed in section 48 of Labour Relations Act, 2007 together with the relevant order by the Minister for Labour authorising the deductions.

For the respondents it was submitted that they had concluded a recognition agreement with the interested party so that the claimants should not be allowed to interfere with the arrangements between the interested party and the respondents. It was further submitted that the respondents engaged predominantly in agricultural activities being ranching and partly in wildlife conservation in so far as it related to the ranching business. The interested party submitted that under the Statute Law (Miscellaneous Amendments) Act, 1993, the Agriculture Act Cap. 318 Laws of Kenya amended the definition of “**agriculture**” to mean cultivation of land and use of land for any purpose of husbandry including conservation and keeping of game animals, game birds and protected animals as defined in the Wildlife (Conservation and Management) Act and also of all aquatic animals; and breeding, game ranching, game cropping, and other wildlife utilisation and otherwise turning to account within the provisions of the Wildlife (Conservation and Management) Act but not otherwise of game animals and birds (not being protected animals) and also of all aquatic animals whether in inland waters or the waters of the maritime zones falling within the provisions of the Fisheries Act. Thus, the interested party submitted that wildlife user was properly agriculture falling within its registered sector of agriculture for its recruitment of union members. The interested party further submitted that the recognition and collective agreements as concluded between the interested party and the respondents should be respected by preventing the claimant from recruiting in its sector.

The interested party and the respondents submitted that as per the claimant’s case, once the requirements of section 48 of the Labour Relations Act, 2007 were satisfied by a union, being, recruiting members and serving of check off forms S dully signed by recruited staff authorising deduction of union dues and, there being a ministerial order permitting the deduction and remission of union dues, then the employer was enjoined to deduct and remit the union dues. However, to foster industrial peace, in the present case, only the interested party being the union in recognition and collective agreements should be allowed to continue with union activities at the respondents’ workplace.

The claimant submitted that the definition of agriculture to include wildlife user should not be allowed to deny it from undertaking its objectives in the wildlife sector for which it was registered to operate as a union. The claimant further submitted that where the sectors appeared to overlap, then workers should be allowed to exercise freedom to associate and choose their union in terms of Article 41 of the Constitution.

The court has considered the submissions made for the parties. It is clear that the claimant was registered to recruit in the wildlife conservation sector which overlaps the agricultural sector for which the interested party was also registered to operate. In the opinion of the court, both unions are entitled to recruit and operate in that sector. The claimant has showed that it had recruited and complied with the provisions of section 48 of the Labour Relations Act, 2007. In the opinion of the court, denying the claimant recruitment and the union dues would amount to unjustified denial of furthering the purpose for which the claimant was registered. Accordingly, the court finds that the claimant is entitled to the remedies as prayed for. While making that finding, the court considers that healthy competition among trade unions should be encouraged towards effective, efficient and ethical delivery of the objects for which unions are established. The court has further considered that unions which are registered later in time scoop their spheres of operation out of the wider sectors of the earlier registered unions. Thus, denying younger unions from recruitment and entitlement to union dues after they have satisfied the statutory requirements for such entitlement and on account of pre-existing recognition or collective agreement would, in the opinion of the court, hamper growth and expansion of trade union activities for which new trade unions are registered to achieve.

In conclusion, judgment is entered for the claimant against the respondents for:

1. The respondents to deduct and remit union dues from the employees who have acknowledged their union membership as reflected in the check off system send to them by the claimant on

- 01.01.2011 and on 10.10.2010 respectively and any further employees as may be recruited by the claimant.
2. The deduction and remission of union dues by respondents to commence by end of May 2015 failing which the respondents to be liable to pay the union dues out of their own funds and with interest at court rates from due dates till full payment.
 3. Each respondent by itself or its agents or employees is hereby restrained from victimising, intimidating, harassing, coercing, terminating, dismissing or otherwise disciplining the claimant's members on account of their union membership.
 4. The respondents to severally pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 8th May, 2015.

BYRAM ONGAYA

JUDGE