



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1362 OF 2011

KENYA UNION OF COMMERCIAL

FOOD & ALLIED WORKERS.....
.....CLAIMANT

-VERSUS-

UKWALA SUPERMARKET LTD.
RESPONDENT

Mr. Nyumba for the Claimant union.

Mr. Onyony for the Respondent Employer.

R U L I N G

This court in a ruling dated 30th August, 2013 directed *inter alia*;

“..... the Ministry of Labour by itself or through its appointed agents to conduct ballot of all unionisable employees in all the branches of the Respondent country wide to establish whether or not the union has attained 51% membership of the unionisable employees of the Respondent.

The ballot be conducted in terms of rules agreed upon by both parties within 60 days from the date of the ruling; and

A report of the ballot be presented to court upon conclusion of the ballot for purpose of determining the issue of recognition between the parties”

On 22nd October, 2013, the Respondent filed an application for review dated 10th September, 2013.

On the face of the Memorandum of review, it is apparent that the Respondent seeks to appeal the ruling of the court dated 30th August, 2013, in guise of a review application.

Further, the court views the application as yet another of the Respondent’s dilatory tactics to resolve the real issue between the parties being whether or not the Claimant union has attained 50 + 1% membership of the unionisable employees in Ukwala Supermarket Limited.

It is purported by the advocate for the Respondent that the Respondent does not have branches countrywide as stated in the ruling but the various shops are different entities registered as individual franchises.

This is a matter that was not raised at all in the initial application.

The court nonetheless has made specific orders directed at the Respondent and not any other entity.

The ballot directed by the court relates to the employees of the Respondent before court and the Respondent should ensure that the ballot is conducted in its known supermarkets, wherever they may be in the country where the Claimant has members.

There is no reason why the Respondent should be bothered about enterprises it does not own.

The court reiterates its directive of 30th August, 2013 to the Respondent to allow, a ballot to be conducted in its supermarkets by the Ministry of Labour or through its appointed agents with a view to establish how many of its employees are members of the Claimant union out of the total number of its unionisable employees.

The Respondent is under a statutory duty to provide a comprehensive list of its employees to the Ministry of Labour for the purpose of conducting a ballot. This comprehensive list is to include all the employees regardless of their station in the country.

This exercise is to be concluded within thirty (30) days from the date of this ruling.

The interim orders are vacated accordingly.

The Respondent is to pay the costs of this application.

Dated and delivered at Nairobi this 5th day of February, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE