



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1447 OF 2013

BETWEEN

KENYA GAME HUNTING AND

SAFARI WORKERS UNION
CLAIMANT

VERSUS

SOUTHERN CROSS SAFARIS LIMITED
RESPONDENT

Rika J

CC. Edward Kidemi

Mr. J.M. Ndolo General Secretary of the Claimant, instructed by the Claimant

Mr. Masese instructed by the Federation of Kenya Employers [F.K.E] for the Respondent

ISSUES: REDUNDANCY AND CONTEMPT OF COURT

AWARD

1. Rule 6 [1] of the Industrial Court [Procedure] Rules 2010 states:

“Where a trade dispute is referred to the Court in accordance with the provisions of the Labour Relations Act-

[a] the statement of claim shall be signed by the authorized representative of the party

referring the trade dispute to the Court; or

[b] where the trade dispute has been subject of conciliation, the statement of claim shall be accompanied by-

[i] a report by the conciliator on the conciliation process, supported by minutes of the conciliation meetings; and

[ii] a certificate of conciliation issued by the conciliator under section 69 [a] of the Labour Relations Act.’’

2. In the absence of the certificate issued by the Conciliator under section 69 [a] of the Labour Relations Act, the Claimant or his representative must file an affidavit sworn by the Claimant attesting to the reasons why the Conciliator did not issue a certificate. If conciliation has not taken place, the Claimant must explain why it has not taken place, in a sworn affidavit filed in Court by the Claimant or his authorized representative.

3. The Claimant filed the Statement of Claim in Court on 6th September 2013. Simultaneously, the Claimant filed an application by way of Notice of Motion, asking the Court to find the Respondent in contempt of Court for non-compliance with the orders issued by this Court in Cause Number 246 of 2012 between the same Parties.

4. The Claimant made a formal report on the existence of a trade dispute to the Minister for Labour, under Section 62[1] of the Labour Relations Act 2007, on 22nd May 2013. The Minister appointed a Conciliator, who invited the Parties for conciliation meetings on 30th July 2013 and 1st August 2013. The Respondent attended the meetings, but the Claimant was absent.

6. The Statement of Claim filed on 6th September 2013 does not comply with Rule 6, quoted at the outset. There is no certificate from the Conciliator issued under section 69 [a] of the Labour Relations Act evincing failure of the conciliation process; there is no report of the Conciliator filed in Court, and no minutes of the conciliation meetings are available; there is no affidavit from the Claimant attesting to the reasons why the Conciliator has not issued the certificate; and there is no affidavit suggesting no conciliation has taken place.

7. The Claimant appears to have come to this Court prematurely. It initiated the conciliation process, but did not exhaust that process. Rule 6 of the Industrial Court [Procedure] Rules 2010, is a mandatory Rule, applying to all disputes which are subject to conciliation under the Labour Relations Act 2007.

8. The second aspect of this Claim relates to contempt of Court. It is not clear why the Claimant opted to pursue contempt proceedings in this fresh Cause, while the decision subject matter of contempt, is in Cause Number 246 of 2012. The application for contempt in the fresh Cause is misplaced. The verifying affidavit in support of the Claim is not sworn by any of the Grievants, the Claimant or authorized representative, and says nothing about the conciliation process. The supporting affidavit supporting the application for contempt is sworn by an Employee, who has not revealed in what way he has been affected by the compliance or non-compliance of the decision made in Cause Number 246 of 2012. This Employee made a brief 5 paragraph affidavit that is so generalized, as to come anywhere near the high standards of proof required in establishing the presence of contempt of Court.

9. The Court is satisfied the claims for redundancy, resignation and contempt are improperly in Court. The Claimant should put its house in order and comply with the mandatory Rules to which this Court is subject. ***The Statement of Claim and Notice of Motion filed by the Claimant on 6th September 2013 are improperly before the Court, and are hereby struck out, with no order on the costs.***

Dated and delivered at Nairobi this 1st day of July 2014

James Rika

Judge