



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI

CAUSE NO. 81 OF 2013

KENYA GAME HUNTING & SAFARI WORKERS UNION.....CLAIMANT

VERSUS

ENSOIT RANCH (CONSERVANCY).....RESPONDENT

RULING

1. The issue in dispute in this cause and cause Number 82 of 2013 are similar in that they concern recognition of the claimant and deduction of union dues from unionisable employees of the respondents in both causes, who have allegedly joined the claimant. The two disputes were therefore consolidated and will be determined under cause number 81 of 2013.
2. When the dispute came up for hearing on 13th August, 2013, the court after hearing opening submissions by all the parties to the dispute came to the view that they had not properly utilized and exhausted the preliminary dispute resolution mechanisms as laid down in Labour Relations Act prior to submitting the dispute to the court. Consequently the court directed that the two disputes be submitted for conciliation before the Labour Office Nanyuki and a report be filed by the conciliator on or before 30th September, 2013.
3. When the matter came up for mention on 30th September, 2013 as directed, Mr. Chepkech from KPWAU appeared before the court and requested that his Union be joined in the proceedings as an interested party. He informed the court that a formal application in that respect had been filed although not yet served on the others in the suit. A further mention date was set for 24th October, 2013. This date was extended to 26th November, 2013. When the matter came up for mention on this date, the Court's attention was drawn to the minutes of conciliation meeting held on 11th September, 2013 involving the parties and the KPWAU as interested party. The minutes indicated that KGH & SWU refused to make their submissions in respect of the dispute for the reason that, in their view, KPWAU was a stranger to the dispute. The conciliator therefore recommended in those minutes that the court do direct that KPWAU be joined as interested party to the dispute. This request did not go down very well with Mr. Ndolo for the KGH & SWU who in a letter couched in a rather unsavory language, protested to the recommendation. That notwithstanding the court directed that KPWAU be joined and their submission on the dispute be considered in the formal report to the court.
4. The court finally received the conciliator's report and recommendations on 31st December, 2013 and asked all the parties to make their final submissions thereon.
5. The report found that Agricultural Employer's Association had in existence a recognition agreement with KPWAU which was entered into on 6th September, 1999. The report further stated that KGH & SWU did not produce tangible evidence to the conciliator to show they had recruited members from the two respondent companies. Further, the report stated that the two companies were predominantly

engaged in agricultural activities even though Oljogi Ltd had some rhinoceros protected by armed rangers.

6. Whereas the respondents and the interested party filed no submission in addition to those made before the conciliator and considered in the report, Mr. Ndolo for his part filed further submissions the essence of which was that, the report contained only the wishes of the conciliator and that it quoted matters of investigation yet no one appointed the conciliator as an investigator. In Mr. Ndolo's view, the report donated nothing on the issue in dispute hence should be rejected.

7. In order for a Union to attain recognition status, it is a requirement of the Law (S.54(1) LRA), that such union must represent the simple majority of unionisable employees. Section 54(1) of the Act is couched in such a way that once a trade union attains a simple majority of unionisable employees, recognition is a must.

8. Whilst a reading of section 48 of the Act does not seem to tie deduction of trade union dues to entry into a recognition agreement with a union, a holistic and purposive interpretation of this section reasonably yields the meaning that no union deductions can take place on the basis of recruitment of members in a particular employ alone. Membership to a union is for purposes of collective bargaining which can only occur after entry into a recognition agreement. Any other interpretation would yield absurd results as no unionisable worker joins a union for the sake of it.

9. The foregoing having been said, since the dispute between the claimant and the respondent in these two causes appear to be over recognition and consequent deduction of union dues, the same can only be resolved by seeking to ascertain if the claimant has attained simple majority of unionisable members in the employment of the respondents. However, prior to delving into the issue of membership, it is important to seek to establish the nature of the business the two respondents are engaged in. This issue is important because it would enable the court determine if the claimant is the relevant union for the purposes of collective bargaining.

10. It has been submitted that the respondents' core business is ranching and related agricultural business which tends to identify KPWAU as the relevant union and further that even though Oljogi Ltd had some rhinoceros protected by rangers, this did not remove them from their core business which is ranching.

11. The court's attention has further been drawn to statute Law (Miscellaneous Amendment) Act, No. 11 of 1993 which defines agriculture to include conservation and keeping of game animals, birds and aquatic animals. These submissions have not been reasonably resisted by the claimant.

12. The operative words in deciding whether the recognition status has been attained is "simple majority of unionisable workers". This means, the simple majority of those workers eligible to join a union which is adequately representative of workers in the industry in which the employer is carrying out its core business. Of course it is not possible to attain uniformity in a business undertaking. There will always be cases where an employer may for instance be in the agribusiness employing as majority, unionisable workers skilled in agriculture with a few electricians and plumbers. This does not mean that segment of employees will belong to a different union. The interest of the minority unionisable employees will be subsumed and represented by the relevant union in the core industry enjoying the overall simple majority.

13. To this extent, the court concurs with the recommendation by the conciliator that the claimant be denied recognition by the respondents as it has not adequately demonstrated that the respondents' business lie more in game hunting and safaris than ranching and livestock.

14. It is so ordered.

Dated at Nyeri this 26th day of September 2014.

ABUODHA J. N

JUDGE

Delivered in open Court in the presence of Ndoho Advocate for the Claimant and in the presence of Muranguri Advocate for the Respondents.

ABUODHA J. N.

JUDGE