



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 61 of 2011

KENYA UNION OF COMMERCIAL, FOOD

& ALLIED WORKERCLAIMANT

MUTHAIGA MEAT LTDRESPONDENT

AWARD

1. It is regrettable that this Claim filed on 21 January 2011 has not been determined until now. I say so because the Labour Relations Act has made provision for disputes relating to recognition agreement to be referred to Court as a matter of urgency and therefore deserving of urgent determination. The reasons for referral as a matter of urgency and expeditious disposal need not be belaboured. They are self revealing. For one, it is a matter of constitutional entitlement to the rights to freedom of association and fair labour practices in Articles 36 and 41 of the Constitution, respectively. At a practical level, the recognition is grounded on recruitment of a simple majority as envisaged under section 54 of the Labour Relations Act and any delay may complicate the mathematical precision which is one of the factors to be considered. Recruited employees may leave employment involuntarily or voluntarily or even through natural attrition.

2. Kenya Union of Commercial Food & Allied Workers (the Claimant Union) filed a Memorandum of Claim against Muthaiga Meat Limited (the Respondent) and the issue in dispute was stated as *recognition agreement*.

3. Mr. Owiyo for the Claimant Union and Mr. Omondi holding brief for Ms. Owino appeared before me on 5 October 2012 when an adjournment was sought by the Respondent and granted and hearing fixed for 5 November 2012. On 5 November 2012, there was no representation for the Respondent. Mr. Owiyo made oral submissions and I reserved my decision for 23 November 2012.

4. The facts though in contention are rather straight forward.

Claimant Union's case

5. The Claimant Union is a registered trade union and its membership covers employees in the food production sector. The Respondent deals in meat processing and selling and had 17 unionisable employees at the material time according to the Claimant union but 20 according to the Respondent. According to the Claimant Union, it recruited 9 out of the 17 unionisable employees and informed the Respondent accordingly

6. The Respondent rebuffed the Claimant Union which in turn reported a trade dispute to the Minister for Labour pursuant to section 62 of the Labour Relations Act in 2009. Conciliation efforts did not succeed

and therefore the Conciliator issued a certificate of disagreement on 18 February 2010 hence these proceedings.

Respondent's case

7.The Respondent denied that the Claimant Union had recruited 9 of its employees nor in any case 51 per cent of its employees and further that the Claimant Union was ***not the correct or legal representative of the employees of the Respondent***. It pleaded, it had 20 employees at the material time.

8. But foremost, the Respondent pleaded that it had ceased to be an operating business and does not have any employees in its payroll.

Evaluation

9.If it is true as pleaded by the Respondent that it has ceased operations as a business, then my sentiments at the beginning of this decision appear even more relevant.

10.It would be an exercise in futility and waste of precious judicial time for me to proceed to make a determination herein without establishing the authenticity of the Respondents assertion. The Court was not informed of what happened to the 17 or 20 employees, whether they were declared redundant as per due process and the appropriate authority informed. But all these are just suppositions.

11.Nearly three years have elapsed since the recruitment by the Claimant union of the unionisable employees of the Respondent.

12.The appropriate course for me to take therefore in order to eventually do justice to the parties is to order the Commissioner for Labour to move in fast and establish whether the Respondent has ceased operations and if it has, that would be end of the matter, undesirable as it may be for the Claimant Union, but if still in operation to carry out a ballot to confirm how many of the Respondent's unionisable employees are desirous still of joining the Claimant Union.

Orders

13.In the circumstances it is ordered that:

(i) The Commissioner for Labour to carry out investigations to establish whether the Respondent has ceased to carry on operations/business.

(ii) The Commissioner for Labour to carry out a ballot to establish Claimant Union's membership within the Respondent.

(iii)The Commissioner for Labour to file a report with the Court within the next 15 (Fifteen) days.

(iv)The Registrar of this Court is directed to serve a copy of this ruling on the Commissioner for Labour so that he put in place the necessary arrangements for the investigations and or ballot.

(v)This matter will be mentioned on 17 December 2012 before any Judge in Nairobi for further directions.

14.There will be no order as to costs.

Dated and delivered in open Court at Nairobi this 23rd day of November 2012.

Radido Stephen

Judge

Representations

Mr. Owiyo instructed by

Kenya Union of Commercial, Food & Allied Workers

For Claimants Union

Manraj Pallan & Associates

On record but did not appear at hearing on 5 November 2012

For Respondent