REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Miscellaneous Civil Case 326 of 2007

KENYA UNION OF DOMESTIC, HOTELS,

EDUCATIONAL INSTITUTIONS, HOSPITALS

AND ALLIED WORKERS UNION ……..…….APPLICANT

V E R S U S

SENTRIM KENYA LIMITED

(T/A SIX EIGHTY HOTEL) ……..……RESPONDENT

R U L I N G

The K**enya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers Union** (hereinafter called the Union) is a trade union that represents workers from the industries and trades suggested by its name. It filed a dispute before the **Industrial Court** at Nairobi, being **Cause Number 112 of 2003**, on behalf of some workers of the Respondent, **Sentrim Kenya Limited,** working at its **Sixeighty Hotel in Nairobi.** The issue in dispute was framed as-

"**Refusal by the management to pay audited service charge under-payment totaling to KShs. 1,477,939/00."**

The Industrial Court gave judgment on 14th September, 2006 to the Union in the following terms:-

"**Accordingly, and keeping all the circumstances of this dispute in mind, the Court finds that the Hotel is liable, and awards that it should pay the aforementioned amount of KShs. 1,477,939/00, together with 12% per annum interest thereon, without any deductions whatsoever, to all its employees, including those who have since left their employment or their next of kin, for the relevant period under consideration, i.e., 1985 to 1993.**

"**The court so orders.**

"**Finally, the court directs that the Hotel should pay the total amount to their employees who are still in employment in six equal instalments, the first instalment of which should be paid at the end of October, 2006, and thereafter at an interval of every three months until payment in full. Those**

employees who have since left the hotel employment, or their next of kin, should be paid their shares in a lump sum."

The Union has now applied by notice of motion dated 24th January, 2007 for the following main order:-

"**That the Industrial Court's Award issued on 14th day of September, 2006 and gazetted vide Kenya Gazette Notice No. 8389 of 13th October, 2006 be adopted as the judgment of this Honourable Court."**

There is a further prayer for such further or other orders as the court may deem fit to grant for the ends of justice. Costs for the application are also sought.

The application is stated to be brought under **section 17** of the **Industrial Disputes Act, Cap. 234. Sections 3A, 26, 30** and **38** of the **Civil Procedure Act, Cap 21** are also cited. It is supported by the affidavit of one FESTUS MUTUNGA, the secretary-general of the Union.

The Respondent has opposed the application in a replying affidavit filed on 2nd March, 2007. It is sworn by one JOSEF MUTUKU, the personnel officer of the Respondent. The following grounds of objection appear in the replying affidavit:-

1. That the Union has no *locus standi* to bring the application because the Industrial Court's Award was to individual employees, and that such employees are the only ones who can seek enforcement of the Award.

2. That the Respondent has fully complied with the Award in that it has fully paid such of its ex-employees as have "**turned up to collect their dues…".**

3. That the Union has demanded that the proceeds of the Award be paid to an amorphous entity known as "**Ex–Sixeighty Hotel Workers Group"**, a demand that the Respondent has opposed.

There is a supplementary supporting affidavit filed in response to the replying affidavit. It is sworn by one SAMUEL KIMANI THUO, a former employee and shop steward at the hotel. There is also what has been called a supplementary replying affidavit sworn by one RAJNI SHAH, the chief executive officer of the Respondent. It sets out payments (in accordance with the Award) made to some eight (8) ex-employees of the Respondent.

I have considered the respective written submissions filed on behalf of the parties, including the cases cited. It appears to me that both parties are labouring under a misapprehension. For the Union, the misapprehension is that it should be able to execute the resulting decree against the Respondent without first demonstrating that the Respondent has failed to pay all amounts due upon the Award as directed by the Industrial Court. It is particularly wrong for the Union to expect that it can compel the Respondent to pay any amounts due under the Award to the non-incorporated group called the "Ex-Sixeighty Hotel Workers Group", or to any person for that matter other than as directed by the Industrial Court. That would simply not be possible without first seeking from the Industrial Court a variation of its orders.

On the part of the Respondent, the misapprehension is that once the Award has been adopted as the judgment of this court the Union will be able to execute it as it intends. It cannot do so because, if adopted as the judgment of this court, such judgment will be strictly in the terms of the Award.

The Union, being the party that sued before the Industrial Court, certainly has the *locus standi* to seek bring the present application. The application for judgment cannot arise only in the event of default by the Respondent to meet the Award. Notwithstanding that the Respondent has been willing to pay all ex-employees or their next–of-kin who show up, and has in fact paid eight (8) such ex-employees, nevertheless there appear to be many more ex-employees who have not been paid yet.

I will in the circumstances allow the application by notice of motion dated 24th January, 2007 and grant prayer 1 thereof. **The Award of the Industrial Court made on 14th September, 2006 in its Cause No. 112 of 2003 (and gazetted vide Gazette Notice No. 8389 of 13th October, 2006) be and is hereby adopted as the judgment of this court.** The decree thereof shall be drawn and issued strictly in the terms of the Award.

There will be no order as to the costs of this application. Those will be the orders of the court.

DATED AT NAIROBI THIS 27TH DAY OF MAY, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 29TH DAY OF MAY, 2009