



**Kenya Hotels & Allied Workers Union v Sun Africa Hotels Limited & another; Kenya Union of Domestic Hotels, Educational Institutions and Hospital Workers (KUDHEIHA Workers) (Interested Party) (Cause 88 of 2023) [2024] KEELRC 1195 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1195 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE 88 OF 2023**

**M MBARŪ, J**

**MAY 9, 2024**

**BETWEEN**

**KENYA HOTELS & ALLIED WORKERS UNION ..... CLAIMANT**

**AND**

**SUN AFRICA HOTELS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MGM MUTHU HOTELS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS AND HOSPITAL WORKERS (KUDHEIHA WORKERS). INTERESTED PARTY**

**RULING**

1. The 1<sup>st</sup> respondent, Sun Africa Hotels Limited filed a Notice of Preliminary Objections dated 19 April 2024 on the grounds that;
  1. Representation of the interested party KUDHEiHA Workers by an officer of the interested party is illegal and/or unprocedural and or irregular in this suit; or in the ELRC No.924 of 2017 already consolidated with this case and accordingly all pleadings, court process, affidavits, documents and all purported to have been properly filed or placed on record by such representatives be declared irregular and be struck out or expunged from the record as this court may direct.
  2. Representation by officers of the interested party in the consolidated suit, namely; ELRC 924 of 2017 be declared improper and irregular and the said suit be struck out in limine and or be dismissed with costs for being unprocedural and irregular.



3. The impugned representation and pleadings, court process, documents and all are grossly misconceived and seriously incompetent and the same must be struck out in limine for being fatally flawed and incurably defective.
2. For these reasons, the 1<sup>st</sup> respondent is seeking that a declaration be issued that representation by the Union Officials and all the pleadings, court process and documents filed herein and in ELRC No.924 of 2017 are irregular and be expunged in limine or dismissed ex debito justitiae with costs to the 1<sup>st</sup> respondent.
3. In response, the interested party filed the Replying Affidavit of Hezron Onwonga an employee of the interested party and appointed by the General Secretary under the provisions of Section 2(e) of the [Labour Relations Act, 2007](#) (the LRA) to represent the interested party in these proceedings. He avers that the general secretary of the interested party is mandated under the [LRA](#) to issue written authority to its representative to attend court on his behalf. His letter of authority to attend was issued and is dated 29 January 2024. The 1<sup>st</sup> respondent has not given any legal basis for the objections dated 19 April 2024 which should be dismissed with costs.
4. Parties attended and agreed to address these objections by way of written submissions.
5. Only the 1<sup>st</sup> respondent and interested party participated. The claimant opted to take court directions.
6. The 1<sup>st</sup> respondent submitted that the interested party is represented by an official without authority and any pleadings, records and documents filed by such person are fatally defective and should be expunged from the record. In the case of [Kenya Engineering Workers Union v Rift Valley Engineering Limited](#) Cause No. E011 of 2022 (Nakuru) the court held that Section 22 of the [Employment and Labour Relations Court Act](#), the [Advocates Act](#) and Order 9 of the [Civil Procedure Rules](#) are not a contradiction which requires the party attending court to be represented by its legal representative. The 1<sup>st</sup> respondent also relied on the case of [KMPDU v The Nairobi Hospital \(Kenya Hospital Association\)](#) Cause No.76 of 2020; [Charitable Organizations \(KUEVACO\) v Board of Governors – Maina Wanjigi Secondary School](#) Cause No.744 of 2013.

### Determination

7. The single issue in the objections is whether the interested party is properly represented in these proceedings.
8. Cause N.924 of 2017 is herein consolidated as the parties are the same and the cause of action is closely intertwined. The matter was scheduled for hearing on 25 April 2024 and before the hearing, the 1<sup>st</sup> respondent filed these objections a few days before on 19 April 2024. This effectively frustrated the hearing.
9. Ordinarily, preliminary objections should be on pure points of law and not facts. Such legal issues should be raised at the earliest possible opportunity to avoid parties going into pre-trial directions and at the eve of the hearing, objections are raised. Such is a waste of opportunity.
10. Parties attended before this court unlike other superior courts are regulated under a different regime of laws and rules of procedure. Under Section 22 of the [Employment and Labour Relations Court Act, 2011](#) a trade union is allowed to attend and represent the interests of its members. A trade union official hence enjoys special standing with the court, unlike proceedings before the High Court.
11. A trade union registered under the provisions of the [LRA](#) should be represented in legal proceedings by the General Secretary. Under Section 2(e) of the [LRA](#), the General Secretary is allowed to appoint



another person to represent the union in court. Such letter of authority to act on behalf of the union should be in writing. Hence, under the LRA, an authorized representative of the trade union is defined as follows;

authorised representative” means—

- (a) the general secretary of a trade union;
- (b) an employer or the chief executive officer of an employer;
- (c) the secretary of a group of employers;
- (d) the chief executive or association secretary of an employers’ organisation; or
- (e) any person appointed in writing by an authorised representative to perform the functions of the authorised representative;

- 12. Mr. Hezron Onwonga in his Replying Affidavit has filed a letter of authority to act and attend for the interested party as the authorized representative. The 1<sup>st</sup> respondent has not addressed such a letter of authority. This authority is secured under the law and obtained in proceedings such as herein.
- 13. In the case of Kenya Medical Practitioners, Pharmacists and Dentists Union v County Government of Embu (Cause E017 of 2023) [2024] KEELRC 62 (KLR) (26 January 2024) (Ruling), the court held that a claim filed on behalf of a trade union must be initiated by an authorized persons under the provisions of LRA. This position was reiterated in the case of Kenya Union of Commercial Food Allied Workers v Fralet Agencies (Employment and Labour Relations Claim 29 of 2023) [2023] KEELRC 2208 (KLR) (22 September 2023) (Judgment).
- 14. Parties have been attending proceedings from the year 2017 when Cause No. 924 of 2017 was filed. No objections were filed until the matters were consolidated and scheduled for hearing.
- 15. The objections have no basis in law or fact. The authorities cited by the 1<sup>st</sup> respondent analysed relates to a different set of facts and foundations.
- 16. In this case, the interested party has filed a letter of authority and assigned its officer to attend proceedings herein. This is lawful and valid.
- 17. Objections by the 1<sup>st</sup> respondent dated 19 April 2024 are without merit and hereby dismissed. The 1<sup>st</sup> respondent to meet costs due to the interested party at Ksh.10, 000 and Ksh.5, 000 to the claimant. A hearing date for the main suit shall be issued.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 9 DAY OF MAY 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

