



Kenya Hotels and Allied Workers Union v Great Lakes Hotel Ltd (Cause E035 of 2023) [2024] KEELRC 495 (KLR) (22 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 495 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E035 OF 2023
S RADIDO, J
FEBRUARY 22, 2024**

**BETWEEN
KENYA HOTELS AND ALLIED WORKERS UNION CLAIMANT
AND
GREAT LAKES HOTEL LTD RESPONDENT**

JUDGMENT

1. The Kenya Hotels & Allied Workers Union (the Union) sued Great Lakes Hotel Ltd (the Respondent) on 6 June 2023, and it stated the Issues in Dispute as:
 - i. Refusal by the Respondent to deduct union dues from her employees who are Claimant members and remit the same to the Claimant’s gazetted accounts.
 - ii. Refusal by the Respondent to sign a recognition agreement with the Claimant.
 - iii. Intimidation and victimisation of the Claimant members because of union activities.
2. Instead of filing a Response, the Respondent (acting in person) filed a replying affidavit on 26 June 2023, and the Cause was heard on 22 January 2024.
3. The Union filed its submissions on 5 February 2024 and the Respondent on 16 February 2024.
4. The Court has considered the pleadings, evidence and submissions.

Deduction of Union dues

5. Under section 19(1)(a),(f) and (g) of the *Employment Act*, 2007, an employee is free to use his wages in any manner he wishes including giving written instructions to the employer to deduct and remit to a named person or entity deductions from such wages.



6. When the Respondent's employees who had joined the Union signed the Form S, which were submitted to the Respondent, they were giving the Respondent instructions to deduct from their wages the requisite union subscriptions.
7. The Respondent was obliged by law including the *Labour Relations Act* to commence the deductions within 30 days.
8. Unless some of the employees have withdrawn from the Union as contemplated by section 48 of the *Labour Relations Act*, the Respondent should commence the deduction of union subscriptions forthwith or risk making up for the subscriptions from its own funds.

Recognition

9. It is not in dispute that the Union sent Form S (check-off forms) to the Respondent on or around 1 February 2023 (another form was sent on 20 February 2023) in respect of 18 employees.
10. The Union contended that because the Respondent had 22 employees, it had recruited a simple majority as required by section 54(1) of the *Labour Relations Act* to warrant recognition but the Respondent had declined to grant it the recognition.
11. The Respondent asserted that it had 46 employees, some had withdrawn from the Union and, therefore, the Union had not met the recognition threshold.
12. The Union had reported a trade dispute to the Cabinet Secretary for Labour on 21 February 2023, and a Conciliator was appointed.
13. The Respondent placed before the Court through an affidavit a Conciliator's report dated 30 May 2023, with a finding that the Union had not recruited a simple majority of the unionisable employees as envisaged by section 54(1) of the *Labour Relations Act* to be granted recognition.
14. This Court has no reason to doubt the veracity of the findings by the Conciliator, who was performing a statutory function.
15. This Court finds that the Union has not proved that it achieved the legal threshold for grant of recognition by the Respondent.

Conclusion and Orders

16. From the foregoing, the Court dismisses the claim for recognition, but orders that:
 - (i) The Respondent to commence deducting monthly union subscriptions from its employees who are members of the Union and remitting the subscriptions to the Union forthwith.
17. The parties are social partners with anticipation of getting into a formal recognition, and the Court makes no orders as to costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22ND DAY OF FEBRUARY 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Mr. Ngame, Industrial Relations Officer



For Respondent Mr Kodenga, Human Resources Manager
Court Assistant Chemwolo

