



**Kenya Hotels & Allied Workers Union & another v Boma Hotel/Red Court Hotel  
(Cause 1051 of 2018) [2024] KEELRC 258 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 258 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1051 OF 2018  
L NDOLO, J  
FEBRUARY 15, 2024**

**BETWEEN**

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

**AND**

**AGNES WANJIRU EVAN ..... PROPOSED CLAIMANT**

**AND**

**THE BOMA HOTEL/RED COURT HOTEL ..... RESPONDENT**

**RULING**

1. This ruling flows from a Notice of Motion dated 6<sup>th</sup> April 2021, by which the firm of Akolo Wanyanga & Company Advocates seeks to come on record for the Grievant, Agnes Wanjiku Evan in place of Kenya Hotels & Allied Workers Union. The Grievant further seeks to be made a party in the claim.
2. The application is supported by an affidavit sworn by the Grievant and is based on the following grounds:
  - a. That the Grievant would like to withdraw instructions from Kenya Hotels & Allied Workers Union;
  - b. That under Article 22(2) of *the Constitution* of Kenya, a person has the right to choose their representative in court at any time of the proceedings.
3. Samuel Akolo Wanyanga, Advocate also swore an affidavit in support of continuance of the suit dated 11<sup>th</sup> July 2023.
4. Counsel claims to have come on record in the matter on 24<sup>th</sup> August 2021 and adds that he was subsequently instructed by the Grievant to come on record for her and to seek her substitution as the



- Claimant in place of the Union. Counsel states that he had filed an application dated 6<sup>th</sup> April 2022 in that regard, which he failed to prosecute due to various intervening work related factors.
5. The Claimant opposes the application by a replying affidavit sworn by its Secretary General, Wycliffe Sava Mundu on 2<sup>nd</sup> October 2023.
  6. Mundu terms the application as frivolous, vexatious and an abuse of the court process.
  7. He depones that the Claimant filed a Memorandum of Claim on behalf of its member, Agnes Wanjiru Evan.
  8. He adds that at the institution of the suit, he had authorised John Simiyu, the then 2<sup>nd</sup> Deputy Secretary General of the Claimant, to litigate this matter, among many others, in court on behalf of the Union.
  9. Mundu further depones that on 29<sup>th</sup> June 2021, the Claimant carried out elections for various positions, in which John Simiyu lost the position of 2<sup>nd</sup> Deputy Secretary General.
  10. He claims that aggrieved by the loss, John Simiyu caused the file in this matter, among others, to disappear and thereafter un-procedurally issued instructions to Ms Akolo Wanyanga & Company Advocates.
  11. Mundu denies ever receiving a letter from Agnes Wanjiru Evan signifying her resignation from the Union.
  12. I have carefully considered the pleadings and supporting documents filed by the parties in this application and a worrying picture presents itself; an Advocate files a Notice of Appointment to act for a trade union and after the appointment is challenged by union officials he goes ahead to seek to come on record for a grievant on whose behalf the union has filed a claim.
  13. I must at the very outset state that the power granted to trade unions to sue in their name on behalf of its members is a special one donated by the [Labour Relations Act](#). This power is so special that trade unions are the only entities allowed to file claims in this Court, on behalf of its members where the monthly salary falls below the Kshs. 80,000 threshold set by the Gazette Notice donating jurisdiction to the Magistrates' Courts.
  14. By law, the power granted to trade unions to approach this Court cannot be donated to any other person, including an Advocate or a member acting in person. A trade union cannot therefore be replaced as claimant in a case filed before this Court.
  15. This finding would have dispensed with the present application. I must however add that in my view, what is playing out in these proceedings is a dispute between a trade union and its former official, with a member caught in between. This is a most unfortunate development but because the dispute between the union and its former official is not before the Court, I will not say more on this issue.
  16. Finally, the application dated 6<sup>th</sup> April 2021 is dismissed with an order that each party will bear their own costs.
  17. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:



Mr. Wanyanga for the Applicant

Mr. Ombati for the Claimant

