



**Kenya Hotels & Allied Workers Union v Ikonia Resort & Hotels Limited & another
(Cause E032 of 2022) [2023] KEELRC 618 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 618 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E032 OF 2022
CN BAARI, J
MARCH 16, 2023**

BETWEEN

KENYA HOTELS & ALLIED WORKERS UNION CLAIMANT

AND

IKONIA RESORT & HOTELS LIMITED 1ST RESPONDENT

WILLIAM ODUOL 2ND RESPONDENT

RULING

1. Before Court is the Respondent's Notice of Preliminary Objection dated 13th March, 2022, seeking to strike out the Claimant's suit on the grounds that the Claimant has no *locus standi* to bring, commence or defend proceedings on behalf of the grievant for lack of a recognition agreement with the 1st Respondent.
2. The Respondent further contends that the Claimant does not have privity of contract with the 2nd Respondent for lack of an employer/employee relationship.
3. The Claimant opposed the Preliminary Objection vide a replying affidavit sworn by Chadwick Oloto Ngono on 4th January, 2023. The Claimant avers that recognition is intended to pave way for collective bargaining, and lack of recognition does not bar a union from representing an aggrieved member, faced with unfair labour practices from an employer.
4. Parties canvassed the Preliminary Objection by way of written submissions, and submissions were received from both parties.

The Respondent's Submission

5. The Respondent submits that the Claimant has no *locus standi* to commence these proceedings without a recognition agreement. It is their further submission that courts have now settled that



without a recognition agreement, a Trade Union has no *locus standi* to represent workers in a court of law. The Respondent placed reliance in [Kenya Union of Employees of voluntary and Charitable Organizations v Board of Governors & Maina Wanjigi Secondary School](#) (2015) eKLR to buttress this position.

6. The Respondent further submits that the Claimant does not have an employer-employee relationship with the Respondents and the suit herein should be struck out. The Respondents sought to rely in [Stephen Onyango Otieno v Fiibarako Transporters Company Limited](#) (2018) eKLR for the holding that failure by the Claimant to establish that he was an employee of the Respondent makes it unnecessary to go into issues raised.

The Claimant's Submissions

7. It is the Claimant's submission that per Section 54 of the *Labour Relations Act*, a recognition agreement is to pave way for negotiation of a Collective Bargaining Agreement, and lack of recognition does not bar a Union from representing her member.
8. The Claimant further submits that Articles 3, 22 and 258 of the *Constitution* empowers it to file suit on behalf of a member and that it is clothed with the mandate to stand in for her membership in this suit.

Determination

9. The legal position regarding Preliminary Objections was spelt out in the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696, where the court held as follows:

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

10. The Preliminary Objection in this suit, concerns *locus standi* by the Claimant to institute this suit on behalf of the grievant for reason that it does not have a recognition agreement with the Respondents. The Claimant has not disputed that it does not have a recognition agreement with the Respondent, and only contends that the absence of recognition does not bar it from representing her members.

11. Section 54 (1) of the *Labour Relations Act* states: -

“An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.”

12. Further Section 54 (3) states: -

“An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union shall conclude a written recognition agreement recording the terms upon which the employer or employers' organisation recognises a trade union.”



13. By dint of these provisions of the law, I agree with the Respondent that in the absence of a recognition agreement, the Respondent/employer cannot recognize the Claimant union as a representative of the interest of their unionisable employees. Without recognition, the Claimant union has no interest to protect.
14. In *Communication Workers Union v Safaricom Limited* (2014) eKLR, Mbaru J held that without recognition by an employer, a trade union has no *locus standi* and cannot file a trade dispute within the *Labour Relations Act*.
15. I fully agree that to represent a grievant, a union must first have a recognition agreement with the employer, which creates a relationship for proper dealing between parties, and to avoid surprises for either party.
16. I further hold that without a recognition agreement with the Respondents, the Claimant does not have an employer-employee relationship with the Respondent.
17. The upshot is:
 - i. The Respondent's Notice of Preliminary Objection is upheld, and the Claimant's Memorandum of Claim dated 15th July, 2022, is struck out with costs.
18. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 16TH DAY OF MARCH, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Ngame Present for the Claimant

N/A for the Respondent

Ms. Christine Omolo-C/A

