



**Kenya Hotels and Allied Workers Union v Mada Holdings T/A Baobab Sea Lodge/
Kilifi Bay (Cause 2 of 2021) [2022] KEELRC 1515 (KLR) (14 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1515 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
CAUSE 2 OF 2021
BOM MANANI, J
JUNE 14, 2022**

**BETWEEN
KENYA HOTELS AND ALLIED WORKERS UNION CLAIMANT
AND
MADA HOLDINGS T/A BAOBAB SEA LODGE/KILIFI BAY RESPONDENT**

RULING

1. This is an application to substitute the claimant and re-describe the respondent in the cause. The applicants, Daniel Juma, Boroko Mwanzonga Kalama, Mark Shida Kenga, Peter Kazungu Kenga, George Mwamuye and David Wambua pray that an amendment of the pleadings be ordered in order to reflect the changes aforesaid.
2. The applicants are nominal parties in the cause. The claim was filed by the current claimant as the principal party litigating on behalf of the applicants.
3. The context of the application is that the claimant is a registered Trade Union mandated to represent workers in the hospitality sector in Kenya. The applicants, who were employees of the respondent, are members of the Claimant Union.
4. When the applicants were allegedly terminated from employment, the claimant Union filed the current claim to seek various reliefs on their behalf. In instituting the cause, the claimant invoked its mandate under the *Labour Relations Act*, 2007.
5. For some reason, the applicants now feel that the claimant should drop out of the cause to enable them take up the conduct of the cause as the principal claimants. Although the reasons informing this decision are not clearly articulated, it is the Applicants' position that they nevertheless have a right to pursue the cause on their own.



6. The applicants also contend that the name of the respondent has not been appropriately set out in the statement of claim. Whilst the respondent is a corporate entity, this is not obvious from the description of the respondent in the statement of claim.
7. The respondent has opposed the application. In the respondent's view, the application has been filed in bad faith. The application is incompetent and vexatious.
8. The respondent holds the view that since the applicants acquiesced to the filing of the claim by the current claimant they should not be permitted to re-characterize it at this stage of the litigation. The respondent mentions the signing of verifying affidavits and witness statements by the applicants as evidence of acquiescence.
9. I have considered the application. Although rule 14(6) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 does not address the question of substitution of parties to a cause, I note that section 12 of the *Employment and Labour Relations Court Act* gives the court wide jurisdiction to issue orders that are necessary to meet the ends of justice. In my view, this includes jurisdiction to issue orders for substitution of parties to a cause before the court.
10. On the authority of the Court of Appeal decision in *Kenya Trypanosomiasis Research Institute v Anthony Kabimba Gusinjilu (Suing for and on behalf of 112 Plaintiffs)* [2019] eKLR, it is my view that a nominal party to a cause can always apply to be considered as the principal litigant. This is because by virtue of the action being brought on behalf of such party, he is the ultimate beneficiary in the litigation. And the orders that will issue at the tail end of the case will, in any event affect him.
11. In any event, members of a Trade Union are not bound to remain in such Union or to continue being represented by it. Article 41 of *the Constitution* as read with section 4 of the *Labour Relations Act* appears to underscore the right of employees to join or leave a Trade Union at will. In my view, to force the Applicants to be represented by the Claimant is in effect to infringe on this right.
12. Consequently, I find no merit in the respondent's resistance to the request to substitute the current claimant with the applicants. This prayer is granted.
13. On the question of re-describing the respondent so as to appropriately set out its name, I think that such request should be readily granted as this is critical in ensuring that the parties that will ultimately be bound by the court's decision are the correct ones. These sentiments are alluded to in *Mapendo International v Metra Investment Ltd & 4 others* [2014] eKLR.
14. I see no prejudice that the respondent will suffer if the prayers sought are granted. I think that any inconvenience occasioned to the Respondent as a result of the proposed requests can be adequately remedied by an order for costs of the application.

Disposition

15. The application is thus granted as presented. More specifically:
 - a) The applicants are permitted to come on board these proceedings as principal claimants.
 - b) The applicants are also granted leave to re-describe the Respondent as proposed.
 - c) The applicants are to effect these changes by filing and serving on the respondent an amended statement of claim within 7 days of this order.
 - d) The respondent is granted leave to file amended pleadings within 7 days of service of the amended statement of claim.



e) The costs of the application are granted to the respondent. It is so ordered.

DATED, SIGNED AND DELIVERED ON THE 14TH DAY OF JUNE, 2022.

B. O. M. MANANI

JUDGE

In the presence of:

Odhiambo for the Applicant

Musyoki for the Respondent

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this Ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

