



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1388 OF 2018**

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

**VERSUS**

**GOLDEN JUBILEE LTD T/A CROWN PLAZA NAIROBI..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 17<sup>th</sup> May, 2019)

**JUDGMENT**

The claimants filed the memorandum of claim on 17.09.2018 alleging the unfair termination of Gordon Obiero Rawuor, Peter Kuria Mukuria, and Eric Kamau Kiguru.

The respondent filed a notice of preliminary objection on 05.11.2018 through Gicheha Kamau & Company Advocates upon the following grounds:

- a) That the suit is misconceived, incompetent, bad in law and an abuse of the Court process.
- b) That the claimant lacks Locus Standi to sue on behalf of the aggrieved parties herein who have always been registered members of KUDHEIHIA Workers Union.
- c) That the suit before the Court is premature since the parties did not comply with the provisions of the Labour Relations Act before the institution of the suit.

The respondent prayed that the suit be struck out with costs to the respondent.

The Court has considered the pleadings and the submissions filed for the parties on the preliminary objection. The Court makes findings as follows:

- a) Under section 22 of the Employment and Labour Relations Court Act, a party to the proceedings may be represented in court by an office bearer or official of the party's trade union. As held by Makau J in the ruling in **Kenya Shoe & Workers Union – Versus- Modern Soap Factory Ltd [2017]eKLR**, trade unions must differentiate between representing their members in collective disputes and assisting them in their personal disputes.
- b) In the present case the claimant trade union says it has recruited the three members and other members being employees of the respondent. Further the union reported a trade dispute under section 62 of the Labour Relations Act, 2007. The parties submitted themselves to the statutory conciliation process. An amicable resolution was not reached and the present suit is essentially an unresolved trade dispute referred to the Court under section 73 of the Labour Relations Act, 2007. Section 73(1) provides that if the trade dispute is not resolved, it shall be referred to the Court in accordance with the rules of the Court. The Rules of the Court, 2016 in Rule 5 thereof, provides for a statement of claim issued pursuant to the Labour Relations Act, 2007. The Court returns that, the claimant and the respondent having been parties to the trade dispute, the claimant has the necessary *locus standi* or standing to file the suit as done in accordance with the said section 73(1) and Rule 5.
- c) The respondent faults the claimant on account that the claimant and the respondent have not concluded a recognition agreement as per section 54 of the Act. The Court considers that conclusion of such agreement is distinguishable and distinct from a trade union's entitlement to institute a trade dispute and subsequently a reference to the Court as done in the instant case. The trade union, in the opinion of the Court, is entitled to act by way of a trade dispute in the interest of its members even when there is no recognition agreement but the union is shown to be working towards such recognition within its duly registered sector of operation. In such transitional time, the trade union will protect its members on the basis of the terms and conditions of service per individual contracts of service until the recognition and collective agreements are concluded.
- d) The Court considers that the purpose of recognition under section 54 of the Labour relations Act, 2007 is to pave way for collective bargaining and not to pave way for representation or initiation of a trade dispute or suit like in the instant case. The Court holds that once a trade union has recruited members, it is entitled to represent such members or initiate trade dispute proceedings or a suit for the benefit of its members, even in absence of recognition.

Accordingly, the preliminary objection is dismissed with costs and parties directed to take further steps towards expeditious determination of the suit.

**Signed, dated and delivered in court at Nairobi this Friday 17<sup>th</sup> May, 2019.**

**BYRAM ONGAYA**

**JUDGE**