REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 560 OF 2013

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

VERSUS

HOTEL ROYAL ORCHID.....RESPONDENT

J U D G E M E N T

1. By a Memorandum of claim filed on 22nd March,2017 the Claimant sought orders of this Court that the respondent be compelled to sign a recognition agreement with the Claimant to pave way for CBA negotiations within 20 days.

2. The Claimant averred that between July, and August,2015 it recruited 105 employees of the respondent thereby attaining 75% of unionisable employees. On 21st August,2015, the Claimant forwarded proposed recognition agreement to the respondent for perusal and possible signing on 3rd September,2015 but the respondent declined. The matter was reported to the CS Labour who accepted the dispute and appointed Mrs. C. Obara to conciliate the parties in dispute.

3. The conciliator convened two conciliation meetings and recommended the signing of the recognition agreement. The respondent however declined to implement the conciliators recommendations.

4. Mr. Simuyu for the Claimant submitted that the Claimant successfully achieved the mandatory requirements of so plus 1 percent majority envisaged and section 54(1) of the Labour Relations Act,2007 and despite several attempts by the Claimant, the respondent has chosen to violate section 54(1) of the Act.

5. Ms Kanyiri for the respondent submitted that the respondent had not met legal threshold for recognition. Further that the respondent being a member of the Kenya Association of Hotel Keepers and Caterers (KAHC) had a valid recognition agreement and CBA with Kudheiha (the interested party herein) which covered all unionisable employees of the respondent. In the circumstances the respondent was unable to sign a separate recognition agreement with the Claimant during the existence of the recognition agreement and CBA with the interested party.

6. Ms Kanyiri further submitted that the respondent being a member of KAHC the Claimant ought to save recognition with the Association and not from the respondent directly as this amounted to infringement of respondents' constitutional right.

7. The interested party on their part reiterated submissions by the respondent and further stated that as a result of the existing agreements the respondent deducts and remits through check-off system, the applicable membership fees to the interested party. Further that none of the respondent's employees has executed or filed the requisite withdrawal forms with the interested party.

8. The interested party further submitted that the Claimant's contention about the absence of a rival union due to the interested parties alleged lacked of locus to represent workers within the hotel industry was misleading. To this end the Interested Party relied on the case of **KHAMU vs ALI (2015) eKLR** and which a three Judge Bench of the Court held that the prayer to order the registrar of Trade Unions to strike out the words "hotels, restaurants, casinos, camp sites, catering and similar establishments providing lodging, food beverages or both from the constitution of the 3rd respondent would in the Courts view infringe on the freedom of association of the 2nd respondent's employees.

9. The Court further stated that having joined a crowded field where there was already another player, the Claimant had to be prepared for competition, and to fight for its share of members, it could not use and order of the Court to get members where it had been unable to recruit over the years.

10. This dispute reflects the vicious competition and turf wars following the sprouting of rival trade unions. The older trade unions such as the Interested party have to constantly contend with new-entrants in areas they previously dominated. As observed by my colleague in the

case of **KHAWU v. ALI** referred to above, union membership is the exercise of freedom of association and no court can order anyone to join or remain in an association which they do not want to join or remain in.

11. The respondent and the interested party have in existence a recognition agreement and CBA. The Claimant contends it has recruited the necessary simple majority required under section 54(1) of the LRA.

12. However, no employer or association of employers can have two recognition agreements and CBA running concurrently with regard to unionisable employees. It may be true that the Claimant has recruited the requisite simple majority under LRA however this does not earn it automatic recognition when there is in existence a parallel recognition agreement and CBA by a rival union. The parties to the existing recognition agreement and CBA have to properly disengage as stipulated in the Labour Relations Act before a new actor can enter the arena.

13. In the circumstances the Court will decline to grant orders sought and dismiss the suit however with no order as to costs.

14. It is so ordered.

Dated at Nairobi this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

Delivered this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

……for the Claimant and

……for the Respondent.

Abuodha J. N.

Judge