



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1751 OF 2016**

**(Before Hon. Justice Hellen S. Wasilwa on 30<sup>th</sup> May, 2018)**

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

**VERSUS**

**THE PANARI HOTEL.....RESPONDENT**

**RULING**

1. The Application before Court is the Preliminary Objection filed by the Respondent on the following grounds:-

- 1. That the Claimant lacks the locus standi to act for the grievants in the suit as there did not exist a recognition agreement between the Respondent and the Claimant.***
- 2. It is not possible to plead and file a relevant response in light of the manner in which the claim has been drafted and filed.***
- 3. It will be difficult to conduct a hearing as the Respondent will be compelled to call a different witness to every grievant and this will create confusion and chaos in the suit.***
- 4. The suit as it is drawn consists of a multiplicity of subject matters that are mutually exclusive and ought to be tried separately.***
- 5. The suit as drawn is bad in law, frivolous and vexatious and amounts to an abuse of the Court process and should be dismissed.***

2. The Claimant filed a Replying Affidavit to this Preliminary Objection and stated that they are a union within the provision of Section 19 of Labour and Relations Act 2007 with the mandate to represent her members as envisaged in Section 22 of the Employment Act 234 B Laws of Kenya.

3. They aver that the Preliminary Objection is in breach of the grievants constitutional right to representation and association within the provision of Article 22 and 41 of the Constitution. They aver that the Preliminary Objection has no legal basis and demonstrates incompetence.

4. The parties agreed to dispense this Preliminary Objection through written submissions. The main contention by the Respondent is that the suit is misjoined and should never have been consolidated.

5. The Claimants in their submissions contend that the consolidation is proper as provided for under Rule 23 of the Employment and Labour Relations Court (Procedure) Rules.

6. I have considered the averments of both parties. The issues raised by the Respondents on the misjoinder of this suit are issues covered by Rule 23 of the Employment and Labour Relations Court (Procedure) Rules which state as follows:-

**“The Court may consolidate suits if it appears that in any number of suits:-**

- a) some common question of fact or law arises; or**

**b) it is practical and appropriate to proceed with the issues raised in the suits simultaneously”.**

7. The issue of locus of the Claimant on the other hand is covered by Article 41 on the Labour rights especially on the limb covering the freedom of Association. Indeed an employee has a right to form a union of his choice. Purposes of union is to represent their members in such suits and ensure their best interest.

8. In my view denying the Claimants a right to representation on account of recognition is denying them their labour rights.

9. I find no merit in the Preliminary Objection raised and I dismiss it and order the claim to proceed.

10. Costs for the Claimant/Respondents.

**Dated and delivered in open Court this 30<sup>th</sup> day of May, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kirinya holding brief for Njiru for Respondent – Present

Samson for Claimant – Present