



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 499 OF 2018

KENYA UNION OF ENTERTAINMENT AND MUSIC

INDUSTRY EMPLOYEES.....CLAIMANT

V

MULTIMEDIA UNIVERSITY HOTEL AND

CONFERENCE CENTRE LTD.....RESPONDENT

RULING

1. The Kenya Union of Entertainment and Music Industry Employees (the Union) commenced legal proceedings against Multimedia University Hotel & Conference Centre Ltd (Respondent) on 12 April 2018.

2. The Union stated the Issue in Dispute as Refusal by the Respondent to accord the Claimant herein Recognition Agreement, refusal to comply with Section 48 of the Labour Relations Act 2007 by way of deducting "and remittance of union dues and victimisation of the Claimant members".

3. Filed together with the Memorandum of Claim was a motion seeking

1. ...

2. ...

3. THAT interim orders be issued against the Respondent to comply with Section 48 of the Labour Relations Act by way of deducting and remittance of union dues till the hearing and determination of this suit.

4. THAT the Honourable Court deem it fit to issue interim orders (*sic*) the Respondent from victimising the applicant members on ground of trade union activities/affiliation and or pending the hearing and determination of this suit.

5. THAT the Honourable Court to allow the parties to proceed by way of written submissions to dispose off the main suit.

4. The Respondent filed grounds of opposition on 30 April 2018 and a replying affidavit in opposition to the application on 2 May 2018, and the Court took arguments on 9 May 2018.

5. The Union's case is that it recruited some employees of the Respondent and that it sent to the Respondent Form S to enable it start deducting and remitting union dues, but the Respondent failed to comply.

6. As a result, a trade dispute was reported to the Cabinet Secretary, Labour and because the Respondent failed to attend, a Certificate of Unresolved Dispute under section 69 of the Labour Relations Act was issued on 15 March 2018.

7. In opposing the application two main reasons were advanced.

8. The first reason advanced was that the Respondent does not exist as a *juristic person* but as a unit of Multimedia University.

9. The other key ground advanced was that the Union reported a trade dispute to the Cabinet Secretary, Labour on 30 November 2017, while it wrote to University on 1 December 2017 informing it of the recruitment of some 49 employees. The dispute, it was urged was premature.

10. Part VIII of the Labour Relations Act provides for pre- litigation dispute resolution mechanisms.
11. It is apparent that the Union short-circuited that process by reporting a trade dispute even before it had informed the Respondent or the University that it intended to exercise its right to organise.
12. That runs counter to the principle of good faith in industrial relations, and it would incline the Court not to grant the orders sought.
13. Further, the Respondent as sued does not exist.
14. In the view of the Court, that is a fatal defect in this type of proceedings where recognition is being sought.
15. On that ground, it is not only the application which is incompetent and unmerited, but the Memorandum of Claim as well.
16. The Court therefore comes to the conclusion that the present proceedings ought to be terminated by being struck out.
17. In the event, the Court orders that the Memorandum of Claim filed in Court and the attendant application be struck out with no order as to costs.

Delivered, dated and signed in Nairobi on this 15th day of May 2018.

Radido Stephen

Judge

Appearances

For Union Mr. Mucuha, Secretary General, Kenya Union of Entertainment & Music Industry Employees

For Respondent Mr. Deya instructed by Miller & Co. Advocates

Court Assistant Lindsey