



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 117 OF 2017

(Before Hon. Justice Mathews N. Nduma)

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

VERSUS

SOVEREIGN HOTEL LIMITED.....RESPONDENT

J U D G M E N T

1. This is a dispute arising from failure by the Union and the employer to agree on the terms and conditions of service set out in the Memorandum of Claim dated 27th March, 2017 and filed on 28th May, 2017.
2. The Union reported a dispute on 6th November, 2015 in terms of section 62 of the Labour Relations Act, 2007.
3. Ms. Hellen Maneno was appointed conciliator but the dispute was not resolved.
4. In the Memorandum of Claim, the Claimant Union does not indicate whether it has a Recognition Agreement with the Respondent. The Union does not also disclose whether it has in the past concluded a collective Agreement (CBA) with the Respondent in the past.
5. The Claimant Union has also not pleaded whether the employees of the Respondent are its members.
6. The only documentary evidence indicative of a past relationship between the Respondent and the Claimant is a letter dated 18th September, 2015 written by Mr. Wycliffe Sava, Deputy Secretary General of Sovereign hotel.
7. The conciliator Ms. Hellen Maneno provided the Union with a certificate of unresolved dispute dated 24th June, 2016, which is attached to the Memorandum of Claim.

Defence

8. The Respondent denied all particulars of claim in entirety without any admissions whatsoever except the jurisdiction of the court to deal with the matter and the description of the parties.

CPMU Report

9. The Ministry of East Africa Community, Labour and Social Protection filed a report in court on 27th June, 2017.
10. It is stated in the report that the two parties signed a Recognition Agreement on 27th August, 2015 and commenced negotiations of Collective Bargaining Agreement on 23rd October, 2015 where all clauses were agreed upon except the twelve enumerated clauses in the Memorandum of Claim. Neither the Recognition Agreement nor the draft Collective Bargaining Agreement was provided to the court.
11. The CPMU report does not offer any information on the economic status of the Respondent nor is there any information given on the current terms and conditions of service enjoyed by the Respondent's workers presently.
12. M/s. Syprosa M. Achieng stated that she was unable to get any useful information from Mr. Frank Oyaya, the Human Resource Manager of the Respondent. She states that she obtained a copy of the signed Recognition Agreement dated 27th August 2015, from the Claimant Union.

Proceedings

13. No oral testimony or evidence on affidavit was presented to the court in this matter. Instead, on 27th June, 2017 Hon. Maureen Onyango recorded the following order;

“Hearing on 18th October, 2017. Parties to file written submissions and will proceed by way of highlighting of submissions.”

14. The Claimant filed written submissions on 3rd October, 2017 but the Respondent did not file any despite acknowledgment of receipt of the Claimant’s submissions on 3rd October, 2017 by Ngala Awino & Co. advocates.

Determination

15. The issues for determination are as follows:-

- (i) Whether the Claimant has proved its case on a balance of probabilities.
- (ii) Whether the Claimant is entitled to the reliefs sought.

Issue i

16. In terms of section 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya, the Claimant bears the burden of proving its case on a balance of probabilities.

17. The Claimant did not in its pleadings, provide a Recognition Agreement duly signed between itself and the Respondent.

18. The Claimant did not provide in its pleadings or annexures, the current terms and conditions of service enjoyed by the workers of the Respondent.

19. The Claimant did not provide any evidence that the employees of the Respondent are its members.

20. The report filed by CPMU, did not help either because it discloses no information whatsoever on financial status of the Respondent and the terms and conditions of service currently enjoyed by the workers of the Respondent.

21. Section 57(1) of Labour Relations Act, 2007 provides:-

“An employer, group of employers or an employers’ organisation that has recognised a trade union in accordance with the provisions of this part shall conclude a collective agreement with the recognised trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.”

22. In the light of above, the Claimant has an obligation to prove to the court on a balance of probabilities the following:-

- (i) That it is a registered union that has been recognized by the Respondent.
- (ii) The employees covered by the Recognition Agreement.
- (iii) The current terms and conditions of service enjoyed by the covered employees.
- (iv) Justification to change for the better those existing terms of service.

23. The Claimant chose not to tender any oral evidence nor present the relevant documentation to prove its case. As stated, no Recognition Agreement signed by the parties was presented to court. No sample contract of employment of the employees purportedly covered was presented to the court to show the existing terms enjoyed by the employees to justify, change of the same.

24. CPMU, failed to provide, relevant information to further the case by the Claimant.

25. Accordingly, the Claimant has failed to prove its entire case, on a balance of probabilities and the same is dismissed.

26. It follows, that issue II, is decided in the negative, since no case has been proved to warrant award of any new terms of service as prayed by the Claimant Union.

27. The court awards no costs to the Respondent since there is evidence of non-co-operation on it’s part, which has contributed to the failure of this case. Each party to bear its own costs of the suit.

Judgment Dated, Signed and delivered this 6th day of June, 2018

Mathews N. Nduma

Judge

Appearances

Mr. John Simiyu for the Claimant Union

Mr. Ngala Awino Respondent

Chrispo – Court Clerk