



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 585 OF 2011**

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

**VERSUS**

**SOUTHERN SUN MAYFAIR.....RESPONDENT**

**JUDGMENT**

1. The respondent in this matter has raised a fundamental issue which must be addressed by the claimant before the court can be seized of jurisdiction to hear the matter.
2. Part VII of the Labour Relations Act deal with recognition of trade unions and collective agreements. Section 54(6) provides as follows:  
  
“If there is a dispute as to the right of a trade union to be recognized for the purposes of collective bargaining in accordance with this section or cancellation of a recognition agreement, the trade union may refer the dispute for conciliation in accordance with provisions of Part VIII”.
3. Part VIII of the Act at Section 62(1) provides that a trade dispute may be reported to the Minister who shall within twenty one days of the trade dispute being reported appoint a conciliator to attempt to resolve the trade dispute. Section 72(1) of the Act provides that if a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Industrial Court in accordance with the rules of the Court.
4. Section 74 of the Act however permits referral to the court of a dispute as a matter of urgency if the dispute concerns recognition of a trade union. This claim was filed as an ordinary claim without any evidence of conciliation as required by part VIII of the Act.
5. Where the law requires that a particular step be taken before invoking jurisdiction of the court, that step must be taken first before the court can become seized of the matter.
6. The court will in the circumstances decline jurisdiction and direct that the dispute be reported to the Minister for conciliation in accordance with Part VIII of the Labour Relations Act.
7. It is so ordered.

Dated at Nairobi this 13<sup>th</sup> day of July, 2018

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 13<sup>th</sup> day of July, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.