



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 450 OF 2017**

**BETWEEN**

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

**VERSUS**

**SUCHAM INVESTMENT LIMITED**

**T/A AMANI TIWI BEACH RESORT.....RESPONDENT**

**RULING**

1. The Claimant is a registered Trade Union, which represents Unionisable Employees in the hotel industry. It filed this Claim on 9<sup>th</sup> June 2017, on behalf of 13 former Employees of the Respondent Hotel, who are claimed to be Members of the Claimant Union, and whose contracts were terminated by the Respondent on the ground that the jobs held by the said Employees had become redundant. The Claimant prays the Court to declare redundancy unfair; reinstate the affected Employees; or, order the Respondent to pay the Employees terminal benefits and compensation; and that the Court grants any other suitable relief.

2. The Respondent filed an Application on 3<sup>rd</sup> July 2017, asking the Court to strike out the Claim, on the ground that the Claimant does not have locus standi, or on the ground that the Claim is in abuse of the Court Process.

3. The Application is based on the Affidavit of Respondent's Human Resource Assistant, Omar Hassan, sworn on 22<sup>nd</sup> June 2017. The main ground is that the Employees on whose behalf the Claim is presented are not Members of the Claimant Union; they belong to a rival Union, Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied Workers [KUDHEIHA]. The Employees' pay slips show union dues were deducted from the Employees' monthly salaries in favour of KUDHEIHA. KUDHEIHA has a Recognition Agreement and Collective Bargaining Agreement with the Hoteliers' Umbrella Association. The Respondent belongs to the Hoteliers' Association. Only KUDHEIHA can legally engage the Respondent on behalf of the Employees. KUDHEIHA and the Respondent have already engaged the dispute resolution mechanisms under their Recognition Agreement, with respect to the affected Employees. The Claimant Union cannot be allowed to hijack that process by coming to Court, and purporting to represent the same Employees.

4. The Claimant opposes the Application, relying on the Replying Affidavit sworn by Secretary-General Wycliffe Sava Mundu, on 13<sup>th</sup> November 2017. He states there has been a long running dispute between the Parties herein, on Employees' membership of the Claimant Union. The Respondent has been urging Employees to withdraw from the Claimant Union and join KUDHEIHA. The Claimant has been compelled to seek Court's protection against victimizing of its Members by the Respondent on account of their association with the Claimant. The Recognition Agreement between KUDHEIHA and Hoteliers' Association was invalidated by the Court. The Respondent however continues to pay trade union dues to KUDHEIHA, through coercion and intimidation of Employees. The Claimant and the Respondent have a valid Recognition Agreement. Employees have freedom of association. They have never been informed of other parallel dispute resolution processes in place, at the time of coming to Court.

5. The Application was heard on 31<sup>st</sup> May 2018. The Respondent submits membership to a Trade Union cannot be presumed. It must be established through evidence of subscription fees or membership card. Pay slips on record indicate trade union dues were deducted from Employees' salaries and paid to KUDHEIHA.

6. The Court directed the Claimant to supply certified copies of Employees' subscription receipts and membership numbers on 13<sup>th</sup> December 2017. The Claimant supplied receipts without membership numbers. Secondly, the Respondent reiterates that the Respondent is a Member of the Hoteliers' Association who has a Recognition Agreement with KUDHEIHA. The Claimant Union has attached a Recognition Agreement concluded between the Claimant and Tiwi Beach Resort. This is a separate entity from the Respondent, Amani Tiwi Beach Resort. Employees are not prejudiced by having the Claim struck out as they have the option of being represented by their rightful Union,

KUDHEIHA.

7. The Claimant answers that it has supplied certified copies of membership receipts as directed by the Court. It also has exhibited Recognition Agreement, concluded between the Claimant and the Respondent.

8. There is no rival Union which has come to Court, alleging the Claimant has hijacked proceedings. In this Court's **Cause Number 163 of 2014** between the same Parties, the Court found there was no valid Recognition Agreement between Hoteliers' Association and KUDHEIHA. The Application by the Respondent is intended to obstruct justice. Employees have the right to be heard under Articles 21 and 23 of the Constitution of Kenya. The Employees, on whose behalf the Claim is made, are Witnesses. They can testify on their union membership.

**The Court Finds:-**

9. In a Ruling of this Court in **Cause 163 of 2014**, the Court found there is no valid Recognition Agreement, concluded between KUDHEIHA, and the Hoteliers' Association. The Respondent cannot therefore claim to have a valid Recognition Agreement with any other Union, other than the one concluded with the Claimant Union. The Company behind Tiwi Beach Hotel is Sucham Investment Limited, which is clearly indicated, as a Party to the Recognition Agreement concluded with the Claimant Union. Amani Tiwi Beach Resort or Tiwi Beach Resort, are just business names, given to the Hotel. In the above stated **Cause**, the Court went on to order the Respondent Hotel to enter into fresh Collective Bargaining with the Claimant Union. It cannot therefore be the finding of the same Court, that the Respondent and KUDHEIHA have any valid labour contract, which can be interpreted in favour of dismissing the Claim filed herein, as urged by the Respondent.

10. The affected Employees have supplied to the Court *prima facie* evidence of their membership of the Claimant Union. They are available as Witnesses, and can be cross-examined on their membership during trial, if there be any lingering questions on their membership. There is no rival Trade Union, which has made a claim that the Employees, on whose behalf the Claim is made, are their Members. The circumstances, under which the Respondent has continued to remit trade union dues to KUDHEIHA, in light of decisions of the Court invalidating Recognition Agreement between KUDHEIHA and Hoteliers' Association, can only be made clear through a substantive hearing.

11. The Court is satisfied that the Claimant Union has the mandate to appear for the affected Employees. It has the *locus standi*. **The Application by the Respondent is rejected with no order on the costs.**

**Dated and delivered at Mombasa this 11<sup>th</sup> day of July, 2018.**

**James Rika**

**Judge**