



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

**CAUSE NO. 1081 OF 2015**

**CONSOLIDATED WITH CAUSE NO. 1986 OF 2016**

*(Before Hon. Lady Justice Maureen Onyango)*

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

**VERSUS**

**THE PANARI HOTEL.....1<sup>ST</sup> RESPONDENT**

**THE JACARANDA HOTEL.....2<sup>ND</sup> RESPONDENT**

**THE SUNSET HOTEL.....3<sup>RD</sup> RESPONDENT**

**SOUTHERN SUN HOTEL.....4<sup>TH</sup> RESPONDENT**

**SIANA SPRINGS HOTEL.....5<sup>TH</sup> RESPONDENT**

**THE FAIRMONT GROUP OF HOTELS.....6<sup>TH</sup> RESPONDENT**

**SERENA GROUP OF HOTELS.....7<sup>TH</sup> RESPONDENT**

**THE SAFARI PARK HOTEL.....8<sup>TH</sup> RESPONDENT**

**THE BOMA HOTEL.....9<sup>TH</sup> RESPONDENT**

**SUNA AFRICA HOTEL.....10<sup>TH</sup> RESPONDENT**

**NAIROBI HILTON HOTEL.....11<sup>TH</sup> RESPONDENT**

**AND**

**KUDHEIHA WORKERS.....1<sup>ST</sup> INTERESTED PARTY**

**KENYA HOTEL KEEPERS AND**

**CATERERS ASSOCIATION.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

Judgment in this case was delivered by Ndolo J. on 27<sup>th</sup> January 2017.

The court ordered as follows –

1. "The Court was therefore unable to understand under what circumstances an employer would recover VAT from its employees.
2. Consequently, the Court finds the Respondents' action of recovering VAT from its employees not only unlawful but also unreasonable and directs that any such charges must stop forthwith.
3. I however withhold my decision on the prayer for recovery of past charges pending filing of particulars by the aggrieved employees.
4. I direct that each party will bear its own costs."

Pursuant to the said orders, the successful claimant filed the application dated 19<sup>th</sup> April 2017 seeking the following orders –

1. That the court be pleased to order the 3<sup>rd</sup>, 5<sup>th</sup> to the 11<sup>th</sup> respondent and two members of the 2<sup>nd</sup> Interested Party to avail the record for the 16% VAT on their employees service charge to the applicant within seven days for the period they unlawfully levied.
2. That the costs of this application be paid by the above mentioned respondents in paragraph one.

The grounds for filing the application is that the applicant engaged all the respondents to avail and ascertain the records of the unlawful deductions of 16% VAT on employees service charge but the 3<sup>rd</sup>, 5<sup>th</sup> to 11<sup>th</sup> respondents, Golden Jubilee Limited T/A Crown Plaza Hotel, Azuri Limited T/A Royal Orchid Hotel, members of the 2<sup>nd</sup> Interested Party declined to provide the records.

Upon the failure of the respondents to avail the records, the claimant applied its own resources to source for the information which it filed in court as follows –

Nairobi Serena Individual VAT claim.....	Kshs.9,898,126.84
Panari Hotel.....	Kshs.10,492,572.96
Southern Sun Mayfair Nairobi.....	Kshs.15,191,105.26
The Jacaranda Hotel.....	Kshs.19,422,764.74

Only the 6<sup>th</sup> respondent responded to the application by filing both a replying affidavit of MBITHE WAMBUA, its Group Director, Talent and Culture and written submission. I am satisfied from the said affidavit and submissions that the 6<sup>th</sup> respondent Fairmount Group of Hotels does not charge VAT on service charge as demonstrated in the sample payslips annexed to the replying affidavit.

All the other hotels have failed to submit their records or to comment on the records filed by the claimant pursuant to the orders of the court, which permitted the claimant to file particulars of claims by the aggrieved employees.

I therefore enter judgment in favour of the aggrieved employees against the respondents as follows –

1. Panari Hotel..... Kshs.10,492,572.96
2. The Jacaranda Hotel..... Kshs.19,422,764.74
3. Southern Sun Mayfair Nairobi..... Kshs.15,191,105.26
4. Nairobi Serena Individual VAT claim..... Kshs.9,898,126.84

The details are as particularised in the records submitted by the claimant.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF OCTOBER 2018**

**MAUREEN ONYANGO**

**JUDGE**