



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

**CAUSE NO. 377 OF 2015**

**KENYA HOTELS & ALLIED WORKERS UNION CLAIMANT**

**v**

**GREAT RIFT VALLEY LODGE & GOLF RESORT/**

**GREEN PARK & COUNTRY COMPLEX      RESPONDENT**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL**

**INSTITUTIONS, HOSPITALS &**

**ALLIED WORKERS**

**INTERESTED PARTY**

**RULING NO. 3**

1. Before Court for determination is an application by the Kenya Hotels & Allied Workers Union (Union) dated 23 January 2017 and seeking

1. ...

2. That, the Resort Manager, and the Resident Manager of the respondent be ordered to appear in person during the hearing of this application to show cause why section 13 of the employment and labour relations court Act cap 234B cannot be enforced against them.

3. That, the honourable court be pleased to issue execution order and/or warrant of arrest against the Resort Manager Mr. Njenga Mungai, and the Resident Manager Mr. Gregory Wabuge of the respondent herein.

4. That, the honourable court be pleased to execute her own orders as per section 13 of the employment and labour relations court Act, cap 234B laws of Kenya.

2. When the application was placed before Court on 23 January 2017, the Court directed that it would await the determination of an application dated 16 December 2016 by Kenya Association of Hotel Keepers and Caterers seeking to be enjoined in the Cause as an Interested Party.

3. The Court dismissed the said application in a ruling delivered on 17 March 2017 (Ruling No. 2), the main reason being that having delivered judgment on the Cause on 2 September 2016, the Court became *functus officio* in respect of the substantive cause(s) of action raised therein.

4. In the said Ruling No. 2, the Court scheduled the hearing of the instant application for 10 April 2017

and the Union was directed to serve hearing notices.

5. According to an affidavit of service by Diffinah Moithaga and filed in Court on 10 April 2017, the Federation of Kenya Employers acting for the Respondent and the firm of Mumia & Njiru acting for the Interested Party both acknowledged service by stamping on copies of the hearing notice.

6. However, when the application was called out for hearing on the scheduled date, the Respondent and the Interested Party were absent/not represented and the Court allowed the Union to prosecute the application.

7. Mr. Simiyu, Assistant Secretary General for the Union informed the Court that he relied entirely on the grounds on the face of the motion and the supporting affidavit of Wycliffe Sava, General Secretary of the Union.

8. The Court has given due consideration to the application and also taken note that no responses in objection to the application were filed.

9. The Court has also considered that in deed there is a judgment of Court delivered on 2 September 2016 in which the Respondent was ordered to grant the Union recognition within 21 days.

10. Further, the Court notes that there are no stay of execution orders in place, the conditional stay of execution granted for 45 days on 2 December 2016 to enable the Respondent and Interested Party to move the Court of Appeal for appropriate orders having lapsed.

11. The Court is also alert to the legal difficulties attendant on the mode of execution of certain of its orders, such as enforcement of an order to grant recognition to a trade union, which properly cannot be enforced using the usual first line civil procedure processes of execution. It is a legal fact that there are certain orders of this Court which based on the peculiarities of the disputes presented to the Court, cannot be resolved by reliance on the execution processes outlined in the Civil Procedure Act and/or Rules.

12. In fact, considering the special character of orders such as was granted herein, a Union may have no option but to resort to complying with the procedures outlined in the Labour Relations Act by calling a strike, but that is not an issue addressed and the Court will leave it at that.

13. The Court is satisfied that the Union has made a case for Summons to Issue to Mr. Njenga Mungai and Mr. Gregory Wabuge to show cause why the Respondent has refused to grant the Union recognition.

14. The Court therefore orders that Summons do Issue.

15. Respondent to meet the Union's costs of this application.

**Delivered, dated and signed in Nakuru on this 28<sup>th</sup> day of April 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Union            Mr. Simiyu, Assistant Secretary General

For Respondent        Federation of Kenya Employers

For Interested Party    Mumia & Njiru Advocates

Court Assistant        Nixon