



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 376 OF 2015

KENYA HOTELS & ALLIED WORKERS UNION CLAIMANT

v

SUN AFRICA HOTELS

1ST RESPONDENT

RAHUL SOOD

2ND RESPONDENT

KUDHEIHA

1ST INTERESTED PARTY

KENYA HOTELS & CATERERS

ASSOCIATION

2ND INTERESTED PARTY

RULING

1. For determination is a motion dated 26 November 2015 brought under certificate of urgency in which the Kenya Hotels & Allied Workers Union (Claimant union) sought

1. ...

2. *That, pending the hearing and determination of this application, the Respondents be compelled to stop Deducting Agency Fee from Applicant members.*

3. *That, pending the hearing and determination of the main claim, the Respondents be compelled to stop Deducting Agency Fee from Applicant members.*

4. *That, pending the hearing and determination of this Application the Respondents is restrained from Coercing, Intimidating and or victimizing the Applicant members.*

5. *That, pending the hearing and determination of the main Claim the Respondents is restrained from Coercing, Intimidating and or victimizing the Applicant members.*

6. *That, the Honourable Court be pleased to determine the main Claim on Priority basis.*

2. The Court directed that the motion be served upon the Respondents for *inter partes* hearing on 15 December 2015 but the Respondents sought and got an adjournment to file further documents, when the motion came up.

3. At the same time, the Kenya Union of Domestic, Hotels, Educational Institutions, Hospital and Allied

Workers (*KUDHEIHA*) made an oral application to be enjoined in the Cause as an interested party.

4. The Court allowed the application and directed *KUDHEIHA* to file its papers before the giving of directions on 18 January 2016.

5. On 18 January 2016, *KUDHEIHA* had not complied and sought a further 14 days to file its papers. The Court gave it until 1 February 2016 and also directed that the Kenya Hotels & Caterers Association be notified of the Cause because it had filed an application in Court on 29 December 2015 seeking to be enjoined as another Interested Party.

6. By 17 February 2016, *KUDHEIHA* had not again complied with the Court orders. Its papers were filed and admitted on the same day.

7. It also turned out that Kenya Hotels & Caterers Association had not served its application filed in Court on 29 December 2015 upon the other parties, nevertheless the Court allowed the application joining Kenya Hotels & Caterers Association as the 2nd Interested Party and gave directions as to the filing of responses to the Claimant Union's application, and fixed 21 March 2016 for further directions.

8. However, there was no compliance and the Court, on 21 March 2016 gave further directions as to the filing of responses.

9. When the Cause was next mentioned on 5 April 2016, the 2nd Interested Party had not complied with the Court orders as to filing of appropriate papers.

10. The Respondents and the 1st Interested Party suggested that the Court move to hear and determine the Cause rather than the application, but the Claimant Union insisted that it wanted the application to be heard first.

11. The Court adjourned the hearing of the Claimant Union's application to 5 July 2016, but it was not until 7 September 2016 that the motion was urged.

12. Before delving into the application the Court wishes to make some observations, first by noting that on 2 September 2016, it delivered judgment in a Cause where the issues in dispute were nearly similar to the instant Cause.

13. Secondly, that it is apparent that the 2nd Interested Party appeared bent on delaying the expeditious disposal of the application and ultimately the Cause on the merits, by failing to comply with Court directives.

14. Third, that there appears to be a no holds barred legal war between the parties in other previous suits herein which have been fought through the legal system without no let-up but revolving around the same questions.

15. The Court has given due consideration to the Claimant Union's application and supporting affidavit, the replying affidavit by the 2nd Respondent, grounds of opposition filed by the 2nd Interested Party's Executive Officer and the oral submissions made in Court.

16. In the view of the Court, the questions posed through the Claimant Union's motion cannot be determined without hearing the parties on the merits of the main Cause, as it is the same issues posed for determination in the Cause.

17. In other words, determining the issues raised in the motion would be tantamount to determining the Cause without a hearing on the merits and in that regard, the Court declines to address the said issues at this interlocutory stage.

