



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 GOLF & COUNTRY COMPLEX.....RESPONDENT

KENYA UNION OF DOMESTIC, HOTELS, EDUCATION INSTITUTIONS,

HOSPITALS & ALLIED WORKERS.....INTERESTED PARTY

RULING

1. The Respondent and the Interested Party both filed different applications on 19 September 2016 seeking stay of execution pending appeal of the Court's judgment delivered on 2 September 2016.
2. The Claimant Union filed what it referred to as Preliminary Objection to the Respondent's and Interested Party's applications.
3. In the judgment sought to be challenged on appeal, the Court ordered the Respondent to grant recognition to the Claimant Union within 21 days.
4. The legal principles upon which applications seeking stay of execution pending appeal are granted are now legion.
5. However, within the labour and industrial relations law sphere, and in respect of some of the disputes handled by this Court, the legal principles are sometimes inapt.
6. This is one such case.
7. The one thread running through both applications here is the contention that the Respondent is a member of the Union of Kenya Hotelkeepers and Caterers Association, which association has a recognition agreement with the Interested Party and which parties have reached several collective bargaining agreements and therefore the Claimant Union has no legal space (associational and/or organisational rights) within that arrangement.
8. The Respondent and the Interested Party intend to challenge this Court's interpretation of section 54(2) of the Labour Relations Act and its applicability in the circumstances presented.

9. In reaching its conclusions in the judgment sought to be impugned, the Court took cognisance of the judgment of the predecessor of this Court in Nairobi Cause No. 39 of 2007, *Kenya Hotels and Allied Workers Union v Grand Regency Hotel* that the recognition agreement between the Interested Party and the Association was invalid and therefore the Interested Party should vacate and/or stop exercising organisational rights in the hotel industry upon expiry of the then existing collective bargaining agreement (judgment appears not to have been appealed against), and a demarcation report issued to resolve the organisational dispute between the Claimant Union and the Interested Party.

10. The legal questions raised by both the Respondent and the Interested Party are better left to a determination of the Court of Appeal and in this regard, the Court is of the view that a stay of execution for a limited period be granted to allow the Respondent and the Interested Party to move the Court of Appeal to determine whether a stay of execution pending appeal is merited.

11. The Court in this regard grants stay of execution pending appeal for a limited period of 45 days from today.

12. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 2nd day of December 2016.

Radido Stephen

Judge

Appearances

For Claimant	Mr. Simiyu, Industrial Relations Officer, Kenya Hotels & Allied Workers Union
For Respondent	Mr. Masese, Senior Legal Officer, Federation of Kenya Employers
Interested Party	Ms. Mumia instructed by Mumia & Njiru Advocates
Court Assistant	Nixon