



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 322 OF 2016

KENYA HOTELS & ALLIED WORKERS UNION CLAIMANT

v

ENASHIPAI RESORT & SPA RESPONDENT

JUDGMENT

1. The Kenya Hotels & Allied Workers Union (Union) commenced legal proceedings against Enashipai Resort & Spa (Respondent) on 8 September 2016 and the issue in dispute was stated as

refusal by the Respondent to sign recognition agreement.

2. Together with the Memorandum of Claim, the Union lodged a motion under certificate of urgency.

3. On 8 September 2016, the Court directed that the motion be served upon the Respondent for directions on 3 October 2016.

4. According to an affidavit of service filed in Court on 28 September 2016, the Respondent was served and a secretary accepted service by stamping on a copy of the motion.

5. When the motion was called out on 3 October 2016, Mr. Masese (Federation of Kenya Employers) informed the Court that he had received instructions that morning and that he had *no problem with the application*. He sought for time to file a Response to the Memorandum of Claim.

6. In effect, the Court allowed the motion and directed the Respondent to file a Response and documents to be relied on before 14 October 2016.

7. The record however indicates that no Response was on file even by this morning. The Respondent was also not in Court nor was it represented.

8. The Union therefore sought a hearing date and indicated that it would not call witnesses, but would rely on the record and submissions to be filed.

9. The Court directed the Union to file its submissions ahead of a hearing scheduled for 28 November 2016.

10. The Union in compliance with the directive on filing of submissions filed its submissions on 18 November 2016 (the Court will not consider the evidentiary material sneaked in with the submissions as the same ought to have been filed before closing its case).

11. When the Cause was called out for hearing on the scheduled date of 28 November 2016, Mr. Simiyu, Deputy Secretary General of the Union informed the Court that he was ready to proceed.
12. An advocate, Ms. Ndungu informed the Court that she was holding brief for a Ms. Oyombe and that Ms. Oyombe was not ready for lack of instructions from the Respondent. Ms. Ndungu indicated that Ms. Oyombe intended to file an application to cease from acting.
13. In a brief ruling delivered after the request, the Court declined to adjourn the hearing because there was nothing on record to suggest that Ms. Oyombe or indeed Mr. Masese had filed any formal documents to signify their representation of the Respondent.
14. The Court has seen an increase in a practice where advocates inform the Court from the bar that they have been instructed and fail to file formal documentation when given time.
15. Such a practice must be deplored both by the Courts and legal practitioners as it not only frustrates the principal objective of this Court as envisaged under section 3 of the Employment and Labour Relations Courts Act, but also denigrates the professional duty of advocates to their clients and the Court.
16. Further, under section 74 of the Labour Relations Act, the Court is enjoined to determine disputes pertaining to recognition expeditiously.
17. The Union is a registered trade union under certificate of registration number No. TU/138 and its constitution provides for membership from those employed within the hotel, restaurant and catering sectors of industry.
18. From around January 2015 to 6 May 2015 (recruitment went on until around 16 March 2016), the Union recruited about 207 out of 240 unionisable employees of the Respondent and the Form S (check-off forms) were forwarded to the Respondent with a view to entering into a recognition agreement.
19. The Respondent failed to grant the Union recognition and on 28 May 2015, the Union reported a trade dispute to the Cabinet Secretary responsible for Labour.
20. The Chief Industrial Relations Officer, on behalf of the Ministry accepted the trade dispute and a Mr. R. Kilonzi was initially appointed as a Conciliator. The appointment was revoked and one Mr. R. Litaba was appointed instead.
21. The Conciliator scheduled several meetings, but it appears from his letter of 19 October 2015 that although no meetings were held, the Federation of Kenya Employers had communicated with him on behalf of the Respondent that the Respondent was ready to grant the Union recognition.
22. The Conciliator therefore recommended that the Respondent grant recognition to the Union and as a follow up, the Respondent's Assistant Human Resource Manager wrote to the Union on 5 January 2016 rescheduling a ceremony to sign a recognition agreement from 7 January 2016 to a date in mid-February 2016.
23. It appears the Respondent did not go the whole hog and hence the present proceedings.
24. The Union's constitution allow it to organise within the sector the Respondent operates in and the facts it has presented to Court as to having obtained more than a simple majority of the Respondent's unionisable employees is not challenged or controverted.
25. There is no suggestion that there is a rival union which has met the statutory threshold envisaged under section 54(2) of the Labour Relations Act.
26. The Court will therefore grant the substantive prayer sought by the Union in the Memorandum of Claim.

Conclusion and Orders

27. The Court finds and holds that the Union has met the legal threshold for grant of recognition and orders that

- (i) the Respondent to grant the Union recognition within 30 days from today
- (ii) each party to bear its own costs because of the envisaged social partnership between the parties.

Delivered, dated and signed in Nakuru on this 1st day of December 2016.

Radido Stephen

Judge

Appearances

For Union Mr. Simiyu, Deputy Secretary General

For Respondent did not formally participate

Court Assistants Nixon/Daisy