



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 2145 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 14th May, 2015)

KENYA HOTELS AND ALLIED WORKERS UNIONCLAIMANT

VERSUS

SENTRIM KENYA LIMITED1ST RESPONDENT

KUDHEIHA WORKERS2ND RESPONDENT

JUDGMENT OF THE COURT

Issues for determination

1. The Claimant herein Kenya Hotels & Allied Workers Union filed their Memorandum of Claim on 3/12/2014 where they aver that issues in dispute are:

- 1. Refusal by the 1st Respondent to deduct union dues in respect of the employees' subscription to the Claimant.***
- 2. Refusal by the 1st Respondent to sign recognition agreement to facilitate a Collective Bargaining Agreement.***
- 3. Resultant interference by the 2nd Respondent within the jurisdiction of the Claimant.***
- 4. Arbitrary victimization of the Claimant members by the 2nd Respondent within the jurisdiction of the Claimant.***

Background

2. The Claimant is a duly registered Industrial Trade Union within the meaning of Section 19 of the Labour Relations Act 2007 with the mandate to represent the employees in the hospitality section, as envisaged in Article IV of her our Constitution annexed herein as Appendix S 2.

3. The 1st Respondent is a registered limited liability company registered under the companies Act Cap 486 Laws of Kenya to carry out catering and accommodation services within the Republic of Kenya. The 2nd Respondent is also a registered general trade union with an amorphous and various trade discipline of

representation within the Republic of Kenya.

Claimant's case

4. The Claimant submitted that on 4th December 2009 they visited Masai Mara Game Reserve and while there recruited employees from various establishments, the 1st Respondent herein included.

They aver that they managed to recruit 35 employees of the 1st Respondent which translated to 80% of the unionisable staff at Sentrim Masaai Mara hence attaining a simple majority as stipulated in the Labour Relations Act as per their annexure S 4.

On the 1/1/2010, the Claimant avers that they served the 1st Respondent with the check-off list duly filled and signed by her members with instructions to deduct union dues in line with Legal Notice No. 4805 of May 2009 which the 1st Respondent declined to enforce.

5. The Claimant further stated that following this recruitment, the 1st Respondent started subjecting her members to threats, intimidation, victimization and dismissed some of them who refused to disown the Claimant. Those dismissed include Kiu Andrew Siamata, Dominic Dassiany, Margaret Njeri, Anne Soila, Ken Kimaru Rinka, Resian Tujo, Peter K. Soyiet, Ruffas Karubae, Esther Nasieku, Maika Njapit, Maurine Nailotoi, Carlos Kiu, Joan chebet, David Shukoki, William Njapit, Ampai Karia, Raphael Kagwi, Peter Mwangi, Simon Njihia, Reteti Gabriel Olooso.

6. The Claimants aver that the 1st Respondent also declined to sign a recognition agreement with the Claimant whose copy they have annexed herewith – Annex S 5.

7. Following the above developments the Claimant reported the existence of a trade dispute to the members for Labour as per their Appendix S 6. A conciliator was appointed to conciliate the parties but efforts of the conciliation were unsuccessful as per Appendix S 8.

The Claimant further aver that while the conciliation efforts were being frustrated, the Respondents colluded to coerce the Claimant members to withdraw in favour of the 2nd Respondent contrary to orders made in Industrial Cause No. 39 of 2007 on 3rd July 2008 where the 2nd Respondent was an interested party.

That the Respondents negotiated a Collective Bargaining Agreement after this with inferior terms and conditions of service meant to benefit the 1st Respondent rather than the unionisable employees as per the Annexure S 9.

8. The Claimant further avers that they embarked on reorganizing her members at the 1st Respondents premises at Sentrim Masai Mara on 8/7/2014, Boulevard Hotel on 21/7/2014, Sentrim Tsavo on 25/7/2014, Sentrim Amboseli on 7/8/2014 and Sentrim Elemetaita on 30/10/2014 as per Annexure S 10.

However, they contend that the 1st Respondent aware of the progress vowed to take stern action on any of her employees disowning the Claimant in favour of the 2nd Respondent which threats were not taken lightly by the Claimant members.

9. The Claimants have now approached this court seeking to have the right to freedom of association guaranteed in the Constitution protected. They want the court to order the 1st Respondent to accord them formal recognition and fast tract the Collective Bargaining Agreement and that the 1st Respondent should be ordered to deduct and remit the union dues in accordance with the Legal Notice No. 4805 of 5th May 2009.

They also want the 1st Respondent prohibited from victimizing her employees who have withdrawn from

the 2nd Respondent and joined the Claimant union.

They also want the existing recognition agreement between the 1st and 2nd Respondent declared illegal and in contempt of this Honourable Court.

Respondent's case

10. The Respondents on their part though served, failed to file their respective responses. On 9/12/2014 when the parties appeared before court they were directed to file their response to the claim within 21 days. Hearing was then scheduled for 13/4/2015. On this date the Respondent failed to attend court. The case then proceeded ex parte. The Respondents have not defended this suit.

Issues of determination

11. Upon hearing the Claimant herein the issues for determination are:

- 1. Whether the Claimants have reached the threshold in terms of members to warrant a recognition by the 1st Respondent.***
- 2. Whether the 2nd Respondent have encroached on Claimants membership.***
- 3. Whether the Claimant is entitled to orders sought.***

12. On the 1st issue, the Claimants have told court that they have recruited the requisite number of staff from the 1st Respondent. The schedule of the recruited members was attached as Appendix S 14 where they have withdrawn their membership from the 2nd Respondent. This evidence has not been controverted by the Respondents. This court therefore finds that the Claimant has recruited the requisite members - equivalent to simple majority of the members as envisaged under Section 54(1) of the Labour Relations Act and therefore the Claimant ought to be recognized by the 1st Respondent.

13. On the 2nd issue, the issue of encroachment by the 2nd Respondent, Article 41(2)(c) of Constitution provides that:

“Every worker has the right to form, join and participate in the activities and programmes of a trade union--- .”

The encroachment by another union will not arise if the worker decides on his own volition to join another union which will cater for his needs. The ruling in case 48 of 2007 having been delivered before the promulgation of the current constitution of 2010 will not therefore be binding in this court as it curtails the workers right to form and join a trade union of his or her choice.

14. I grant the claimants orders as follows:

- 1. The 1st Respondent be and are hereby directed to recognize the Claimant for purposes of collective bargaining and do commence negotiations for a Collective Bargaining Agreement within 60 days from today.**
- 2. The 1st Respondent do remit union dues for employees who have joined the Claimant immediately as per Appendix S 14 and the remittances be with effect from January 2015.**
- 3. The 1st Respondent be and are hereby prohibited from victimizing the Claimant members because of their union affiliation.**

The 1st Respondent to pay costs of this suit.

Read in open Court this 14th day of May, 2015.

HON. LADY JUSTICE HELLEN WASILWA
JUDGE

In the presence of:

George Odera for Claimant

No appearance for Respondent