



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 39 (N) OF 2007**

**(Before Hon. Justice Hellen S. Wasilwa on 2<sup>nd</sup> June, 2015)**

**KENYA HOTELS AND ALLIED  
WORKERS' .....CLAIMANT**

**VERSUS**

**GRAND REGENCY HOTEL.....  
RESPONDENT**

**KENYA UNION OF DOMESTIC HOTELS,**

**EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS...1<sup>ST</sup> INTERESTED  
PARTY**

**KENYA HOTEL KEEPERS AND CATERERS ASSOCIATION.....2<sup>ND</sup> INTERESTED  
PARTY**

**RULING**

1. The Applicants have filed an application before court, the one dated 23/8/2012 in which they seek orders to have the Respondents cited for contempt of court.
2. The Respondents filed their grounds of opposition on 20/11/2012. This application was to be argued by the parties and no reason has been given to this court as to why this has not been done to date.
3. This application was set to be heard on 29/4/2015 but the interested parties have raised a Preliminary Objection which they have now argued.
4. The Respondents Preliminary Objection is to the effect that the application dated 23/8/2012 set to be argued cannot lie because the Respondent has ceased to exist. That this position was brought to the attention of the court in 2010 and Justice J. Rika made a ruling on the same on 3/9/2010 in relation to another application made on 8/1/2010.
5. Secondly, the Applicants argue that the application is belated having been overtaken by the new Constitution wherein Article 36 and 41 give freedom to Legal entities to join or leave an association of their choice. They therefore argue that the orders given in 2008 cannot be implemented.

6. The Applicants have also argued that the Applicants had filed a Constitutional Petition being 1964 of 2012 – filed in court seeking court protection of its area of operation. The same was transferred to the Employment & Labour Relations Court and is now registered as No. 5 of 2013 – to be heard by a 3-Judge bench.

7. The Applicants therefore argue that until that matter is resolved, arguing this application will be an exercise in futility.

8. The Claimants herein opposed the Preliminary Objection. They argue that the orders being sought are against the 2 interested parties who asked this court to use this case a test suit and the 2 Interested Parties are still alive.

9. The Respondents also argue that Article 36 and 41 are irrelevant herein on contempt issues but they concern freedom of association wherein the Claimants have been denied an opportunity to associate with its members.

10. The Claimants also argue that the orders being sought are relevant given that court orders should be obeyed.

11. They also argue that Petition 5 of 2013 and case No. 39/2007 are different and that Petition No. 5/2013 does not arise out of cause 39/2007 and that they relate to different issues. They therefore argue that the Preliminary Objection lacks merit and they urge court to dismiss it.

12. I have also considered the submissions of the interested Parties and the Preliminary Objection raised concerning, the fact that the Respondent does not exist anymore, this would not bar the Applicants from arguing their application against the Interested Parties who still exist and were part and parcel of the main cause giving rise to the application herein. That in itself would not deter this court from proceedings with the Notice of Motion.

13. I have looked at the ruling made by Justice Rika on 3/9/2010 in this case, I do not find it to be similar to the issue being raised in the Notice of Motion. That as it may be, it has been brought to this court's attention that there is Petition No. 5 of 2013 to be determined as by a 3 Judge bench which is still pending before this court. That Petition seeks to determine amongst other issues matters that may lay to rest this cause 37/2007 concerning matters being argued in the Notice of Motion. It will therefore be in the interest of justice to await the outcome of the Petition before the Notice of Motion is argued. That being the position, I find that the Notice of Motion has merit but its determination will await the outcome of the Petition 5 of 2013. These are the orders of this court.

Read in open Court this 2<sup>nd</sup> day of June, 2015.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

George Odera for Applicant – Present

Guserwa for Respondent – Present