



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 330 OF 2015**

**BETWEEN**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS**

**AND HOSPITAL WORKERS (KUDHEIHA)..... CLAIMANT**

**VERSUS**

**DIANI BEACH RESORT AND SPA.....RESPONDENT**

**RULING**

The Claimant Union filed a Statement of Claim on 20<sup>th</sup> May 2015. It seeks to have the Respondent Hotel ordered to pay gratuity to 11 Former Employees, who are Members of the Claimant Union.

Together with the Statement of Claim, the Claimant filed an Application seeking similar orders as sought in the Claim.

Parties thereafter agreed to have the Application disposed of by way of written submissions, which have been placed on the record.

The Court has been asked to make a determination based on these submissions.

*The Court Finds:*

1. The Industrial Court (Procedure) Rules 2010, distinguish a Claim, from an Application.
2. The Court in essence, is being asked to overlook the Claim, and dispose the entire dispute on an Application.
3. What will happen to the Claim if the Application is dismissed or allowed?
4. In conclusion, the procedure adopted by parties, is contrary to the Rules of the Court. If they had intended to dispose of the Claim in the manner proposed, there would have been no need of filing the Application.
5. The Court must consequently reject the Application for being in abuse of the Court Process.

6. Parties shall proceed with the Main Claim in the regular way.

Dated and delivered at Mombasa this 23<sup>rd</sup> day of October, 2015

**James Rika**

**Judge**