

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 314 OF 2013

KENYA HOTELS AND ALLIED WORKERS UNIONCLAIMANT

VERSUS

UNITED SPORTS CLUB TRUSTEESRESPONDENT

J U D G M E N T

The claimant brought this suit on 30/9/2003 seeking for the following orders against the respondent:

- a. **That the respondent commence and conclude negotiations with the claimant within a specific period.**
- b. **That the respondent be ordered to produce records pursuant to Section 57(2) of the Labour Relations Act (LRA)**
- c. **That the respondent be restrained from victimizing the union members in respect of the Collective Bargaining Agreement (CBA).**
- d. **Costs of the suit.**

The respondent appointed counsel to appear for her on 9/10/2013 but no defence was filed. Instead the parties filed a consent judgment on 10/12/2013 and the court adopted it the same day when the matter came up for mention. The effect of the said consent judgment was to settle all the disputed items on the 2011/2012 CBA. What remained of the suit was the prayer for the production of records, injunction and costs. Instead of pursuing the said remedies, the claimant abandoned them and started to agitate for conclusion of the 2013/2014 CBA.

With profound respect to the claimant, the court cannot allow suits to mutate after amicable settlement of some terms. No leave was sought to amend the claim. Even the claimant was to seek leave, the same could not have been granted because that would have contravened the procedure set out for settlement of disputes under part VIII of the LRA. The reason for the foregoing view is that the only dispute declared for conciliation under Section 62 of the LRA was in respect of failure to conclude CBA for 2011/2012, failure to produce records and victimization of union members on ground of the said CBA. The 2013/2014 was not yet a cause of action until the consent judgment was entered on 10/12/2013 in respect of the CBA for 2011/2012. Consequently the court declines to make any orders as requested by the claimants written submissions filed on 17/6/2014. The said submissions did not address the remaining prayers in this suit.

The upshot of this judgment therefore is that the claimant did not prove on a balance of probability that her union members were being victimized on ground of the CBA for 2011/2012 which while incidentally was settled by consent on 10/12/2013. Likewise the claimant did not identify the particular documents for which she wanted an order to compel the respondent to produce.

The court will therefore not grant the said orders.

Lastly, in view of the fact the respondent acted in good faith in signing the consent judgment on 10/12/2013, the court will not condemn her to pay costs.

DISPOSITION

The suit is dismissed save for the prayer granted by the consent judgment entered on 10/12/2013. each party to bear his own costs.

Dated, Signed and delivered this 25th July 2014

O. N. Makau

Judge