

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 14 OF 2012

(FORMERLY CAUSE NO. 1340 OF 2011 AT NAIROBI)

KENYA UNION OF DOMESTIC, HOTELS,

**EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS
(KUDHEIHA).....CLAIMANT**

- VERSUS -

SUNBIRD LODGE LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 4th July, 2014)

JUDGMENT

The claimant filed the memorandum of claims on 09.08.2011 praying for recognition by the respondent. The respondent filed the memorandum of response on 25.10.2011 and prayed that the court finds that the claimant union did not qualify for recognition by the respondent because the claimant had not recruited a simple majority of the unionisable employees.

The only issue in dispute is whether the claimant recruited simple majority of employees of the respondent as provided for in **section 54(2) of the Labour Relations Act, 2007**. The evidence shows that the respondent recruited 19 employees on diverse dates being 04.12.2009, 05.12.2009, 07.12.2009 and 08.12.2009. As of that time, the respondent had 35 union membership's eligible employees. The respondent declined to recognise the claimant and the claimant reported a dispute to the minister for labour under section 62(1) of the Act. The minister appointed a conciliator. The respondent's case at conciliation was that 10 of the 19 employees recruited by the claimant as submitted in January, 2010 had left the respondent's employment. Further, the respondent's case was that 7 of the recruited staff were supervisors who were not eligible to join the union. The respondent's case before the conciliator was that the list as submitted on 14.02.2011 had only 10 members out of 18 eligible employees in the respondent's employment, suggesting the simple majority had been attained.

The conciliator's findings and which in the court's findings are valid are that the claimant achieved the simple majority recruitment of 51% and some employees left the respondent's employment leaving the recruitment level at 32% or below the simple majority.

The court finds that the respondent has not established why the employees who were supervisors, not being managers, there being no agreement that they were excluded from union activities, and the supervisors having been recruited, did not qualify as part of the simple majority threshold. The court further holds that once the claimant achieved the 51% or simple majority recruitment, the statutory test for recognition was met and it was immaterial that some of the recruited employees left the respondent's service. Accordingly, the court finds that the claimant is entitled to recognition by the respondent.

In conclusion, judgment is entered for the claimant against the respondent for:

- 1. A declaration that the claimant is entitled to recognition by the respondent.**
- 2. The parties shall negotiate and conclude the relevant recognition and collective agreements**

by 1.10.2014.

3. Effective end of July 2014, the respondent shall deduct and remit to the claimant all union dues with respect to its employees who are members of the respondent.
4. The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nakuru this Friday 4th July, 2014.

BYRAM ONGAYA

JUDGE