



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. APPEAL (M) 1 OF 2011**

**ROYAL COURT HOTEL ..... CLAIMANT**

**VERSUS**

**THE MINISTER FOR LABOUR ..... 1<sup>ST</sup> RESPONDENT**

**KENYA UNION OF DOMESTIC, HOTELS**

**EDUCATIONAL INSTITUTIONS, HOSPITALS**

**AND ALLIED WORKERS**

**(KUDHEIHA) ..... 2<sup>ND</sup> RESPONDENT**

Mrs Bubi for Appellant

Mr. Macharia P. N. for 1<sup>ST</sup> Respondent

Mr. S. Njiru for the 2<sup>nd</sup> Respondent

**JUDGMENT**

1. The Appellant, Royal Court Hotel, Mombasa, lodged an Appeal against the Minister's findings in Trade Dispute ML/IR/3/94/2007.
2. The Appeal was lodged under Section 5(2) of the Trade Disputes Act, (Repealed) as read with Section 2(41) of the Labour Relations Act No. 14 of 2007.
3. The report of the dispute was made on 22<sup>nd</sup> August 2007. The issue in dispute was;  
**“Refusal by the Management to sign Recognition Agreement.”**
4. By a letter dated 16<sup>th</sup> October 2007, the Minister appointed an investigator in terms of **Section 7** of the **Trade Disputes Act Cap 234**.
5. Both parties submitted their memorandum to the investigator and a report dated 11<sup>th</sup> February, 2011 was made with the following findings:

- i. The Royal Court is a registered concern in Mombasa dealing with hotel business;
- ii. There is no rival union in the hotel claiming a right to represent unionsable employees in the establishment.
- iii. By the time the dispute was declared, the union had recruited 51% of the total permanent employees;
- iv. The Management did not give any tangible proof that check off forms were not forwarded to them by the union.

6. The Minister therefore **recommended** that the union be accorded recognition by the management to pave way for negotiations of terms and conditions of employment for the employees in the establishment. According to the union the check-off forms were forwarded to the General Manager of the Royal Court Hotel on 17<sup>th</sup> April 2007 and the document is attached to the Response to the Statement of Appeal.

### **Statement of Appeal**

7. The grounds of Appeal are stated to be in the main that;

1. the Minister erred in law and in fact in finding that by the time the dispute was declared, the union had recruited 51% of the total permanent workforce of 50 employees wherein;
  - i. there was no material evidence placed before the Minister to that effect.
  - ii. the evidence actually placed before the Minister was to the contrary.

8. From a reading of part II of the **Trade Disputes Act**, the Minister invoked the provisions of **Section 5(1)(f)** and caused an investigation of the trade dispute reported to him to be conducted in terms of **Section 7(1)** but instead of making an order for the Employer to recognize the union in terms of **Section 5(2)** he proceeded to make a recommendation for recognition and negotiation of a collective Bargaining Agreement.

9. The effect of the recommendation was however that the Minister was satisfied that the requirements under **Section 5(2)** had been achieved by the union by attaining a simple majority of the unionsable employees at the employer's establishment.

10. In terms of the *proviso* to **Section 5(2)** of the **Trade Disputes Act**, the employer had a right to appeal against the order of the Minister to the Industrial Court within fourteen days from the date of communication of the order to the party making the appeal or his representative and the Industrial Court may revoke or endorse with or without amendment, any such order.

11. **Section 5(3)** made it a criminal offence for any employer who fails to comply with an order of the Minister under Section 5(2) and liable to a fine of ten thousand shillings for each month or part thereof during which such failure continues.

12. The Appellant received the Minister's order on 21<sup>st</sup> February 2011 and lodged an appeal on 7<sup>th</sup> March 2011 well within the 14 days permitted under the Section.

In its Appeal the Appellant primarily contests an issue of fact to the effect that the union had not attained a simple majority and therefore the finding by the Minister was wrong.

The Minister relied on the evidence placed before him by the Respondent union comprising of a check-off system sent to the General Manager on 17<sup>th</sup> April 2007 annexed to the Response to the statement of Appeal.

The Appellant did not annex to the Memorandum of Appeal or to the submissions it filed before Court any evidence contradicting the findings by the Minister as at the time the decision by the

Minister was made.

13. There is no basis therefore for the Court to fault the findings and the recommendation by the Minister dated 11<sup>th</sup> February 2011.

Accordingly, in terms of the proviso to **Section 5(2)** of the **Trade Disputes Act, Cap 234** of the **Laws of Kenya** (now repealed), the Court endorses the decision of the Minister aforesaid without any amendment and directs the Appellant Royal Court Hotel, Mombasa to recognize the Respondent union (KUDHEIHA) for negotiating and collective Bargaining purposes.

The Appeal is therefore dismissed with costs to the Respondent union. This decision has resolved the dispute in this Appeal and **Cause No. 2075 of 2011** between the same parties.

**Dated and Delivered at Nairobi this 9<sup>th</sup> day of July, 2014.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**