



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**  
**CAUSE NO. 16/2013**  
**(formerly KSM HCC No. 43 of 2003)**  
**(Before Hon. Justice Hellen Wasilwa on 25<sup>th</sup> July, 2013)**

1. JOHN OSEWE OGOLA
2. LILIAN AYA AGINGU
3. MARY WANJIKU MWANGI
4. GEORGE ODUOR OWUODHA
5. MAURICE ADEK OMOLLO
6. DANIEL NYAOKE NABULE
7. JARED JUMA OWINO
8. JAPHETH NJOMO OLENYO
9. CHARLES OBONYO OMULO
10. JAIRUS OTIENDE ANDERE
11. PATER MUKUNA OBWELA
12. WILLIAM MATORO ODONGO
13. EMMANIEL K. OTIENO SIRMA MAINGA
14. MOSES KIZITO SHIASIA SHIVOGA
15. JULIUS ODHIAMBO ABONYO
16. MATHEW ASANGAI OMUSE
17. WILFRED RADUL

- 18.SAMWEL ONYANGO OKORE**
- 19.CHARLES BOLVINCE OPONDO**
- 20.PATRICK ONYANGO AYUGI**
- 21.CHARLES ODHIAMBO APINA**
- 22.ELIAKIM MBOYA NAPALI**
- 23.JOSECK OMUNYIN OCHUDI**
- 24.EDWARD ODERO**
- 25.SAMSON OUCHE**
- 26.LUKA LEPELL**
- 27.LOCHUKA LODIR**
- 28.GEORGE APINA**
- 29.JOHN SAO**
- 30.JOSEPH OMEDO**
- 31.JOHN OGONDO**
- 32.JOHN OKITWI**
- 33.SAMWEL OUKO**
- 34.MARY ASSUMPTA AYITSI**
- 35.LINET OCHIENG**
- 36.JAMES OTINDO**
- 37.BILLY OWUOR**
- 38.JULIUS OUMA**
- 39.JAMES OGONY**
- 40.STEVE WARINDA**
- 41.DENNIS ENONDA**
- 42.JULIA AGENGO**
- 43.SALOME NYAMWATHI MWANGI**
- 44.MILKA ATIENO JUMA**
- 45.BONFACE SHIVOGA MAKENZI**

**46.ELIZABETH ANYANGO ODHIAMBO**

**47.LUCY AKOTH SAO ..... APPLICANTS**

**-VERSUS-**

**RAGHBIR SINGH SADHU**

**T/A HOTEL ROYALE .....RESPONDENTS**

### **R U L I N G**

A brief history of this case will suffice as an introduction to this ruling.

This case was originally filed before Kisumu High Court as HCC No. 43/2003. It was heard by several Hon. Judges but given the nature of the case involving 47 claimants, there were further delays occasioned by death of some of them. This necessitated the filing of applications for grant of letters of administration and thereafter application for substitution of the deceased claimants before hearing could proceed.

Hearing initially commenced on 27/1/2004 but stalled in 2007. By then only eight out of the expected 47 witnesses had testified. The case was again revived in October 2012 and transferred to the Industrial Court for disposal in January 2013. I first dealt with preliminary issues and gave directions that hearing should proceed where it had stalled without much delay. Upon commencement of the hearing, it became apparent that issues being canvassed by the respondents as their defence were legal in nature touching on ownership of Hotel Royale. I then directed that it would be prudent to have the parties call evidence and make submissions on this aspect of ownership of Hotel Royale before further hearing of this case.

The issues before this court in relation to the entire suit concern non payment of terminal dues to the claimants herein by the respondents. The respondents contention seems to be that they were not employees of the claimants and neither did they own Hotel Royale and therefore they cannot be condemned to pay such dues. In seeking to address the issue of ownership, the claimants have called four witnesses and the respondents called two.

The 1st claimant's witness Ismael Onyango informed court that he is a retired trade unionist having previously worked under the Communication Workers Union an affiliate of COTU. He testified that in the year 2003, the case involving the employees of Hotel Royale was brought to his attention by some employees as the Chairman of COTU Nyanza Region. The employees' concerns was that their employer was about to wind up. Later the employees came back and informed him that their employer had wound up but had not paid them their dues. They showed him a Memorandum of Understanding between Hotel Royale and KUDHEIHA. The employer in this CBA was Raghbir Singh Sandhu for Hotel Royale who had signed as Director. This witness decided to approach the Ministry of Labour and report a dispute. At the District Labour Office, they were given certain promises but later the employees made a sit in at the labour office. The labour offices then called the Director of Hotel Royale – Baghbir Singh. He came with part payment of Kshs 668,000/= and handed it over to the District Labour Officer who paid the employees. This witness Ismael informed court that in normal circumstances, a CBA is signed between an organization's, Chief Executive Officer and a Union and even if the Human Resource Manager was to sign, the final responsibility in it's implementation rests on the Director. By the time these workers were staging a sit in, they had been out of work for 1 month and they recognized Baghbir as their employer. In cross-examination, Ismail told court that these employees didn't frog match Baghbir and Raghbir Singh to the Labour Office. He told court that he didn't know Hotel Royale's legal status. He also indicated that after payment of the Ksh 668,000/= there was a promise to pay the balance within a week. He denied the employees frog matched Baghbir to the Labour Office nor harassed him. In re-examination he said that

this CBA was signed by Raghbir and Francis on behalf of Hotel Royale.

The 2nd claimants witness John Ogolla told court that he had already testified before court as PW1. He further testified that he was an accountant at Hotel Royale which was owned by Raghbir Singh Sandhu and his brother Baghbir Singh Sandhu. As an accountant he used to deal with Raghbir Singh Sandhu who was Director of Hotel Royale. Raghbir was the one managing the hotel on a daily basis not as an employee but as Director. One Mr. Odongo was the Manager. He indicated that he was present when the money was brought to the Labour Office by Baghbir Singh Sandhu who was also a Director of the Hotel. That the two Singhs took over this Hotel from Darbur.

In cross-examination Mr. Ogola told court that he worked as accountant for this hotel for over 10 years and he used to make the hotels returns. He indicated that the returns he was making was for a company called Sandeep Tours and Travels Co. Limited who were trading in the name of Hotel Royale. He said the Hotel had many departments and Odongo headed the bar department and was overall Manager. He was shown a document DMF1, from Registrar of Business of names which indicated that Hotel Royale is a business name. He said he didn't know if the Hotel was initially owned by Sandeep Hardware Ltd. He indicated that he didn't do the returns of Sandeep Tours and Travels Ltd in 1996 and that the document of annual return of the Company were secretly kept by the Directors. The document indicated that the Directors who made the return then were Ramesh Thakar, Pratab Singh Darbur and Nirmal Singh Pratab Singh Darbur. However he said that as far as he knew Baghbir and Raghbir were the Managing Directors of Hotel Royale and he was present when Sandhu brought money to the Labour Office. He denies they had stormed Baghbir's house nor office prior to this. That at the Labour Office Baghbir and Raghbir promised to pay them the balance but it is the Labour Officer who did the talking. In re-examination he told court that as far as he is concerned Baghbir Singh and Raghbir Singh are owners of Hotel Royale and he dealt with them as an accountant.

The witness No. 3 William Odongo told court that he had already testified before this court as PW12. He Indicated that he was the Manager of Hotel Royale when the hotel was sold. By then, the owners were Baghbir and Raghbir Singh whom he dealt with on a day to day basis. He also told court that the CBA signed between the Hotel and the workers was signed by Raghbir Singh and Jode for Hotel Royale named as employer in the CBA. He also told court that he knew the Darbur – who sold the business to Baghbir and Raghbir. He showed court a copy of the agreement of sale to show the business was sold. Baghbir and Raghbir Singh signed the agreement on behalf of Sandeep Tours and Travels Limited and also Ramesh Thakar signed it on 2.10.1995 before D. M. Kimatta Advocate. 60% shares Hotel Royale was sold and this is as per claimants Exh 1. He also indicated that Ramesh Thakar who sold the hotel came to court and gave evidence in a criminal case concerning NSSF payments as PW6 – and the proceedings of the said case were produced as Exh 2. In this case Raghbir and Baghbir were ordered to pay NSSF dues which they paid. In the same case Nirmal Darbur testified also as PW6 and told court that he sold 60% shares from Sandeep Tours Limited owned by himself and Ramesh Thakar and he was paid in full. In his evidence Mr. Odongo also testified that it was not the workers business to confirm transfer of names of the business. An investigation was also done by the Chief Industrial Relation Officer and he explained why the Company was never transferred to Raghbir and Baghbir Singh. The report was identified and marked MFI 14. He says that that Ramesh Thakar and Nirmal Darbur never ran the hotel nor pay salaries and it is Baghbir Singh who brought money to Labour office as Director and asked for one week to pay the balance.

In cross examination Mr. Odongo told court that the agreements made him believe that the owners of the hotel are Baghbir and Raghbir and the agreement shows that 60% shares of Ramesh Thakar were the ones sold. He also said that the 40% remaining shares were sold a year later to Raghbir and Baghbir. The agreement in question was signed on 2.10.1995. He also says that the documents of returns signed in in 1996 shows that Ramesh Thakar was still doing returns of the Company. He further told court that in the NSSF case, Ramesh Thakar testified as PW6 and he said that he had not been paid up and that is why his name appear in the records of the Register of Companies.

The witness also testified that the NSSF case was in the year 2002 and it is an employer who remits NSSF contributions. Witness No. 3 also told court that it is Baghbir who brought money to the labour

office on 2.2.2003. He denies they frog matched Baghbir to the labour office. Baghbir handed over money to the District Labour Officer who now paid the workers. Baghbir had been called by the District Labour Officer and he promised to come in 30 minutes and did come with the money. He promised to pay the balance in a week's time. Mr. Odongo further told court that the Company had not been wound out and so claims for redundancy were misplaced.

In re-examination Mr. Odongo told court that the agreement shows that Raghbir and Baghbir took over the hotel in 1996 and Raghbir signed the agreement. He says that the 60% of Sandeep Tours and Travel Limited was Hotel Royale which was formerly owned by Ramesh Thakar and Nirmal Darbur. Nirmal also testified that he sold 40% shares later as he couldn't work with Baghbir.

The 4th witness for claimants was one Nirmal Singh Pratap Darbur. He informed court that from 1994 to 1996, he was a Director of Sandeep Tours Limited. He then sold his shares in the Hotel in 1996 to Baghir Singh Sandhu and Raghbir Singh Sandhu. It was now the responsibility of buyers to change documents at Registrar of Companies. He also told court that he had given evidence in this case as PW6 and confirmed he sold his shares for the hotel. He says after 1996, he never got involved in the running of the hotel and never paid workers NSSF or NHIF.

In cross examination Mr. Nimal told court that Hotel Royale was a business name and a property of Sandeep Tours and Travels Limited, a limited liability Company to be run under the Articles and Memorandum of Association of the Company under the laws of Kenya. He further said that he sold 40% of the shares to Raghbir Singh and it is the buyer to transfer to his name. He indicated that he has no minutes of the Company showing he has resigned as a Director. He testified that his father received the 1 million sale price but he has no evidence that the same was declared to Kenya Revenue Authority. He testified that Hotel Royale was not 60% of Sandeep Tours and he does not know if Hotel Royale sold the hotel to Maseno University. When DMFI – 4 is put to him, he admits that they are documents signed by Ramesh Thakar filing returns as Director of the Company in November 1996. He says Hotel Royale is a business name run by Baghbir and Raghbir and he does not know if they registered the name themselves.

In re-examination, he confirmed that DMF1 – 5 shows return of 1995 when he was still Director. However no search after 1995 was shown to him as he was no longer managing the hotel and so never got involved with the workers as they agitated for their pay. He says the agreement of sale of this hotel was produced by him in this court when he appeared as PW6.

The respondents called 2 witnesses Raghbir and Baghbir Singh Sandhu. Mr. Raghbir told court that he is currently 76 years old and he knew Hotel Royale. He indicated that he joined the hotel in late 1990s as an observer. He told court that he was prospecting to see if he could buy it at some stage. The name Hotel Royale was a business name but the Company was Sandeep Tours and Travel Limited. He produced Def. Exh. 1 annual return for 1995 filed on 22nd May 1997 of Sandeep Tours and Travel Limited as proof that the shareholders and Directors of the Company were Ramesh Thakar, Pralap Singh Darbun and Nirmal Singh Pralab holding 6000, 3000, and 1000 shares each respectively. Def Exh 2 produced by Mr. Raghbir is the certificate of incorporation of Sandeep Hardwares Limited incorporated on 28.4.1987. This Sandeep Hardwares changed its' name to Sandeep Tours and Travel Limited on 12.7.1988 as per the certificate of change of name produced as Def. Exh. 3.

He averred that there was no proof that Hotel Royale was 60% of Sandeep Tours and Travels Ltd. He also produced DMF 14 – as Def Exh 4; the copies of annual return filed in 17.11.1996 filed by Ramesh Thakar. He denies that Ramesh Thakar sold him 60% of his shares in Sandeep Tours and Travels Limited. He avers that he had intended to buy but found the whole thing an empty shell and so didn't pay for it. He denies that Ramesh Thakar sued him in respect of the agreement. He says the claimants Exh 1 was never concluded and has never been lodged at the Company's registry and that it is a requirement of law that such a document should be lodged and declared by the seller. He also avers that the document is dated 2.10.1995 yet the returns filed on 17.11.96, are filed by Ramesh Thakar. He also averred that Ramesh Thakar testified before court and in cross examination he had told court that he had never been paid for the sale. He also denies that Nimal sold them his 40% shares as there is no sale agreement in respect of the said sale.

In relation to the CBA dated 3.6.1998, Mr. Raghbir told court that he signed it as Director but never drew it. He indicated that the CBA was drawn by the Union but there is no advocate who signed it as a witness. He says he signed it on behalf of Hotel Royale but he was not Hotel Royale and that this CBA was never registered. On the issue of 600,000/= given to the labour officer, he says this money was taken to the labour office by his brother and this was after the workers became aggressive and unruly and even beat him up. They then approached Pratab Darbur who was one of the Directors of Sandeep Tour to give money. That Pratab Darbur gave them the money which his brother Baghbir took to the labour office. He avers that Mr. Baghbir was beaten up and frog matched to the labour office. That they even lodged a complaint with the police on this and 5 or 6 people were charged.

He says he had intention of buying shares in Hotel Royale but found it insolvent as it owed money to KRA, NSSF, NHIF Union dues, Delphy's Bank, Reliance Bank and Trust Bank and even security guarding the place and other suppliers. It is Mr. Raghbir's evidence that Mr. Ogola who gave evidence for claimants was only a book keeper and was therefore not privy to Company returns and documents involving it's directorship. That also William Odongo was looking at various aspects of the establishment and was not a Manager. In respect of the sale of Kisumu Hotel, he testified that Mr. Panachand Shah and Hudleys Limited were the owners of the buildings housing Kisumu Hotel and the building was sold to Maseno University. Mr. Raghbir says he only learnt of this when he was evicted and the workers were present and knew what happened and that Hotel Royale had only leased the premises. He denies discussing with Maseno University the prospect of taking over the workers. He says that at the time, the hotel owed the landlord 2 years rent and he too was thrown out unceremoniously. He says this claim is fictitious and should be dismissed.

In cross examination Mr. Raghbir told court that him and Nirmal Darbur are good friends and still visit one another and so he has no reason to lie about him. He says he was an observer at the hotel for 7 years since 1996. He admitted that Ramesh Thaker sued him in the **HCCC No. 80/2002 at Nakuru and judgment** was entered against him and he was ordered to pay Ksh 1,230,851 plus interest which he paid. This was as bank guarantee that Thakar had given Delphys Bank which was never paid. He says he never attended court. He says Thakar's case was in relation to 60% of Sandeep Tours and Travels Limited. He avers that Thakar got judgment because his advocate didn't turn up. He also agrees that judgment was entered against him and he paid and didn't appeal.

In relation to the NSSF case, Mr. Raghbir told court in cross examination that the case number was **46 of 2003**. He was charged for not remitting NSSF dues. He says that in this case Ramesh Thakar and John Ogola testified. He was then found guilty and was ordered to pay 60,000/= which he paid and didn't appeal.

He was cross examined in relation to the CBA and he said that he signed it on behalf of Hotel Royale as a director. He says he didn't ask the person who prepared it to change it nor read it. He says he was a Director. He says most of the negotiations were done by Jode on behalf of the Hotel Royale and Jode did it with his consent and he signed it. He says when workers became unruly, he went to Pratab Darbur to get his money to take to labour office. He says Pratab Darban didn't sign any document as he gave this money. He denies he gave Pratab and his father 1 million. He denies that the business name Hotel Royale was owned by him. He told court that he was an employee of Pratab Darbur but he had no agreement with them. He further told court that he was a class mate of Mr. Pratab Darbur and they are family friends.

Mr. Raghbir further told court that he knows John Odongo and that John knows the history of the hotel. He agrees that they worked together with Mr. Odongo since 1996 to 2003. He says his brother is one who got money from Pratab to take to the labour office. He said that people were recharged for roughing him up but the case was dismissed.

Mr. Raghbir further told court that he was an employee of Hotel Royale but the workers thought he was a Director as he interacted with them on a day to day basis. He denies that Mr. Darbur introduced him as a Director. Mr. Raghbir also told court that he is in the Hotel Industry and runs a Hotel called Takanin which is currently dormant and has 4 workers. Mr. Raghbir was shown claimants exh 12(a) (b),

letters he wrote to workers as Director of the Hotel and he admitted he signed as Director. He was also shown a cheque (MFI 1(a) ) and admitted the signature on the said cheque in the names of Hotel Royale was his. He denies selling Hotel Royale as per newspaper reports. Exh 1 the agreement of sale was shown to him and admitted signing it. He however says the three sellers conspired to fix him after selling him a dead horse. He further told court he was not party to an agreement at the labour office to calculate what the workers were entitled to but he admits signing the CBA and cheque without being forced. He admits that the Nakuru court was right in finding that he should pay 1.2 million bank guarantee.

In re-examination, he denies seeing pleadings and judgment of Nakuru case No. 80/2002 and that they were not supplied to him.

Respondents 2nd witness was one Baghbir Singh Sandhu. He told court that he is over 79 years old. He denies he was owner of Hotel Royale with his brother Raghbir. He indicated that the Hotel was owned by Sandeep Tours and Travels Limited as per their Exh. 3. He says they never bought Sandeep Tours. That they had intended to buy but didn't do so as the Hotel was not running well. He avers that Ramesh Thakar and others are the Directors of that Company. He admits he paid money to the labour officer as the labour officer wanted it. He says he was given this money by Mr. Darbur Pratab who is Director of Sandeep Tours and Travels Limited Mr. Baghbir says that he had no interest in the hotel but his brother went to do observation of the hotel but never bought it. He avers that the workers manhandled him demanding money and they came to his home.

In cross examination he says that they started trying to buy this Hotel from 1996 to 2003 i.e 7 years. He says he is not aware that his brother was charged in any NSSF case nor if he paid Ksh 60,000/= to NSSF. He also say he does not know if Darbur got 1 million from Raghbir for himself and his father. He says he is aware that Ramesh Thakar sued him and Raghbir in a Nakuru court and they paid Kshs 1.2 million to Ramesh. He says he does not recall the year Darbur died but it was around 2002. He says the money he took to labour came from Darbur's family. He admitted knowing one Odongo Matoro who worked at the Hotel but says he had no communication with the workers as Raghbir was the one running the Hotel. He says he is not aware that his brother Raghbir signed a CBA with the Union on behalf of Hotel Royale. He say his brother Raghbir was everything at the Hotel, Director, Manager, Financial Controller e.t.c. In re-examination Mr. Baghbir told court that his brother Raghbir was the Manager of the Hotel and that Darbur died around 2002.

Having heard the evidence of the parties herein and having considered their submissions, the issues for determination are as follows:-

- 1. What was the relationship between Hotel Royale and Sandeep Tours and Travels Company Limited.**
- 2. What was the effect of the Agreement of Sale between Sandeep Tours and Travels Limited and the respondents herein dated 2.10.1995.**
- 3. How was Hotel Royale manged and by who.**
- 4. Whether Mr. Pratab Darbur gave out money to Mr. Baghbir to take to the labour office on 2.2.2003.**
- 5. In view of the answers to the above questions, who owns Hotel Royale.**

In answer to the 1st and 2nd questions, Sandeep Tours and Travels Company Limited, is a Company incorporated under the Companies Act (Cap 486) initially on 28.4.1987 under the name of Sandeep Hardwares Limited. By a special resolution of the Company, Sandeep Hardwares changed it's name to Sandeep Tours and Travels Limited on 12.7.88 according to documents availed to court such as Def Exh 2, 3 & 4. As per the annual return for 1995 filed on 22nd May 1997 the share holders and directors of the said Company were Ramesh Thakar, Pratab Singh Darbur and Nirmal Singh Pratap having 6000, 3000 and 1000 shares each respectively. As per def MFI - Hotel Royale on the other hand was a business name owned by Sandeep Tours and Travels Limited carrying on the business of food, drinks and accommodation.

Vide an agreement dated 2nd October 1995 Ramesh Thakar referred to as the vendor sold 60% of his shares with Sandeep Tours and Travels Limited (under the name of Hotel Royale) to R. S. Sandhu and B. S. Sandhu at a price of 3 million. The special conditions in this sale were that;

“ (a) -----

**(b) The purchasers agree to take up all liabilities of the Company along with the remaining share holders which liabilities include debtors, creditors, taxes, rent, bank overdraft etc.**

**(c) The purchasers shall pay the seller one million shillings (Kshs 1 million) upon the the execution of this agreement while the balance of 2 million will be paid by monthly instalments of Kshs 100,000/= for 20 months with effect from 30th October 1995.**

**(d) The purchasers will take over, together with the remaining share holders, the bank overdraft with Delphys Bank and may continue to operate the same as they wish.**

**(e) the seller has agreed to retain his personal security through fixed deposit receipts (FDR's) for the overdraft facility for use by the company for a period of 12 months after which period the overdraft facility will either be liquidated or the share holders furnish the bank with fresh security as they would deem fit.**

**(f) The purchases undertake to furnish their outs personal guarantee to redeem the sellers security for the Fixed Deposit Receipts (FDR's) with Delphys Bank upon expiry of 12 months period in default whereof the seller will beat liberty to take up any necessary steps to have the same redeemed.**

**(g) The purchasers together with the remaining share holders who have consented to this agreement will make all relevant changes in the names of the share holders so as to delete the sellers name from all Company records immediately upon the execution of this agreement”**

There was a penal clause on the agreement where the seller was at liberty to take any legal action for recovery in case of breach. The agreement was signed by the vendor and the 2 purchasers B. S. Sandhu and R. S. Sandhu in the presence of D. M. Kimatta Advocate of P. O Box 3300 Nakuru.

After this sale, it was envisaged that the share holding of this Company was now to be charged as follows:-

1. 60% held under the name of Hotel Royale goes to R. S. Sandhu and B. S. Sandhu.
2. 30% held by Pratab Singh Barbur.
3. 10% held by Nirmal Singh Pratap

Nirmal Singh Pratap testified before this court as claimants witness No. 4. He told court that he was a Director of Sandeep Tours Limited. However in 1996 he sold his shares to Mr. Baghbir and Raghbir Singh Sandhu and after this time, he never got involved in the running of the hotel. However he was not able to show any documents showing this sale nor minutes of the Company showing he had resigned as a Director. He however told court that in the earlier proceedings before **Tanui J** he produced the agreement of the sale of the 40% shares – 30% for his father and 10% his own. A look at the proceedings however do not show that the sale agreement was ever produced but was marked MFI – P12.

As per the special condition of the agreement of sale dated 2.10.1995, the purchaser was expected to liaise with the remaining share holders of Sandeep Tours and Company Limited to ensure the name of the seller is removed from the Company records. It appears this has never been done to-date. In an effort to try and enforce some of the terms of the agreement the seller ever sued the purchasers in **Nakuru HCCC No. 80/2002**. This was in respect of the clause dealing with personal security of the seller. It had been agreed that the purchaser was to liquidate the personal security or furnish the bank with fresh security within 12 months. The purchasers failed to do so and in his findings **Visram J** (as he then was) found for

the seller Ramesh Thakar and ordered the purchasers Baghbir and Raghbir Sandhu to pay him 1,230,857 accordingly.

It is my finding that whereas the documentation at the company registry never changed, the intention of the parties and their conduct pointed to the fact that indeed, Ramesh Thakar had sold 60% of his shares in Sandeep Tours and Travels Limited (under the name of Hotel Royale) to Baghbir and Raghbir Sandhu. In the Nakuru case, the said Raghbir and Baghbir never appealed the Hon. Judge's ruling and indeed paid the amount of 1,230,857 as ordered by court. Their attempt to run away from this obligation was further curtailed by the ruling of **Musinga J** (as he then was) who found that the two Baghbir Singh Sandhu and Raghbir Singh Sandhu were culpable based on the same agreement dated 2nd October 1995 which had given rise to the suit.

The other shares of Sandeep Tours and Travel Limited – i.e 40% under the names of Pratab Sin Darbar and Nimal Sing Pratap remain so to-date as per the Companies records without any proof to the contrary. Therefore as between Baghbir and Raghbir, their contention can only resolved by pursuing the Company Sandeep Tours and Travels Company Limited.

Now to answer my question 1 and 2, I find that Hotel Royale is now in the hands of Baghbir and Raghbir Singh Sandhu and this is premised on the sale agreement of 2.10.1995.

How was the Hotel managed after this sale in 1995? From the records available before court, the Hotel Royale was under the control and management of Raghbir Singh Sandhu. Several documents shown to Mr. Raghbir and even cheques drawn on this Hotel Account were signed by Mr. Raghbir. Mr. Raghbir also approved employees' leave application and transferred them from one department to another. In his defence, Mr. Raghbir has told court that he was but only an observer for 7 years.

The Concise Oxford English Dictionary 12<sup>th</sup> Edition defines Observer **as one who watches**. Mr. Raghbir was not just one who watched. He participated in the day to day running of this Hotel and was perceived and looked upon by the employees herein as their employer. In any case, watching for 7 years cannot be taken lightly by a person who has no interest in buying an entity and especially after entering into an agreement of buying the said entity with the seller.

This position of Mr. Raghbir extended beyond just observing. He was responsible for paying the workers salaries and he did pay. He remitted their NSSF contributions to NSSF. He was charged in Cr. Case NSSF No. 46 of 2013 as follows:-

**“On or about the 15<sup>th</sup> day of every month from 15<sup>th</sup> April, 2002 Raghbir Singh Sandhu, being proprietor of Hotel Royale, a registered contributing employer No. 466646 failed without lawful excuse to pay Ksh 60,000/= in respect of his workers to National Social Security Fund for the period March 2002 to December 2002, contrary to Section 36(a) of the National Social Security Fund Act Cap 258 Laws of Kenya”.**

Indeed Mr. Raghbir was found guilty and convicted. He was ordered to pay the Ksh 60,000/= to NSSF and he, complied. He never appealed the court's ruling. Under the **National Social Security Fund (Registration) Regulations** made under S. 5(3) and (8) of the National Social Security Fund Act Regulation 3:-

**“Every contributing employer registered under regulation 3 shall complete and forward to the Fund without delay the appropriate form or forms in respect of each of his employee who is registrable as a member of the Fund and who has not previously been registered.”**

Upon this registration, it is expected that the employer is expected to remit the contributions from the employees to the NSSF. S. 36 of NSSF Act provides that:-

**“Any person who-**

- 2. fails without lawful excuse to pay to the Fund within the period prescribed by this Act any contribution which he is liable as a contributing employer to pay under this Act”.**

It is worth pointing out here that only contributing employers are liable under this Section hence the reason why Raghbir was found guilty as an employer and ordered to make a good. Mr. Raghbir having paid NSSF remittances as expected by law cannot turn around at this point to say he was a nobody in Hotel Royale and just paid the NSSF contributions as an ‘observer’.

It has been brought to the notice of this court that Hotel Royal entered into a Memorandum of Agreement with the Kenya Union of Domestic Hotel, Educational Institution, Hospitals and Workers Union, KUDHEIHA on 3.6.1998. This Memorandum was a CBA signed by representatives of the Union on one hand and Mr. Raghbir Singh Sandhu and Francis Jode on the other hand for Hotel Royale. Mr. Raghbir signed as Director of Hotel Royale whereas Mr. Jode signed as Accountant. This agreement was witnessed by the Provincial Labour Officer Nyanza Province.

Under S. 5(1) of the Labour Relation Act 2007:-

**“An employer, a group of employers or an employer’s organization that has recognized a trade Union in accordance with the provisions of this part, shall conclude a collective agreement with the recognized trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.”**

Under this Section – an employer or a group of employers or employer’s organization do enter in such an agreement and sign a CBA. In view of this provision, Mr. Raghbir could never have had the capacity to sign a Memorandum (read CBA) unless he did it as an employer.

Mr. Raghbir indeed paused and acted as employer of the claimants herein. He paid their salaries, he signed, the CBA as their employer, he paid their NSSF dues, he transferred them from department to another, and approved their leave and when they found themselves jobless, his brother and partner in Hotel Royale brought money to the Labour Officer to pay them.

In the eyes of these claimants, their employer was Mr. Raghbir and Baghbir and Hotel Royale. It is not a duty of an employer to do a background search on his employer to establish the share holding. In the eyes of a simple employee, the person who pays him and so puts food on his table is employer. To seek to ask the claimants to go and seek a company's legal standing and share holding of an entity that has employed them is far-fetched and not called for and especially for a layman.

In answer therefore to my question 3 Hotel Royale was managed by Mr. Raghbir and his brother Baghbir who were employers of the claimants. As Mr. Baghbir said, in evidence Mr. Raghbir was everything in Hotel Royale – director, manager, accountant etc.

Now in answer to question 4, Pratab Darbur gave money to Mr. Baghbir on 2.2.2003 to pay off the claimants. In cross examination, Mr. Baghbir told court that Mr. Darbur died sometimes in 2002 and so he could not have been alive to give him money in 2003. That contention therefore falls on the face reason Mr. Baghbir admits he took money to the labour offices to pay the agitated workers. He had contended that he was given this money by Mr. Darbur but no evidence of this was adduced before court. In this case then, Mr. Baghbir paid this money as Company proprietor of Hotel Royale as this was his obligation.

Given the answers to the above questions, who then own Hotel Royale? I want to go back to where I started, I set out to establish who is liable to pay claimants if at all. The defence of the respondents was that they are not liable as they never employed the claimants. Having answered the questions above, it merges that the respondents herein acted and paused as employers of the claimants. They are estopped by their own conduct from denying there existed between them and claimants an employee/employer

relationship and therefore I find that the respondents herein Raghbir Singh Sandhu T/A Hotel Royale is liable to pay claimants their dues upon their establishment of certain facts. This will be upon the establishment of each claimant of what is due and owing. Given the number of claimants involved, I will now invoke my powers under S. 15 of the Industrial Court Act, 2011. I refer the parties to the County Labour Office Kisumu to establish the amounts payable to each claimant and report back to court in 2 months time.

**HELLEN WASILWA**

**JUDGE**

**25/07/2013**

**Appearances:-**

**Mwamu for claimants present**

**Nyamweya for respondents present**

**CC. Sammy Wamache.**