



**REPUBLIC OF KENYA.**

**IN THE INDUSTRIAL COURT OF KENYA**  
**AT MOMBASA.**

(Before: Charles P. Chemmutut, J.,

O.A. Wafula & J.M. Kilonzo, Members.)

**CAUSE NO. 31 OF 2007.**

**KENYA HOTELS & ALLIED WORKERS' UNION.....Claimants.**

**v.**

**SERENA BEACH HOTEL (MOMBASA). ..... Respondents.**

**Issue in Dispute:-**

**“Recognition.”**

Ms. Dalphine Muude, Industrial Relations Officer, for the Claimants (hereinafter called the Union).

Mr. A.O. Ambenge, Senior Executive Officer, F.K.E., for the Respondents (hereinafter called the Hotel).

**A W A R D.**

The Minister for Labour and Human Resource Development referred this dispute to this Court for consideration and determination on 4<sup>th</sup> April 2007, in accordance with the powers conferred upon, or vested in, him by Section 8 of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act); and his reference, together with the statutory certificate from the Labour Commissioner under Section 14(9)(e) of the Act, were received by the Court on the same day, i.e. 4<sup>th</sup> April, 2007. The dispute was then listed for mention on 19<sup>th</sup> April, 2007, when Ms. Muude and Mr. Salim Wa-Mwawaza, Executive Officer, F.K.E., who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 2<sup>nd</sup> and 17<sup>th</sup> May, 2007, and the dispute was fixed for hearing on 29<sup>th</sup> May, 2007. Ms. Muude submitted her memorandum, on behalf of the Union, on 2<sup>nd</sup> May, 2007, but Mr. Wa-Mwawaza did not file any reply statement thereto, on behalf of the Hotel, and no reasons were given for his inability to file the same. However, Mr. Ambenge, who purported to appear, on behalf of Mr. Wa-Mwawaza, during the hearing of this dispute on 29<sup>th</sup> May, 2007, only sat in Court through-out the entire proceedings without even uttering a word, or making a verbal or *viva voce* response from the bar. The matter was, therefore, heard in default of written submission by the Hotel.

The Union is registered under Section 11 of the Trade Unions Act, Cap. 233, Laws of Kenya; and pursuant to Clause 3.0, Part III, Article (iv)(a) of its Constitution and Rules, it is allowed to seek “membership from employees engaged in hotels, restaurants, casinos, catering establishments providing lodging, food, beverages or both and further categories of related establishments providing tourism services, clubs, guest houses, camping sites, golf clubs and all other institutions and projects associated with them provided that such employees are of apparent age of eighteen years” (see App. I). On the other hand, the Hotel, which is commonly known as Mombasa Serena Beach Hotel, is an integral part or unit of Serena Hotels and Lodges and a member of Kenya Association of Hotelkeepers and Caterers. It is described in the Kenya Hotels and Restaurants Guide of 2006/7 as “offering an oasis of tranquility wholly delivering a unique mix of high-action water sports, sybaritic sun worship,

world class cuisine and vibrant night-life styled to resemble an ancient Swahili village”. Its bed or accommodation capacity is 166 air-conditioned bedrooms and suits, and has 3 restaurant, including open-air restaurant, a wide choice of recreational facilities, with squash, tennis and beach volleyball pitch as well as deep sea fishing, mini sailing, scuba diving, wind surfing and coral reef snorkeling. The Hotel also offers evening entertainment, including dancing, live bands and traditional Swahili nights with music and food. Maisha health and beauty treatments are available too. All in all, the Hotel is a business entity, and was registered as such by the Ministry of Tourism and Wildlife under the Hotels and Restaurants Authority Act, Cap. 494, Laws of Kenya, to engage in hotel business.

It is alleged that between 1999 and 2000, the Union sought recognition from the Hotel on the following grounds:-

- (a) that it had recruited the total of 190, or 100%, unionisable employees as its members;
- (b) that it was the right or appropriate Union to represent the employees of the Hotel, and
- (c) that there was no rival union claiming recognition or representation (see App. 2.)

The Hotel refused to accord recognition to the Union; and aggrieved by this decision, the Union reported 85 disputes on recognition against various establishments in the hospitality industry or sector to the Minister for Labour in accordance with Section 4 of the Act. The Minister accepted the dispute; and on 19<sup>th</sup> March, 2000, he appointed a Demarcation Committee, consisting of Mrs. B.W.Mwai (Chairlady), Mr. J.N. Mwanzia (Secretary) and Messrs. G.N. Konditi and G. Odiko (Members) from the Federation of Kenya Employers (F.K.E.) and Central Organisation of Trade Unions (COTU) respectively, to act as the Investigators. On 11<sup>th</sup> February, 2002, Miss M.M. Muli released the investigation report to the parties, on behalf of the Chief Industrial Relations officer, for the Minister, in which it was found that the Union had recruited 190 unionisable employees against a nil recruitment by the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (commonly known as KUDHEIHA Workers) in the Hotel establishment, and it was, *inter alia*, recommended therein as follows:-

- “1. KHAWU and KUDHEIHA represent Hotel and catering establishment .....
2. Hotels and restaurants which are members of the Hotel Keepers and Caterers association to negotiate individual agreements with the union that has fulfilled the simple Majority rule.
3. ....
4. The Minister ..... should accept and process all disputes involving Hotels and Restaurants irrespective of the union which has reported.
5. Each union is to represent collective and individual disputes of workers who are members or were former members of Hotel establishments having recognition with them. However, representation of individual workers disputes in Hotel establishment where a union has no recognition will be allowed on condition that, the same dispute is not being pursued by a rival union.
6. Representation of workers employed in non Association Hotel members be undertaken by both unions..... Principle of ‘who gets where first’ to apply.
7. Both unions should desist from interfering in any way with industrial relationship existing between a union and a particular Hotel establishment unless evidence of formal mass revocation of members is submitted and accepted by the Minister as provided in our Industrial relations machinery and the Trade Disputes Act Cap. 234.
8. Both unions should carry out their organization and recruitment of members in a peaceful and harmonious manner which does not threaten industrial relations existing in a particular establishment and the industry in general. Employers and management of the various Hotels as well as the Association should cooperate with each of the union in the spirit of Tripartism as enshrined in our Industrial Relations Charter and desist from actions that are injurious or are a hindrance to the exercise of legitimate union activities.
9. ....”

Despite the above findings and recommendation of the report by the Demarcation Committee, the Hotel did not accord recognition to the Union. Consequently, the latter reported a formal trade dispute to the Minister for Labour. The Minister accepted the dispute and referred the same to the Court for adjudication and determination on 21<sup>st</sup> May, 2002 under Section 8 of the Act. The case was received by the Court on 23<sup>rd</sup> May, 2002, and registered as Cause No. 50 of 2002, However, on 15<sup>th</sup>

October, 2002, the parties presented a memorandum of agreement in which they unconditionally withdrew it and prayed that the same be marked as withdrawn. In an order, dated 25<sup>th</sup> October, 2002, the Court dismissed the case as withdrawn, but allowed the Union to report a fresh dispute on the same issue, if they deemed necessary (see Apps. 3,4 and 5).

The Union made further attempts to gain recognition from the Hotel, but all in vain despite being advised by Mr. S.M. Mbae, on behalf of the Chief Industrial Relations Officer, at para. 5 of his letter, dated 5<sup>th</sup> October, 2004, that “investigations carried out established beyond any reasonable doubts that the union has managed to recruit more than the required legal and mandatory simple majority in your organization to warrant you to accord them a formal recognition to pave ways for commencement of Collective Bargaining Agreement”(see Apps. 6 to 19). As the Hotel declined to accept the report of the Demarcation Committee and also refused to endorse or sign the Notification of Dispute, Form ‘A’, the Minister for Labour and Human Resource Development again invoked his powers vested in, or conferred upon, him by Section 8 of the Act and referred the present dispute to the Court as stated at the outset of this award. (see App. 20, 21 and 25).

Incidentally and on the advice of the management of the Hotel, the Union had sought fresh mandate from the unionisable employees in September 2006 to represent them. As a result, it recruited 156 out of about 206, or 75.7%, unionisable employees as its members, and out of a total of 1,200 unionisable employees of the entire Serena Hotels and Lodges, the Union has recruited 626, or 52.2%, as its members (see Apps. 22, 23 and 24).

Ms. Muude submitted that the Union had met the requirements under Section 5(2) of the Act for recognition; and in exercise of their constitutional right under Section 80(1) of the Constitution of Kenya and Part B III. 2 of the Industrial Relations Charter, the unionisable employees voluntarily joined the Union as members. She relied on the following authorities in support of her case:-

(i) *Cause No. 8 of 2003: Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers Union v. Kenya Association of Hotelkeepers & Caterers and Kenya Hotels & Allied Workers’ Union.*

(ii) *Cause No. 36 of 2005: Kenya Hotels & Allied Workers’ Union v. Tea Hotel, Kericho.*

(iii) *Cause No. 90 of 2006: Kenya Hotels & Allied Workers’ Union v. Nairobi Gymkhana.*

Accordingly, Ms. Muude prayed that the Hotel accord formal recognition to the Union forthwith.

The demand by the Union for recognition stands unchallenged, although full and free opportunity was given to the Hotel to file its reply statement thereto, but it did not bother or care to do so. In the circumstances, we are satisfied that the Union has met or fulfilled the conditions under Section 5 (2) of the Act. Accordingly, we award that the Hotel accord formal recognition to the Union, and the parties must sign a recognition agreement with **three (3) months** from the date of this award for purposes of collective bargaining.

**DATED** and delivered in Nairobi this 11<sup>th</sup> day of September, 2007.

Charles P. Chemmutut, MBS.,  
**JUDGE.**

O.A. Wafula,  
**MEMBER.**

J.M. Kilonzo,  
**MEMBER.**