



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 39 OF 2007

KENYA HOTELS AND

ALLIED WORKERS UNION
CLAIMANT

VERSUS

THE GRAND REGENCY HOTEL
RESPONDENT

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATION INSTITUTIONS,
HOSPITALS**

**AND ALLIED WORKERS (KUDHEIHA) 1ST INTERESTED
PARTY**

**THE KENYA HOTEL KEEPERS AND CATERERS ASSOCIATION 2ND
INTERESTED PARTY**

Mr. John Simiyu for claimant/applicant

M/S Oyombe for respondents

Mr. Ongoto for interested parties

RULING

1. The application seeks to have Nduma J. recuse himself for the reason that he has determined a similar matter against the applicant in Petition No. 5 of 2013. In her Ruling dated 2nd June 2015, Hon. Lady Justice Hellen Wasilwa stayed the hearing of the Application dated 23rd August 2012 seeking orders to have the respondents cited for contempt of court pending the hearing and determination of Petition No. 5 of 2013, by a three Judge Bench comprising of Nduma J. presiding, Ndolo J. and Onyango J.
2. The Lady Justice opined that Petition No. 5 of 2013, will lay to rest this Cause No. 37/2007 concerning matters being argued in the notice of motion.
3. Petition No. 5 of 2013 was heard and determined by the three Judge Bench.

4. The Bench held *inter alia* that provided there was a recognition agreement between KUDHEIHA and Kenya Hotel Keepers and Caterers Association, the 1st interested party and 2nd interested party herein, the claimant/applicant could not force the Hotels that were members of the Kenya Hotel Keepers and Caterers Association, to forfeit their membership and recognize the claimant/applicant as the exclusive union permitted to negotiate a Collective Bargaining Agreement with the specific Hotel.

5. The claimant/applicant instead of abiding by the decision of the three (3) Judge Bench in Petition No. 5 of 2013, which is a decision of a superior court as opposed to the decision of the erstwhile Industrial Court, which was a tribunal at the time Hon. James Rika, made the decision, the applicant, now purports to use this as a reason to allege bias on the part of Nduma J. because, Nduma J. participated in the Bench in Petition No. 5 of 2013, which made a Judgment unfavourable to the claimant/applicant.

6. It is my considered view, that this application for recusal, is misconceived and an abuse of the process of the court.

7. The court stated the law on the issue of recognition between the claimant/applicant and members of the 2nd interested party in Petition No. 5 of 2013. The decision of the superior court, supersedes the position taken by Justice Rika in a Judgment of the erstwhile tribunal on 31st July 2008.

8. Accordingly, the application for recusal of Nduma J. for stated reasons is refused.

Dated, Signed and delivered at Nairobi this 25th day of August, 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE