



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 80 OF 2018

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATION INSTITUTIONS,
AND HOSPITAL WORKERS.....CLAIMANT**

VERSUS

THE PROPRIETOR BANDARI HOTEL.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Hezron Onwong'a, Industrial Relations Officer, for the Claimant

Muthee Soni & Associates, Advocates for the Respondent

RULING

1. In the Amended Memorandum of Claim filed on 30th September 2019, the name of the Claimant is indicated as Kenya Union of Domestic, Hotels, Educational Institutions and Hospitals Workers (KUDHEIHA).
2. No name of the Grievant if any, is indicated in the Amended Memorandum of Claim.
3. The issues in dispute are identified to be:-
 - Refusal by Management to pay **her** terminal benefits.
 - Failure by Management to comply with Legal Notices, by underpaying the **Claimant**.
4. It is not disclosed who reference to 'her' above, relates to. The Claimant is the Union known as KUDHEIHA. It is not likely that KUDHEIHA was underpaid any salary or allowances by the Management.
5. The rest of the Amended Memorandum of Claim, does not clarify who is the Claimant; and who is the Grievant.
6. Paragraph 3 states the Claimant was an Employee of the Respondent. Paragraph 4 states the Grievant was employed by the Respondent, as a Receptionist. Paragraph 10 states that the Respondent failed to pay the Claimant (KUDHEIHA) its rightful salary. Paragraph 19 refers to summary dismissal of the Claimant. Paragraph 21 seeks Certificate of Service to the Claimant.
7. The Respondent in the Amended Memorandum of Claim is simply identified as 'The Proprietor Bandari Hotel'. No natural or juristic names are given.
8. The Respondent filed a Notice of Preliminary Objection on 17th January 2020, stating that the Claimant lacks capacity to bring the Claim;

the Claim is defective; and in abuse of the Court Process.

9. The Objection was heard on 27th February 2020.

The Court Finds:-

10. The Amended Memorandum of Claim does not disclose in clear terms, who is the Claimant, and who is the Grievant.

11. As shown at paragraph 6 of the Ruling, the identity of the Claimant and the Grievant is totally confused.

12. The identity of the Respondent is similarly not sufficiently shown, to enable the Court reasonably consider and issue the remedies sought.

13. Before the Court is an Amended Memorandum of Claim, which fails to fulfil a rudimentary procedural requirement: that of identifying who are the litigants. Rule 4(1) of the Employment and Labour Relations Court (Procedure) Rules 2016, requires names and description of Parties are given. 'The Proprietor' is not a name. It could be a description, but not a name, of a natural or juristic person. It does not sufficiently identify the Employer against whom the Claim can be sustained.

14. Whereas the Court does not think that recognition of the Union by an Employer is determinative of the Union's right to represent its Members in Court, as advanced by the Respondent, identification of Parties in any litigation, is critical to determination of the dispute.

15. The Court must agree that even were it to presume that the Claim herein is brought by a Trade Union on behalf of its Member, there ought to be shown some prima facie evidence of that membership.

16. The Claimant has not stated in the Amended Memorandum of Claim who the Grievant is and shown its link to the said Grievant. It similarly has failed to name the Respondent. The Claim is not sustainable.

IT IS ORDERED:-

a. The Preliminary Objection is sustained.

b. The Claim is rejected with no order on the costs.

Dated and delivered at Mombasa this 26th day of March 2020.

James Rika

Judge