



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 369 OF 2010

KENYA GUARDS AND ALLIED WORKERS UNION.....APPLICANT

VERSUS

THE REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION...1ST INTERESTED PARTY

SAMSON WANJARA MATETE.....2ND INTERESTED PARTY

WILLIAT ISAAC MACHONJO.....3RD INTERESTED PARTY

RULING

1. **Isaac Machongo**, the Secretary General of the Applicant herein has, vide his Motion filed on 4th October 2012, sought that he be joined in these proceedings. It is his position that one **Mr Samuel Ndonga** who filed these proceedings did not do so with the consent of the applicant and is a stranger to the applicant hence had no *locus standi* before the Court. According to him the applicant stands to be greatly prejudiced if the orders sought were granted.

2. There is another application dated 9th November 2010 drawn by **Samson Wanjala Matete**, the Secretary General of Kenya National Private Security Workers Union which however seeks several very substantive orders without seeking to be joined in these proceedings. The affidavit in support of the said application is however, sworn by one **Thomas Ochieng** who purports to be the Secretary General of National Private Security Workers Union.

3. Order 53 Rule 6 of the Civil Procedure Rules provides:

On the hearing of any such motion as aforesaid, any person who desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice or summons, and shall be liable to costs in the discretion of the court if the order should be made.

4. Strictly speaking, the joinder of a party who desires to be heard and who is deemed by the Court to be a proper person to be heard ought to be done at the time of the hearing of motion. However, where subsequent to the hearing a person claims that he ought to have been heard but was not made aware of the

proceedings and could not have been aware despite due diligence, it is my view that it would be unjust to lock such a person from being heard in the matter. The Court of Appeal in **Nakumatt Holdings Limited vs. Commissioner of Value Added Tax [2011] EKL** held that the superior court in the matter before the court has the residual power to correct its own mistake. Accordingly, where a mistake is shown to have been committed which is remediable by the Court the same ought to be corrected by the Court in the exercise of its inherent jurisdiction and not necessarily under section 3A of the Civil Procedure Act which strictly speaking does not apply to judicial review proceedings. Order 53 rule 3(4) of the Civil Procedure Rules provides:

If on the hearing of the motion the High Court is of the opinion that any person who ought to have been served therewith has not been served, whether or not he is a person who ought to have been served under the foregoing provisions of this rule, the High Court may adjourn the hearing, in order that the notice may be served on that person, upon such terms (if any) as the court may direct.

5. Therefore it is as much a duty on the part of the Court to ensure that persons who are likely to be affected by the decision sought are served as it is upon the applicant to ensure that the said persons are served. Therefore where it subsequently turns out that a person who ought to have been brought into the picture was not so brought the Court has a duty to allow the joinder of the said party to the proceedings.

6. Having considered the material before the Court and in particular the fact that **Mr. Miyare** learned counsel for the applicant and **Ms Cheruiyot** learned counsel for the Respondent do not oppose the application, I am satisfied that **Isaac Machongo** ought to be joined in these proceedings. Accordingly I hereby allow the said **Isaac Machongo's** application and order that he be joined to these proceedings as an interested party. The costs of the application will be in the cause.

7. With respect to **Samson Wanjala Matete's** application, it is clear that he has not been joined to these proceedings. He has not applied to be joined. In fact from the application itself, it is not clear who the applicant is. The orders he seeks are similarly vague and unclear. They are not orders which are meant to complete the orders sought in the judicial review application but seems to be parallel to it. I am therefore not satisfied that even if the application was to be stretched to be an application for joinder, sufficient material has been disclosed to enable me allow the same. Judicial Review Application ought not to be transformed into an avenue for ventilating personal differences between parties or persons who feel aggrieved by any aspect of the matter but which cannot be dealt with within the strict framework and corners of the judicial review applications. The remedy against the merits of the decision is always available as a private law remedy and not vide judicial review proceedings which falls within the regime of public law. Accordingly I am not satisfied that the application dated 9th November, 2010 is merited and the same is dismissed but with no order as to costs since the application itself does not disclose exactly who the applicant is.

Dated at Nairobi this day 13th day of March 2013

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Miyare for the ex parte applicant

Miss Ogina for Wati for the 1st Interested Party

The 2nd Interested Party

The 3rd Interested Party