



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CAUSE NO. 161 OF 2011

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF THE LABOUR INSTITUTIONS ACT, NO. 10 OF 2007

AND

**IN THE MATTER OF AN ORDER ISSUED ON 17TH JUNE 2011 BY THE INDUSTRIAL
COURT IN CAUSE NO. 394 (N) OF 2009;**

SIMON MUKIRI & 58 OTHERS – VS – DOMINION ENGINEERING WORKS LIMITED

BETWEEN

**DOMINION ENGINEERING WORKS
LIMITED.....APPLICANT**

AND

**INDUSTRIAL COURT OF
KENYA.....RESPONDENT**

AND

**SIMON MUKIRI & 56 OTHERS.....INTERESTED
PARTIES**

RULING

On 12th July, 2011 the applicant filed an application seeking, *inter alia*, leave to apply for an order of certiorari to remove to this court for purposes of being quashed the decision contained in the respondent's order dated 17th June, 2011 striking out from the record a Notice of Change of Advocates filed on 1st March, 2011 and also setting aside a consent filed on 20th May, 2011 in **Industrial Court Cause No. 394(N) of 2009, Simon Mukiri & 58 Others v Dominion Engineering Works Ltd.** The court directed that the application be served for mention inter partes on 15th July, 2011. On that day **Mr. Thiga** appeared for the applicant while **Miss Gichobi** and **Miss Njeri Mburu** appeared for the Respondent and the Interested Parties respectively. The application was adjourned to 18th July, 2011. Come that day, **Mr. Munyalo** appeared for the Interested Parties. The respondent sought time to file a replying affidavit and it was agreed that the application be adjourned to 29th September, 2011.

There is a dispute regarding representation of the Interested Parties and this ruling is in respect of that dispute only.

On 22nd July, 2011 Miss Njeri Mburu told the court that Mr. Munyalo Muli, Advocate, had not been instructed by the Interested Parties to appear for them and that she was the one rightly on record. The court directed the two advocates to file their respective affidavits and submissions on the issue of representation, which they did.

Njeri Mburu stated that she was duly instructed by the Interested Parties in the Industrial Court Case. She annexed to her affidavit an Instruction Sheet signed by **Simon Mukiri** and **Aloise Otieno** instructing her to act for and on behalf of the Employees of Dominion Engineering Company Limited. She also annexed thereto another Instruction Sheet signed by 29 employees of the applicant authorizing Mr. Simon Mukiri, Mr. Aloise Otieno and Ahmed Mohamed to act as their representatives in their suit filed through Miss Njeri Mburu & Company Advocates. She further annexed thereto a document signed by 34 employees of the applicant confirming that they had not instructed the firm of Munyalo & Company Advocates to act for them in the Industrial Court matter.

On the other hand, Munyalo Muli & Company Advocates claimed that vide a letter of authority to act dated 1st March, 2011, the representatives of the Interested Parties namely **Charles Kilonzo**, **James Macharia**, **Kasingu Muli** and **Jonathan Matusa** instructed him to conduct their case on their behalf and that of other Interested Parties in Industrial Cause No. 394N of 2009. A copy of the letter of authority was annexed to an affidavit sworn by Mr. Tito Munyalo.

Thereafter he commenced negotiations with counsel for the respondents and an out of court settlement of the dispute was arrived at.

However, Charles Kilonzo, James Macharia, Kasingu Muli and Jonathan Matusa who were in court when this issue was being argued, when asked by court when asked whether they had given instructions to Munyalo Muli & Company Advocates, they categorically denied having done so. They disowned the purported instruction letter that was annexed to the affidavit of the said advocates. Some of them even said that they had seen Mr. Muli Munyalo for the first time during the argument of this application. They said that their advocate was Miss Njeri Mburu.

Having taken into consideration the submissions made by the said advocates, I am inclined to believe and

hold that the Interested Parties intended and did instruct M/S Njeri Mburu & Company Advocates and not Munyalo Muli & Company Advocates. Four of the Interested Parties who were alleged to have given instructions to Ms. Munyalo Muli & Company Advocates on behalf of the other Interested Parties denied having ever done so. There is also an affidavit sworn by one Aloise Otieno, a committee member, which states that none of the Interested Parties claims against the applicant have been settled as alleged by Mr. Muli.

I therefore hold that the firm of Njeri Mburu & Company Advocates is the one that ought to lawfully represent the Interested Parties. The firm of Munyalo Muli & Company Advocates is wrongly on record. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2011.

D. MUSINGA

JUDGE

In the presence of:

Nazi – Court Clerk

Miss Mari for the Respondent

Mr. Nthiga for the Applicant

Njeri Mburu for the Interested Parties