



IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Appli 187 of 2008

REPUBLIC APPLICANT

V E R S U S

MINISTER OF LABOUR & HUMAN RESOURCE

DEVELOPMENT..... RESPONDENT

EX- PARTE: KENYA GUARDS & ALLIED WORKERS UNION

J U D G M E N T

Before me is a Notice of Motion dated 22nd April, 2008 filed by M/s Mogire & Company advocates on behalf of the ex-parte applicant named as **KENYA GUARDS & ALLIED WORKERS UNION**. The respondent is named as **MINISTER FOR LABOUR & HUMAN RESOURCE DEVELOPMENT**. The application was filed on 22nd April, 2008 pursuant to section 8 and 9 of the Law Reform Act (*Cap. 26*) and Order 53 rule 3 of the Civil Procedure Rules. The orders sought in the application are as follows-

1. ***Orders of Certiorari do issue to bring into this Honourable Court and quash the decision of the Respondent contained in the Gazette Notice No. 10242 dated 16th October, 2007.***
2. ***An order of prohibition do issue prohibiting the Respondent from exercising his powers under the Labour Relations Act No. 14 of 2007 in an arbitrary and capricious manner against the applicant.***
3. ***Costs of this application be awarded to the applicant.***

The application was grounded on the **STATUTORY STATEMENT** dated 14th April 2008, and the **VERIFYING AFFIDAVIT** sworn on 14th April, 2008 by **ISAAC W. MACHONGO**, the Secretary General of the ex-parte applicant, both of which were filed with the Chamber Summons for leave as required by law.

The grounds of the application are inter alia, that the applicant is a registered trade union with membership over the entire Republic of Kenya; the applicant had been condemned unheard; the respondent acted ultra vires the provisions of the law and contrary to the rules of natural justice; the respondent's action is unreasonable, unfair and inconsistent with good administration or exercise of statutory powers; the respondent's action is in bad faith and contrary to the applicant's legitimate expectations; the applicant's operations are now crippled as a result of the respondent's actions; the respondent ignored the court order contrary to law; and finally that the respondent's revocation of Gazette Notice No. 7416 dated 23rd December, 1999 was without merit.

Counsel for the applicant filed written submissions on 20th August, 2008. It was contended in the said written submissions that the registration of the applicant as a trade union with a membership spread throughout the country, was confirmed by the Industrial Court in cause No. 70 of 2002 – **Kenya Union of Commercial Food & Allied Workers –Vs- Kenya Guard Services and 30 others.** It was contended that the Industrial Court recognized the applicant as the rightful organization to represent employees in the private security sector. It was contended also that on 24th March, 2007, the applicant held elections throughout the country in accordance with its Constitution. However, contrary to the Union’s constitution, some members and strangers constituted themselves into an illegal committee and purportedly changed the name of the applicant to Kenya National Private Security Union. It was contended that the national officials challenged the change of name in Nairobi HCCC No. 210 of 2007 – **Gideon Chacha Kamunu – Vs- Kenya Guards & Allied Workers Union,** and on 5th October, 2007 the court made an order reversing the union’s name to Kenya Guards & Allied Workers Union, and ordered the Registrar of Trade Union to effect the change.

It was contended that the respondent purportedly acting on the illegal change of name issued Gazette Notice Nos. 10242 dated 16th October, 2007 in exercise of powers conferred under the Trade Unions Act (**Cap. 234**) now repealed revoking Gazette Notice No. 7416 of 1999 and recognized M/s Kenya National Private Security Workers Union, which action was illegal, and was contrary to the court’s orders. The said gazettelement also allowed non officials of the union to open illegal bank accounts and receive monthly members contributions, thus deprive the legitimate union (**the applicant**) its contributions. It was contended that the court order which reverted the name of the union to its original name Kenya Guards & Allied Workers Union was still in force and had not been set aside, thus the decision complained of deprived the legitimate union (**the applicant**) its contributions. It was contended that since the court order which reverted the name of the union to its original name of Kenya Guards & Allied Workers Union was still in force and had not been set aside or stayed, Gazette Notice No. 10242 dated 16th October, 2007 was null and void.

Though the respondent was served, they did not file any response to the application. It is necessary to observe here that on 09/10/2008 Mr. Cherogony appeared for the respondent. On the date when hearing date was taken, that is 23/10/2008, Mr. Atanda appeared for the respondent. However, on the hearing date nobody appeared for the respondent and no explanation was given for the failure to appear. Therefore the hearing proceeded in the absence of the respondent or their counsel. Counsel for the applicant, Mr. Mugire made submissions before me in support of the application.

This application will succeed for two reasons. First of all, it is not opposed. Therefore logic demands that I consider only the case that has been presented to me, that is the case of the applicant.

Secondly, there is a court consent order in Nairobi High Court Civil Case No. 210 of 2007 which was recorded before Justice Nambuye on 5th October, 2007 as follows-

- 1. THAT there be an order reversing the change of the respondent’s name, Kenya Guards and Allied Workers Union into Kenya National Private Security Workers Union.**
- 2. THAT an injunction be and is hereby issued restraining the officers, servants or agents of the Kenya National Private Security Workers Union from trespassing, interfering and or recruiting the members of the Kenya Guards & Allied Workers Union in terms of prayer 9.**
- 3. THAT the Registrar of Trade Unions be and is hereby compelled to effect the change of the Officers; Trustees and Committee Members of the Head Office who were voted through the consent order in HCCC No. 210 of 2007 at Webs Hotel in Kisii on 24th March, 2007.**
- 4. THAT the respondents do pay costs of this application.**

In the face of the above consent order which has not been varied or stayed, the Minister cannot by way of a Gazette Notice change this court’s orders. Therefore, the gazette notice is capricious, invalid, unlawful,

null and void.

Consequently, I will allow the application, and order as follows-

1. ***An order of CERTIORARI be and is hereby issued to bring into this Court and quash the decision of the Respondent contained in Gazette Notice No. 10242 dated 16th October, 2007, and the same is hereby quashed forthwith.***
2. ***An order of prohibition is hereby issued prohibiting the Respondent from exercising his powers under the Labour Relations Act No. 14 of 2007 in an arbitrary and capricious manner against the applicant.***
3. ***The respondent will pay the applicant's costs of these proceedings.***

It is so ordered.

Dated and delivered at Nairobi this 28th day of May, 2009.

GEORGE DULU

JUDGE.