



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Appli 471 of 2008**

1. **BENSON IRUNGU MAINA**
2. **AGAPHIO MURIUKI ANTHONY**
3. **ANDREW KINYA M'MUKIRI**
4. **CHARLES WETUNDE KISIERO**
5. **MICHAEL MUKUDI OUMA**
6. **MOSES MURIITHI WAIGANJO**
7. **STANLEY MURIITHI KARANI.....APPLICANTS**

**V E R S U S**

**REGISTRAR OF TRADE UNIONS..... RESPONDENT**

1. **KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS**
2. **BONFACE KAVUVI**
3. **PETER NGUGI**
4. **BENSON LUVAYI**
5. **SIMON KIMEYU.....INTERESTED PARTIES**

**R U L I N G**

Before me is a Chamber Summons dated 6<sup>th</sup> August, 2008 filed by Kurauka and Company advocates on behalf of the applicants named as **BENSON IRUNGU MAINA; AGAPHIO MURIUKI ANTHONY; ANDREW KINYUA M'MUKIRI; CHARLES WETUNDE KISIERO; MICHAEL MUKUDI OUMA; MOSES MURIITHI WAIGANJO;** and **STANLEY MURIITHI KARANI**. The respondent is named as the **REGISTRAR OF TRADE UNIONS**. Before the application was heard, I ordered that it be served. After service, the following persons came on record as interested parties. These are **KENYA UNION OF COMMERCIAL FOOD & ALLIED WORKERS; BONFACE KAVUVI; PETER NGUGI; BENSON LUYAYI;** and **SIMON KIMEYU**.

The Chamber Summons was filed under Order 53 rule 1(2) (3) (4) of the Civil Procedure Rules. The orders sought are as follows-

1. ***THAT the application be certified as urgent.***
2. ***The Honourable Court be pleased to grant leave to the Applicants to apply (for) an order of certiorari to quash the Respondent's decisions of 30<sup>th</sup> and 31<sup>st</sup> July, 2008 to register a Notice of Change of Officers, Form Q, dated 23<sup>rd</sup> June, 2008 purportedly by Kenya Union of Commercial Food and Allied Workers.***
3. ***THAT this Honourable court be pleased to grant leave to the Applicants to apply for an order of prohibition preventing the respondent from registering resolutions of a purported meeting of Kenya Union of Commercial Food and Allied Workers held at Kafoca Hotel, Machakos on 21<sup>st</sup> June, 2008.***
4. ***THAT the said leave do operate as a stay of the Respondent's decisions of 30<sup>th</sup> and 31<sup>st</sup> July, 2008 to register and registration of a Notice of Change of Officers, Form Q, dated 23<sup>rd</sup> June, 2008 purportedly by Kenya Union of Commercial Food and Allied Workers.***
5. ***THAT costs of this application be in the cause.***

The application was filed with a **STATEMENT OF FACTS** dated 5<sup>th</sup> August, 2008 and a **SUPPORTING AFFIDAVIT** sworn by **BENSON IRUNGU MAINA** described as Assistant Secretary-General on 5<sup>th</sup> August, 2008. It was deponed, inter alia, in the said affidavit that the Respondent changed the names of the registered officials on the basis of an unlawful meeting held on 21<sup>st</sup> June, 2008, on which objections were lodged and the said respondent initially upheld the objection. Therefore, the subsequent change of names has thus caused the (**legitimate**) union officials to suffer loss, inconvenience and anxiety. It was further deponed that the Trade Union had already filed HCCC No. 261 of 2008, and Milimani CMCC 3979 of 2008, which were still pending but in which the applicants are not parties.

The respondent filed a replying affidavit sworn on 16<sup>th</sup> September, 2008 by **WILLIAM KIBET LANGAT** a Senior Assistant Registrar of Trade Unions. It was deponed in the said affidavit, inter alia, that the Special Conference held at Machakos on 21<sup>st</sup> June, 2008 was proper and had the powers of Annual General meeting. It was also deponed that the Registrar (**respondent**) acted properly and within the law to register the officials as she did.

The interested parties filed a notice of preliminary objection on 8<sup>th</sup> September, 2008 that the application was fatally defective and should be dismissed and/or struck out.

At the hearing, Mr. Kurauka for the applicants addressed me in support of the application. Mr. Langat for the respondent, Ms Guserwa for the 1<sup>st</sup> interested party and Mr. Nyabena for the 2<sup>nd</sup> interested parties addressed me in opposition to the application.

Having considered the application, documents filed and issues raised both in documents filed and the submissions of counsel, I am of the view that there is a matter regarding the exercise by the Respondent of statutory powers that this court needs to investigate. I am of the view that the applicants have demonstrated an arguable case. I will grant leave to file judicial review proceedings. I do not see anything that can make the application fatally defective.

I have been requested to order that the leave do operate as a stay. I see no compelling reason to order a stay, as I have not been informed that the institution or organisation in question is likely to collapse, if stay is not granted. In my view, this is a matter that should only be fast tracked and heard and determined on priority basis. Costs will be in the cause.

Consequently, I order as follows-

1. *Leave is granted to the applicants to file judicial review proceedings for certiorari and prohibition as requested. The Notice of Motion will be filed within 14 days from today.*
2. *I decline to grant stay orders.*
3. *Costs will follow the determination of the Notice of Motion.*
4. *Mention on 15/6/2009.*

Dated and delivered at Nairobi this 25<sup>th</sup> day of May, 2009

**In the presence of-**

Mr. Kurauka for applicants

Mr. Langat for respondent

Mr. Orwa for 1<sup>st</sup> interested party

Mr. Nyabena for other interested parties.

**George Dulu**

**Judge.**