



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

Misc. Appli. 378 of 2008

NATIONAL UNION OF WATER AND SEWERAGE EMPLOYEES.....APPLICANT

V E R S U S

THE REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

RASHID KIVYASO SHAKOMBO.....1ST INTERESTED PARTY

SIMON MAINA.....2ND INTERESTED PARTY

PAUL KIPROTICH KOECH.....3RD INTERESTED PARTY

JACK OMINO.....4TH INTERESTED PARTY

PHILEMON O. ATIK.....5TH INTERESTED PARTY

LYDIA HADULU.....6TH INTERESTED PARTY

MWARUMBA MWONDOSHA.....7TH INTERESTED PARTY

NANCY MUTHONI NDEGWA.....8TH INTERESTED PARTY

R U L I N G

This is a Chamber Summons dated 25th June, 2008 and filed by M/S Mburu Mbugua & Company Advocates on behalf of the ex-parte applicant named as National Union of Water and Sewerage Employees. The respondent is named as The Registrar of Trade Unions.

The Chamber Summons was brought under Order 53 rule 1 (1) and (2) of the Civil Procedure Rules. It was brought under certificate of urgency. It seeks for the following orders that-

(1) *The application be certified as urgent, service in the 1st instance be dispensed with and the same be heard ex-parte.*

(2) *This Honourable Court be pleased to grant leave to the applicant to dispense with service of Notice to the Registrar.*

(3) *This Honourable Court do grant leave to the applicant to apply for an order of certiorari to remove into the High Court and quash the decision of the Registrar of Trade Unions made on 11th June, 2008 revoking the registration of the union's officials elected on 10th May, 2008 and ordering the convening of the National Delegates Conference to conduct elections.*

(4) *This Honourable court do grant leave to the applicant to apply for an order of prohibition directed at the Registrar of Trade Unions prohibiting him from ordering the union to conduct fresh elections revoking the registration of the union's national officials, registering any further changes of the union's officials and or in any manner interfering with the Union's management and affairs.*

(5) *The leave granted by this Honourable Court do operate as a stay of decisions of the Registrar of Trade Unions dated 11th June, 2008 cancelling the registration of National Officials of the union elected 10th May, 2008 and registered on 12th May, 2008.*

(6) *Any other relief this Honourable Court may deem fit for the ends of justice.*

(7) *The costs of this application be provided for.*

The application has grounds on the face of the Chamber Summons. It was filed with a supporting affidavit sworn by LAWRENCE GITHINJI NGACHA on 25th June, 2008, and a verifying affidavit also sworn by LAWRENCE GITHINJI NGACHA as the Secretary General of the applicant on 24th June, 2008. The application was also filed with a statement of facts.

When the application came before me on 25th June, 2008, I ordered that the same be served on the Registrar of Trade Unions and all persons named in the Registrar's letter of 18th June, 2008. After service, Ms Nyandieka & Associates advocates came on record for 8 interested parties named as, RASHID KIVYAO SHAKOMBO, SIMON MAINA, PAUL KIPROTICH KOECH, JACK OMINO, PHILEMON O. ATIK, LYDIA HADULU, MWARUMBA A. MWONDOSHA and NANCY MUTHONI NDEGWA. A replying affidavit sworn on 16/6/2008 by RASHID KIVYASO SHAKOMBO describing himself as Deputy Secretary General was filed, in opposition to the application.

At the hearing of the application, Mr. Mbugua appeared for the applicant, Mr. Langat appeared for the respondent while Mr. Nyabena appeared for the 8 interested parties. The three Counsel who appeared before me addressed me regarding the application. The respondent and the interested parties Counsel were of the view that the application had no merits. Authorities were cited to me, especially by Counsel for the ex-parte applicant.

This is an application for leave to file Judicial Review proceedings. At this stage of considering whether or not to grant the leave sought, I am not required to go into the substantive merits of the application. I am however, required to enquire as to whether the applicant has a sufficient interest in the subject matter, and whether the applicant has a *prima facie* arguable case. Having considered all the facts before me, I am satisfied that the applicant has demonstrated a sufficient interest as the Trade Union concerned, and that they have a *prima facie* arguable case. I will grant the leave sought to file Judicial Review proceedings.

The ex-parte applicant has asked that leave granted do operate as a stay of the respondent's decisions. Several reasons have been given. I will not grant a stay of the Respondent's decision. Though the ex-parte applicant claims that the Union (*applicant*) cannot operate, in fact, it can do so. In my view, it was only some particular officials said to have been registered on a certain date in May, 2008 who were deregistered. Clearly, that meant that the previous position of officials who were in the register before the challenged registration would be the registered officials for the time being. I do not see any irreparable or substantial loss which will be occasioned to the applicant by my not granting stay orders. I decline to grant stay orders.

The merits or otherwise of the Judicial Review orders sought will be determined after the hearing of the

main motion.

Consequently, I order as follows-

1. *Service of prior notice to the Registrar is hereby dispensed with.*
2. *Leave be and is hereby granted to the applicant to file Judicial Review proceedings for certiorari and prohibition as requested in the application. The main motion will be filed within 21 days from today and served on parties or counsel who appeared at the hearing of the Chamber Summons.*
3. *I decline to grant stay orders.*
4. Costs in the cause.

Dated and delivered at Nairobi this 18th day of September, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Mbugua for applicant

Mr. Langat for respondent

Mr. Nyabena for interested parties.