



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIV. APPLI. 1582 OF 2004

KENYA HOTELS AND ALLIED WORKERS UNION.....APPLICANT

VERSUS

REGISTRAR OF TRADE UNIONS.....1ST RESPONDENT

JOANES OKOTCH.....2ND RESPONDENT

POLICE INSPECTOR MATERE (CENTRAL POLICE STATION)...3RD RESPONDENT

RULING

When this matter came before me on 15-06-2005, I raised the issue whether the application herein dated 6th December 2004 by way of Judicial Review should have been brought up by way of an Appeal in accordance with the provisions of Section 38(10) of the Trade Unions Act, and rule 2 the Trade Unions (Appeals) Rules.

Mr. Angima, learned counsel for the Applicant told the court that Judicial Review is not a remedy of last resort, and a party aggrieved by a decision of a public authority does not have to exhaust other remedies before moving the court's power under judicial review. The applicant was therefore properly in court.

Mr. Guserwa, learned Counsel for the Interested Party was of a different view. Counsel submitted that section 38 (10) of the Trade Unions Act, (Chapter 233, Laws of Kenya), clearly provided the procedure to be followed by a party aggrieved by any action of the Registrar. The aggrieved party's right was to appeal to the High Court against the decision of the Registrar of Unions. Under rule 3(1) of the Trade Union (Appeals) Rules, every appeal to the High Court shall be preferred in the form of a memorandum of appeal signed by the applicant or his Advocate, and be filed in duplicate within one month from the date of the refusal or order as the case may be. As the applicant had not complied with the said provisions, the application was therefore improperly filed, and the same is incompetent, and should be struck out with costs.

Mr. Langat, learned counsel for the Respondent, associated himself with the submissions of M/S Guserwa.

I have considered the provisions of section 38(10) of the Trade Unions Act, and rule 2 of the Trade Unions (Appeal) Rules, together also with the submissions of Mr. Angima, in response to the submissions

by the learned counsel for the Respondent and the Interested Party, and I have come to the view expressed in the paragraphs following.

Section 38(10) does indeed provide for an appeal to the High Court against the refusal by the Registrar of Trade Unions ("the Registrar") to

1. register a change of officers, or
2. correct the register

and so does rule 2 (d) of the Trade Union (Appeals) Rules.

The application here is however not against the refusal by the Registrar to register a change of officers, or to correct the register.

The Registrar did register the change of officers, and therefore no right of appeal accrued to the applicants under that section 38(10). The application here is that after the registration of the change of officers, the Registrar purported to revoke the registration of the change of officers and that this was contrary to the rules of natural justice. That is the decision which the Applicants are challenging in the application and the Applicants are entitled to proceed.

The Registrar's powers to investigate or cause an inquiry are donated to him by section 38(4) & (5) & (6) which read:

"4. Before registering any change of officers or correcting any

register the Registrar may require the production of such evidence in relation to the change of officers or to the correction asked for as he deems necessary to satisfy him as to

their validity or propriety

5. If, after such inquiry as he deems necessary, the Registrar is not satisfied as to the validity of any appointment or the propriety of any proposed correction to the register, he may refuse to register the change of officers or to correct the register or he may refer the matter to a Trade Union's Tribunal composed of one or more independent persons appointed by the Minister and in that case the Tribunal shall inquire into the matter and make recommendations thereon to the Registrar, who shall thereupon register or refuse to register, or to correct in accordance with those recommendations.

6. No change of officers shall have effect until registered by the

registrar"

Having regard to those provisions, and submissions by Mr Angima, learned counsel for the Applicants, and without touching upon the substantive application herein (of 6th December, 2004), that the said application could not have been brought by way of an Appeal as is contemplated by section 38(10) of the Trade Unions Act, the said application is therefore within the purview of Judicial review and is not otherwise incompetent.

The preliminary objection agitated by learned counsel for the respondent and the Interested Party is refused and the applicant is at liberty to fix a date that is mutually convenient to all parties for the hearing of the application. Costs will be in the cause.

DATED and delivered at Nairobi this 16th day of June 2005.

ANYARA EMUKULE

JUDGE