



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL APPLICATION NO. 970 OF 2004

KENYA CHEMICAL & ALLIED WORKERS UNION.....APPLICANT

VERSUS

THE REGISTRAR OF TRADE UNIONS.....RESPONDENT

RULING

I have considered the Chamber Summons dated 23rd July, 2004, the supporting affidavits and the exhibits thereto.

First and foremost, I am satisfied that the Applicant has duly given Notice to the Registrar of this application and the Statutory documents or forms are in order, according to me.

Secondly, I have seen the Registrar of Trade Unions letter dated 1st July 2004 and the certificate of urgency. If the Applicant does not comply with the directions and orders of the Registrar of Trade Unions by 30th July, 2004 then there is imminent possibility or action by the Registrar to revoke the Applicant's Constitution. If this happens then the Union may be de-registered without any constitution and its operations and very existence come to a halt.

The Applicant Union was registered in 1958 while the Kenya Quarry and Mining Workers Union was registered in 1964. It is alleged that the Constitution of the quarry Union was amended in 1994 after which this Union raised its complaints of encroachment on representation areas.

In the exhibits I have seen the letter of the Registrar of Trade Union advising the parties to refer the dispute to the Ministry of Labour. It would appear that the Ministry of Labour declared a Trade Dispute between the Unions and a Demarcation Committee was set up to investigate the question of representation. The Applicant contends that the Demarcation Committee has not completed its work and has not given its recommendations. That such disputes regarding demarcation and representation if not resolved by the Minister the matter would go to the Industrial Court for determination that the Registrar's action has interfered with the said procedure.

I have considered all the foregoing matters, and I am of the view that this application raises very important and fundamental questions. They also touch on the rights of the workers who are members of both Unions. The application touches on constitutional rights including the Freedom of Association and Assembly. In a way it touches on the livelihood of members of both Unions. The threat of eventual de-registration is real and imminent. If this happens the union will suffer irreparably.

Questions of jurisdiction come in. Does the Registrar of Trade Unions have the legal power and right to deal with and determine matters touching on disputes of representation and demarcation thereof? Can the question of representation and demarcation be resolved by amendments to the Unions constitution.

Can such amendments be imposed on the Unions by the Registrar of Trade Unions? Can the Registrar of Trade Union's re-write the constitutions of Trade Unions etc. Such are the fundamental questions raised by this matter.

Considering that the Kenya Quarry and Mining Workers's Union amended its Constitution in 1994, the conflict of representation has been brewing for the last 10 years. I must say that the Demarcation Committee appears to have taken too long to finalize its investigations. Perhaps this has instigated the parallel procedures being prosecuted by the Kenya Quarry and Mining Union. The question is, which is the correct, proper and legal procedure? A determination of all the foregoing questions cannot be resolved within 30 days or one week.

I am of the view that it is in the interest of justice and the interest of industrial relations, Union rights, and its members rights and the public generally, that there is a measure of interim protection to maintain the status quo, pending the hearing of the application inter-partes and on merit. I therefore do hereby grant prayers 1, 2, 3, 4 and 5 of the Application herein. The Applicant shall file and serve the Application within 21 days from the date hereof. The Kenya Quarry and Mining Workers Union is to be served with application and copies of statement.

Orders accordingly.

Dated and delivered at Nairobi this 27th day of July, 2004.

MOHAMMED IBRAHIM

JUDGE

Further Order

The Application is granted leave to file a supplementary Affidavit purely for clarification.

MOHAMMED IBRAHIM

JUDGE