



**M'mbolo & 6 others v Registrar of Trade Unions; Kenya National Private Security Workers Union & another (Interested Parties) (Appeal 5 of 2020) [2024] KEELRC 1340 (KLR) (5 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1340 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**APPEAL 5 OF 2020**  
**S RADIDO, J**  
**JUNE 5, 2024**

**BETWEEN**

**HESBON LUMUMBA M'MBOLO ..... 1<sup>ST</sup> APPELLANT**  
**JANET MUSINGI OLWANGU ..... 2<sup>ND</sup> APPELLANT**  
**MS CAROLYNE MUKHWANA ..... 3<sup>RD</sup> APPELLANT**  
**JAIRUS KATERE SHAMALA ..... 4<sup>TH</sup> APPELLANT**  
**DEBORAH KERUBO OGAKE ..... 5<sup>TH</sup> APPELLANT**  
**ONGERA SAMSON OMECHI ..... 6<sup>TH</sup> APPELLANT**  
**WILFRED DIZUZABOGONKO ..... 7<sup>TH</sup> APPELLANT**

**AND**

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

**AND**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION .. INTERESTED PARTY**

**CENTRAL ORGANISATION OF TRADE UNIONS ..... INTERESTED PARTY**

**RULING**

1. In a judgment delivered on 7 February 2024, the Court ordered the Registrar of Trade Unions to register a proposed Union, Kenya Union of Special & Professional Guards within 30 days.
2. The Registrar failed to comply with the order and the promoters of the proposed union filed an application dated 12 March 2024, seeking orders:



- i. ...
  - ii. That this Court be pleased to order the Ag. Registrar of Trade Unions, Ms Beatrice Mathenge, to personally attend Court and show cause why she should not be punished, and / or committed for being in contempt of Court and for willfully disobeying the Court's Decree (Orders) flowing from the Judgment of this Hon Court delivered on 7th February 2024.
  - iii. That this Hon Court be pleased to declare and/or order that the Ag. Registrar of Trade Unions, Ms Beatrice Mathenge having willfully and deliberately disobeyed this Court's Judgment delivered on 7th February 2024 and Decree (Order) dated 9th February 2024, be convicted and committed to twelve months (12) civil jail, besides personally paying to this Court, a fine not less than Kshs. 1,000,000/.
  - iv. That the Ag. Registrar of Trade Unions, Ms Beatrice Mathenge to personally pay the Appellants'/Applicants' costs of these proceedings.
  - v. Any other order the Hon Court may deem fit to grant for the dignity of this court to be actualised and ends of justice to be realised by the Appellants.
3. The grounds in support of the application were that the Registrar and Honourable the Attorney General were served with the decree/orders of the Court on 9 February 2024; the applicants' representatives met the Registrar on 7 March 2024 and she told them that she would not register the proposed union; the Register had intentionally and willfully declined to comply with orders of the Court and that the authority of the Court was at great risk.
  4. The Registrar filed a replying affidavit on 12 April 2024 deponing that she the deponent to the supporting affidavit to the contempt application was not an interim official of the proposed union and could not act on its behalf and so the application was bad in law; that a copy of the judgment was served on 12 February 2024 and not 9 February 2024; the proposed General Secretary of the proposed union, Jairus Katere Shamala had been convicted of theft by servant and by dint of section 31(5) of the [Labour Relations Act](#) could not be registered as an official of a trade union; the applicants had only provided certificates of good conduct in respect of 4 out of 9 of the proposed officials; that there was a pending stay of execution application before the Court of Appeal; the 4<sup>th</sup> applicant had lied under oath on service of the court judgment on 9 February 2024.
  5. The Kenya National Private Security Workers Union (the 1<sup>st</sup> Interested Party) filed a replying affidavit sworn by its advocate stating that it had filed an application before the Court of Appeal ( Kisumu Appeal No. E024 of 2024, *Kenya National Private Security Workers Union v Hesbon Lumumba M'mbolo & Ors*) and an Appeal (Kisumu Appeal No. E085 of 2024, *Kenya National Private Security Workers Union v Hesbon M'mbolo & Ors*) seeking stay of the judgment and that the Appeal would be rendered nugatory of the proposed union was registered, and that the proposed unions General Secretary had been convicted of a criminal offence and thus could not be an official of a trade union.
  6. The Court took oral highlights on 6 May 2024.
  7. It is not in dispute that the Registrar of Trade Unions became aware of the decree of the Court at least by 12 February 2024. The Registrar has explained the reason why she has not implemented the decree to include the fact that she has information that the General Secretary of the proposed union has been convicted of a criminal offence and sentenced to 12 months' imprisonment/probation.
  8. Section 31(5) of the [Labour Relations Act](#) bars persons who have been convicted of a criminal offence from holding office of a trade union official.



9. The person sought to be registered as the General Secretary of the proposed union does not qualify to be registered as such as he was convicted of the offence of theft by servant in Milimani Criminal Case No. 1410 of 2018, *R v Jairus Khatere Shamala* on 17 January 2023.
10. The Registrar also asserted that out of the 9 officials of the proposed union, only 4 had presented certificates of good conduct in 2019.
11. Conviction in a criminal offence is a material factor which the Registrar should consider in registration of a trade union official.
12. Court judgments must always be put in context. The judgment of this Court did not direct the Registrar to close her eyes to the applicable legal framework for registration of a proposed union and its promoters as officials.
13. Considering the impact of section 31(5) of the *Labour Relations Act* and the fact that the promoters of the proposed union have not satisfied the legal requirement of the aforesaid section, this Court finds that there has been no willful or deliberate intention on the part of the Registrar of Trade Unions to disobey the decree of the Court.
14. The Appellants must put their house in order before alleging disobedience of court orders on the part of the Registrar of Trade Unions.

#### **Orders**

15. The Motion dated is dismissed with costs.

**DELIVERED VIRTUALLY DATED AND SIGNED IN KISUMU ON THIS 5<sup>TH</sup> DAY OF JUNE 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

#### Appearances

For Appellants in person

For Respondent - Ms Jumma, Office of the Honourable Attorney General, Kisumu

For 1<sup>st</sup> Interested Party - Ms Wanyama, Legal Officer

For 2<sup>nd</sup> Interested Party did not participate

Court Assistant - Chemwolo

