



Kiuvu & another (As promoter of the proposed Kenya Road Haulage Workers Union) v Registrar of Trade Unions & another (Petition E148 of 2022) [2024] KEELRC 1814 (KLR) (8 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1814 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION E148 OF 2022

BOM MANANI, J

JULY 8, 2024

BETWEEN

KENNEDY OWITI KIUUVU PATRICK KITHEKA MWANGANGI (AS PROMOTER OF THE PROPOSED KENYA ROAD HAULAGE WORKERS UNION) PETITIONER

AND

REGISTRAR OF TRADE UNIONS 1ST RESPONDENT

KENYA LONG DISTANCE TRUCK DRIVERS AND ALLIED WORKERS UNION 2ND RESPONDENT

RULING

Background

1. The application before me is dated 29th December 2023. Through it, the 1st Respondent seeks to have the ex-parte proceedings that were conducted in the cause on 31st October 2023 set aside so that it can file its response to the matter and tender its evidence.
2. The application is supported by the affidavit of Beatrice Mathenge, the Acting Registrar of Trade Unions. The affiant contends that although notice of the trial date may have been served on the Attorney General, the latter did not notify the 1st Respondent about it. She contends that the 1st Respondent should not be punished for the mistake of the Attorney General.
3. The affiant contends that the 1st Respondent has a good defense to the Petition. She has annexed a draft response in which it is contended that:-



- a. The decision to decline to register the Trade Union proposed by the Petitioners was prompted by the fact that there is an existing Trade Union in the sector where the new Trade Union was proposed for registration.
 - b. The law does not permit the 1st Respondent to register a Trade Union in a sector where there is an existing Trade Union.
 - c. The Petitioners were notified of this fact by the 1st Respondent and had the option of challenging the decision within 30 days of its delivery through an appeal to the court in terms of sections 12 and 30 of the *Labour Relations Act*.
 - d. The Petitioners did not lodge an appeal against the decision. Instead, they filed this Petition long after the period provided for lodging an appeal had lapsed.
 - e. Other promoters of the proposed Trade Union lodged NRB ELRC Appeal No. E 168 of 2022 against the 1st Respondent's decision which is still pending in court.
 - f. The instant Petition raises similar issues as those raised in the pending appeal.
 - g. The Petition ought to be consolidated with the pending appeal.
4. The Petitioners have opposed the application. Their lawyer filed a replying affidavit dated 20th February 2024 even though this ought to have ideally come from the Petitioners themselves.
 5. In the response, the Petitioners contend that the 1st Respondent was properly served with the Petition but failed to file a response to it. That the matter was set down for hearing on 31st October 2023 and notice of the hearing date was served both on the Respondents and the Honourable the Attorney General. However, none of them attended court on the trial date.
 6. It is the Petitioners' position that the 1st Respondent has exhibited a carefree attitude towards the matter. As such, it should not be allowed to belatedly file a defense to the cause.

Analysis

7. It is true that the 1st Respondent was served with summons to enter appearance in the cause. This fact is affirmed by the fact that the office of the Attorney General entered appearance in the matter on behalf of the 1st Respondent on 20th June 2023 or thereabouts. However and for unexplained reasons, the said office did not file a response to the Petition.
8. For the above reason, the 1st Respondent is not entitled to have the impugned proceedings set aside as a matter of right. However, the court retains the discretion to allow the Respondents to defend the petition if they have a prima facie defense to the matter.
9. I have considered the averments by the 1st Respondent in the draft reply to petition. The averments raise matters which deserve consideration during full trial. These include:-
 - a. Whether the presence of another Trade Union in the sector where the Petitioners want to register their proposed Trade Union precludes the 1st Respondent from entertaining their request to register the proposed Trade Union.
 - b. Whether the Petitioners ought to have filed an appeal to challenge the 1st Respondent's decision as opposed to the instant Petition.
 - c. Whether there is in fact a pending appeal filed by the Petitioners' co-promoters over the same matter.



10. Having regard to the foregoing, I am convinced that the 1st Respondent has a plausible defense to the Petition which warrants consideration during full trial of the matter. As such, I am minded to exercise my discretion to set aside the proceedings of 31st October 2023 and allow the 1st Respondent to participate in the action.

Determination

11. The upshot is that I issue the following orders:-
- a. The proceedings of 31st October 2023 are hereby set aside and the matter re-opened to enable fresh hearing with the participation of the 1st Respondent.
 - b. The 1st Respondent is granted leave to file and serve a response to the Petition within fourteen days from the date of this order.
 - c. Costs of the application are granted to the Petitioners.

DATED, SIGNED AND DELIVERED ON THE 8TH DAY OF JULY, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

