



Republic v Registrar of Trade Unions; Kinyangi & 5 others (Exparte Applicants) (Judicial Review E032 of 2023) [2024] KEELRC 2351 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2351 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW E032 OF 2023
MN NDUMA, J
SEPTEMBER 26, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

PAUL M. KINYANGI EXPARTE APPLICANT

MOSES M. NKAABU EXPARTE APPLICANT

JOHN N. GICHUHI EXPARTE APPLICANT

HUMPREY M. MAKOKHA EXPARTE APPLICANT

PATRICK D. MWAVALI EXPARTE APPLICANT

DANCAN M. OMULAMA EXPARTE APPLICANT

RULING

1. The substantive application dated 6/10/2023 is pending hearing. Meanwhile, the intended interested party filed application dated 5/3/2023 to be joined to the suit.
2. The intended interested party has also filed a notice of preliminary objection raising matter of sub judice in that the issues in dispute in this matter ELRC/J12/E032 of 2023 are identical to the issues raised by the same parties before Justice Byram Ongaya J. in ECRC No. 1065 of 2021 consolidated with ELRC Appeal No. 197 of 2022.
3. The preliminary objection is also raised by the intended interested party in the Notice of Motion dated 5/3/2023 on grounds that the ex-parte applicants herein have brought this application without disclosing that there is a similar pending suit before Byram Ongaya J.



4. The respondent, the Registrar of Trade Unions does not oppose the joinder of the intended interested party, Kenya Tertiary and Schools Workers Union.
5. The intended interested party states that it has in its knowledge material facts important for the just determination of this suit.
6. That the ex-parte applicants voted and were voted for when they were not fully paid-up members of the union. That it is important that the intended interested party be joined so as to bring on board the full facts and particulars surrounding the history of the election dispute.
7. The application for joinder is opposed vide the replying affidavit of the 1st ex-parte applicant Paul M. Kinyangi who deposes that he is the General Secretary-Elect of Kenya, Tertiary and Schools Workers Union (KETASWU). That one Japheth Anyira Agura, who has brought the application for joinder of the union is not the General Secretary of the Union. That the deponent was elected pursuant to the court orders given by Byram Ongaya J. on 31/5/2020 in ELRC. No. 1065 of 2021 between Kenya Tertiary and Schools Workers Union (KETASWU) & Another v Registrar of Trade Unions and Another. That the elections were conducted on 16/06/2023 and the ex-parte applicants among other officials were duly elected as the union officials. That the application for joinder is incompetent and should be dismissed.
8. The court has considered the rival depositions and submissions by the parties and is left with no doubt that the issue in dispute in this matter is the propriety or otherwise of the elections of union (the intended interested party), officials on 16th June 2023.
9. The union has an identifiable stake or legal interest or duty in the proceedings before court and is not a party to the suit. It is in the interest of justice and fair play that the union being Kenya Tertiary and Schools Workers Union be joined in this suit and it be given opportunity to be heard before the hearing and determination of this suit. The court was guided by the Supreme Court decision in *Communication Commission of Kenya & 3 others v Royal Media Services Ltd and 7 others* [2014] eKLR.
10. The ex-parte applicants are purported officials of the union and do not exist independently of the union.
11. Accordingly the application for joinder dated 5/3/2023 is granted and the interested party is granted leave to file replying affidavit to the main suit within 21 days of this ruling. The court directs that the matter of sub judice be heard and determined after pleadings, that include the response by the interested party having been filed. Directions on the hearing of the main application and the preliminary objection to be given on the date of the ruling.

DATED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024.

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Jaoko for ex-parte applicants

M/s. Oyugi for respondent

Mr. Kanyi for interested party

Mr. Kemboi – Court Assistant

