



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 145 OF 1993**

**REPUBLIC.....APPLICANT**

**VERSUS**

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

**RULING**

The National Seamen Union described as the interested party brought an application by way of chamber summons under order 39 rules 1 and 2 of the Civil Procedure Rules and section 3A of the Civil Procedure Act for injunction restraining the respondent herein from holding elections until an application dated 15th October, 1993 is heard and determined. An interim order was made on 31st December, 1993.

The said application was supported by an affidavit sworn by one Abdul Kadir Abdalla Mwidau the Secretary General of the interested party. The learned counsel for the applicants/respondents filed grounds of opposition and a replying affidavit. I also have the respective submissions by both learned counsel.

I have had to go through the record and in particular the application by the interested party filed on 15th October, 1993 which prompted the present application. On 8th October, 1993 Mbaluto J made an order after hearing the learned counsel for the applicants in a notice of motion dated 7th July, 1993 to the effect that the appointment of the office holders of the interested party by the Registrar of Trade Unions was quashed and that elections thereof be held forthwith. As at the time and date of the hearing before Mbaluto J aforesaid Mr Mwidau had notice of the hearing. His denial therefore is not true. He was also notified of the intended elections scheduled for 31st December, 1993. The material before me confirms all that.

For the interested party to obtain the orders sought in the present application the Court had to be satisfied that the application of 15th October, 1993 presented a *prima facie* case capable of being successful, that if the order is not granted the loss that follow may not be compensated by way of damages. If the Court is in doubt it shall decide the matter on a balance of convenience. See *Giella vs Cassman Brown & Company Ltd* [1973] EA 358.

The original notice of motion dated 7th July, 1993 was served upon the interested party on 16th September, 1993. No appearance was entered. The then counsel for the Registrar of Trade Unions, Mrs Kariuki, did not state that she had any instructions to appear for the interested party. The hearing notice had been served. I find it difficult to identify any grounds that the Court may rely upon to set aside the order made by Mbaluto J on 8th October, 1993.

I am further informed that the interim order given on 31st December, 1993 was served upon the Provincial Labour Officer at 2.30 pm when elections had already been held and results announced at 12.00 noon. The order had been overtaken by events. In any case I must now find that had the interested party disclosed all the material particulars in the application the interim order would not have been given in the first place.

From what I can gather, the affairs of this Union have a long history of litigation. This must be brought to an end somehow.

Be that as it may, for reasons already stated the interested party has not satisfied the principles for obtaining the orders sought. Consequently the order given on 31st December, 1993 for an interim injunction is hereby discharged and the application by the interested party dismissed with costs.

Orders accordingly.

**Dated and Delivered at mombasa this 25th day of February 1994.**

**A.MBOGHOLI MSAGHA**

**JUDGE**