



**Horticulture And Allied Workers Union & 10 others v Omulama;
Presiding Officer (Edwin Okumu) & Anor (Interested Party) (Civil
Application 082 of 2021) [2022] KECA 840 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KECA 840 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 082 OF 2021
HM OKWENGU, F SICHALE & A MBOGHOLI-MSAGHA, JJA
JULY 22, 2022**

BETWEEN

**HORTICULTURE AND ALLIED WORKERS UNION & 10
OTHERS APPLICANT**

AND

DAVID BENEDICT OMULAMA RESPONDENT

AND

PRESIDING OFFICER (EDWIN OKUMU) & ANOR INTERESTED PARTY

(Being an application for stay of execution pending the filing and hearing of an intended appeal from the Order/Directions of the Employment and Labour Relations Court of Kenya at Nyeri (Marete, J) issued on 30th July, 2021 in ELRC No. E033 of 2021)

RULING

- [1] The background to the application before us is a dispute arising out of the results of the national union elections of the Horticulture and Allied Workers Union (the Union), who is the 1st applicant in this application. The claimant David Benedict Omulama, who is now the respondent, moved to the Employment and Labour Relations Court (ELRC), and questioned the manner in which the presiding officer (Edwin Okumu), had conducted the elections which were held on 16th June, 2021 and the list that he relied on. The respondent complained that qualified members were locked out of the conference and ineligible persons allowed to participate.
- [2] The respondent filed an application dated 21st June, 2021 in the ELRC seeking to restrain the Registrar of Trade Unions from effecting changes of officials arising from the elections, pending determination of the suit filed in the ELRC.



[3] On 1st July 2021, the learned Judge of the ELRC made orders as follows:

- “(i) That an order be and is hereby issued restraining the Registrar of Trade Unions from making any changes or names and/or of titles of National officials of the Kenya Export Floriculture, Horticulture and Allied Workers Union as at 15th June, 2021 pursuant to elections that took place on 16th June, 2021 and a stay of such changes in the event they have been made, pending inter partes hearing and determination of this application.
- (ii) That the respondents be and are hereby awarded 14 days to make, file and serve a reply to the application and the suit.
- (iii) That hearing inter partes on 15th July 2021 at 9.00 hours.”

[4] The applicants opposed the application through an affidavit sworn by Issa Wafula Weruka (2nd applicant), who was the 4th respondent in the ELRC. The 2nd applicant maintained that proper elections had been held on 16th June 2021, and that the respondent had lost his seat, and that no person was locked out of the meeting.

[5] On 30th July 2021, the Employment and Labour Relations Court (ELRC) (Marete J.) issued orders as follows:

- “(i) That the parties on their consent, are agreed on dialogue in course (sic) to 14 days with a view to resolving the issue(s) of how the union can be facilitated to go and manage its officials in the interviewing period.
- (ii) That the interim orders of 1st July 2021 shall remain in place as extended on 21st July 2021.
- (iii) That mention on 19th August 2021 before the duty Judge for report and record of settlement.
- (iv) That parties be and are at liberty to apply.”

[6] The applicants who were dissatisfied with order No. 2, filed a notice of appeal on 10th August 2021, and by a notice of motion dated 13th September 2021, moved the Court seeking an order for stay of execution of order No. 2 issued by the learned Judge in the ELRC on 30th July 2021, pending the hearing and determination of the intended appeal against the orders. In an affidavit sworn by the 2nd applicant who claims to be the secretary general of the Union, the 2nd applicant explained that on 30th July 2021 the parties appeared before the learned Judge at 2.30 p.m. and the learned Judge made suggestions on how they could proceed with the matter by either abandoning the applications and proceeding with the main suit, or proceeding with the applications and canvassing the main suit later, or entering into negotiations. The court then adjourned briefly to allow the parties to discuss and reach a consensus. When the court resumed, the parties informed the learned Judge that they had agreed to dialogue on the management of the Union and report to court within 7-14 days.

[7] The 2nd applicant however, denied that there was any agreement on the issue of interim orders even though the parties were agreed that they should move directly to the main suit in order to fast-track it. It was then that the court directed that the interim orders of 1st July 2021 will remain in place until 16th December 2021, when the matter would be mentioned in court. The applicants were therefore aggrieved by the specific order that was made by the learned Judge as it does not serve justice to any of



the parties. The applicants urged that if the orders of stay were not granted, the intended appeal would be rendered nugatory and that they had filed a memorandum of appeal and had high chances of success.

- [8] The respondent did not file any reply to the application. During the hearing of the motion, Mr. Majimbo appeared for the applicants, while the respondent, appeared in person. The Honourable Attorney General, though duly served for the Registrar of Trade Unions, did not attend Court.
- [9] Mr. Majimbo urged that the applicants had established an arguable appeal as per the grounds on the draft memorandum of appeal. In particular, the learned Judge did not properly address the principles of law; and also failed to note that the orders he issued would render the applicants inoperative. In addition, the Judge irregularly extended the respondents' term. Mr. Majimbo further submitted that the applicants' appeal would be rendered nugatory if the order sought is not issued as the Court would proceed and determine the matter.
- [10] On his part, the respondent argued that the application was defective as the order sought to be stayed was not annexed to the application; that the intended appeal will not be rendered nugatory and that in any case the appeal is frivolous. Finally, no prejudice was being suffered as the applicants have already taken steps to address the interim orders in a different forum.
- [11] We have considered the motion before us, together with the submissions made. Contrary to the submission made by the respondent, the order sought to be stayed is annexed to the application, and we have reproduced the order which was made by the learned Judge in full at paragraph 5 of this Ruling. We note that the learned Judge did not specifically determine the applications that were before him or the main suit, but simply gave directions to the parties on the way forward, and gave them time to discuss and agree, following which, the parties entered into a consent which the learned Judge recorded. Although there is a dispute as to whether order No. 2 was part of the consent, that is an issue that cannot be dealt with at this forum.
- [12] We have examined the draft memorandum of appeal that has been filed by the applicants, but find that the same raises no arguable appeal. The parties at paragraph 1 of the order, which is apparently not disputed, agreed to dialogue with a view to resolving how the union can be facilitated to go and manage its officials. No specific grievance or prejudice arising from the interim order in paragraph 2 has been demonstrated. The parties were given "liberty to apply" and therefore, if no settlement has been arrived at, they are at liberty to go back to the ELRC for either hearing of the application, or the main suit.
- [13] The applicants have totally failed to satisfy the principles upon which an application for stay of execution under Rule 5(2)(a) & (b) can be granted as stated in *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR. We find no merit in this application. It is accordingly dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY, 2022.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

A. MBOGHOLI MSAGHA



.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

