



REPUBLIC OF KENYA



KENYA LAW
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**Ochieng v Union of Kenya Civil Servants & 2 others; Odhiambo (Interested Party)
(Petition E122 of 2024) [2025] KEELRC 908 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 908 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E122 OF 2024
MN NDUMA, J
MARCH 20, 2025**

BETWEEN

LAWRENCE NYAGUTI OCHIENG PETITIONER

AND

UNION OF KENYA CIVIL SERVANTS 1ST RESPONDENT

TOM MBOYA ODEGE 2ND RESPONDENT

ABDUL MALIK 3RD RESPONDENT

AND

LAMECK ABRAHAMS ODHIAMBO INTERESTED PARTY

RULING

1. The Applicant Lameck Abrahams Odhiambo, seeks to be joined as an interested party in this matter by a Notice of Motion application dated 16/12/2024 which prays for an order in the following terms:-
 1. Spent
 2. That the execution of the consent order issued on 19th September, 2024 by Honourable Justice Mathews Nderi Nduma and/or any decree resulting therefrom is hereby stayed pending the service, hearing and determination of this application.
 3. That the aforementioned proposed Interested Party be and is hereby granted leave to join these proceedings as an Interested Party.
 4. That the consent order issued on 19th September, 2024 and any decree resulting therefrom are hereby set aside.



5. That the proposed Interested Party upon being granted entry into this suit be allowed to file the necessary responses to protect his interests.
 6. That the court do make any other or further orders in the interest of justice.
 7. That the Respondents and the Petitioner are hereby ordered to pay costs of and incidental to these proceedings.
2. The application is premised on grounds (a) to (l) on the face of the Notice of Motion the nub of which is that the proposed Interested Party is the current 1st Deputy Secretary General of the 1st Respondent union of Kenya Civil Servants having been elected to office on 5/9/2019 to serve for a five-year term as per Article 7(2) and 11(1) of the union constitution.
 3. That the Applicant retired from Civil service on 30/11/2024 while still in his current position and despite that he is mandated by Article 7(2) and 11(1) of the 1st Respondent's constitution to finish his term of five years which end on 5/9/2024.
 4. That however, parties herein entered into a consent judgment before Nderi Nduma on 19/9/2024 in terms set out as follows:-
 1. That the 2nd Respondent in his capacity as the Secretary General of the 1st Respondent, must declare vacant, all offices held by officials who have ceased to hold office by reason of death, resigned from office, or have retired from civil service and/or all other reasons as contemplated by the 1st Respondent's constitution.
 2. That the treasurer of the 1st Respondent, Union of Kenya Civil servant, Abdulmalik A. Abdalla, the 3rd Respondent herein, stops with immediate effect, paying any allowances and/or benefits to all officials of the 1st Respondent herein, upon retirement from civil service, or have ceased to hold office by reason of death and/or all other reasons as contemplated by the 1st Respondent's constitution.
 3. That all vacancies declared by the 2nd Respondent shall be filled in a manner provided by the 1st Respondent's constitution.
 4. That the 2nd Respondent writes to the Registrar of Trade unions to be removed from the register, all members of the 1st Respondent who have resigned from civil service, died, are suffering from illness, have lost reasoning power, ability and capability, having been declared mentally incapacitated, retired from civil service including all retired officials and/or deceased.
 5. The 2nd Respondent registers or causes to be registered the list of all new office holders by the Registrar of Trade Unions.
 6. The matter is marked as settled and file closed
 5. That by dint of the said consent order, the tenure of the proposed Interested Party as the 1st Deputy Secretary General is under imminent threat of being terminated. That the consent was obtained by fraudulent misrepresentation, collusion and failure to disclose material facts by concealing the truth that:-



1. Courts have held that the union constitution does not provide for officials who exit civil service to vacate office since Article 7(2) of the union constitution stipulate that:

“Except as otherwise expressly provided, in this constitution, all National Officials shall be elected every five years by means of secret ballot by the Quinquennial National Delegates Conference.”
2. In addition 11(1) of the union constitution states that:

“Every elected official of the union shall hold office for a term of five (5) years.”

As a result of the foregoing, the issue of retirees going home can only be solved by an amendment of the constitution and not an interpretation of the constitution since the constitution cannot be interpreted in isolation.
3. Secondly, the Petitioners are misleading this honourable court by stipulating that 4 positions of the national officials are vacant namely: The National Trustees, The National Organizing Secretary and Two Regional Representatives.
4. The national Organizing secretary is validly in office as per the orders that were issued by Honorable Justice Byram Ongaya on 29th May, 2024 upon the 2nd Respondent trying to remove him from office due to retirement.
5. That as a result of the foregoing, the Petitioner together with the Respondents are misleading this honourable court that 4 positions of National officials are vacant since the National Organizing Secretary is officially in office as per the orders that were issued by Hon. Justice Byram Ongaya on 29th May 2024.
6. That as a result of the foregoing, Article 11(4) of the union constitution which states that; “If more than three positions in the national office fall vacant at least twelve months before the next National Quinquennial Delegates Conference, the next National Delegates Conference shall fill the vacancies.” is false.
6. That in any event the proposed Interested Party is entitled to hold office as an official of the Respondent union by virtue of section 31(1) of the Labour Relations Act.
7. That the Applicant is also entitled to equal protection of the law under Article 27(1) of the Constitution. That the Applicant be joined to the suit to defend his rights violated by the said consent. The court issued status quo order on 29/1/2025.

Replying Affidavit

8. The 2nd Respondent Tom Mboya Odege filed a Replying Affidavit to the application sworn to on 28/1/2025 in opposition to the application, stating that a party may only be joined to a suit which is pending in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.
9. That this suit was determined by the consent of the parties dated 19/9/2024 and the Applicant cannot seek to be joined to a non-existent suit which is no longer pending.
10. That the intended Interested Party was a member of the National Executive Board (NEB) of the union and participated in the meeting that interpreted Article 11(5) of the union constitution. That



the concluded petition sought the court to give effect to the said interpretation, a matter that was conclusively determined by the consent.

11. That the Applicant may only challenge the decision of the union by a separate suit and cannot seek to be joined to a matter that has been fully heard and determined by consent of the parties.
12. That the application is mis-conceived and an abuse of the court process and it be dismissed for lack of merit.

Notice of Preliminary Objection.

13. The Petitioner filed grounds of opposition to the application and Notice of Preliminary Objection to wit that the intended Interested Party is not a proper party to the consent agreement adopted by the court and cannot thus seek to have the same set aside as that would violate the cardinal law of contracts as set out in the *Law of Contract Act* Cap 23 Laws of Kenya. That the Applicant is a national official of the union and sits in the National Executive Board and cannot have an independent position distinct from that of the union.
14. That the Applicant is bound jointly and collectively by any resolution reached and advised by the secretary general on behalf of the 1st Respondent the union.
15. That the suit which has been concluded is not a suitable forum to organize the internal affairs of the union and the Applicant is bound by lawful resolution of the union.
16. That this application is a disguised appeal on a matter that has been concluded and the court is functus officio.

That the application be dismissed with costs.

Determination

17. The court has considered the deposition by the parties and all the points of law raised. It is trite that a proposed Interested Party may only be joined to a pending suit upon being judged a necessary party to enable the court hear and determine the matter.
18. Order 1 Rule 10 (2) of the Civil Procedure Rules 2010 provides that;

‘The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added’.
19. This petition was fully determined by a consent dated 15/9/2024 filed by the advocates for the Petitioner and the advocates for the Respondent.
20. The court adopted the consent by the parties as an order of the court in an open (virtual) session of the court on 9/9/2024 where the Petitioner appeared in person and the 1st, 2nd and 3rd Respondents were represented by one Mr. Wangatia. The petition was marked as settled and the file closed.
21. The court finds that the application to have the proposed Interested Party joined to a suit that is no longer alive, is mis-conceived and an abuse of the court process.



22. The court finds that the consent recorded by the court may only be impeached by the parties to the consent, and the Applicant, having not been a party to the suit cannot be permitted to impeach the said consent in a matter that has been fully determined.

23. In the case of Board of Trustees National Social Security Fund versus Michael Mwalo [2015] eKLR, the court of Appeal held:-

The judgment arose from a consent of the parties of the suit. The law pertaining to setting aside of consent judgments or consent orders has been clearly stated. A court of law will not interfere with a consent judgment except in circumstances such as would provide good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud or collusion or by an agreement contrary to the policy of court.”

24. The Applicant has not provided any evidence that he was an aggrieved party to the consent order or that there was evidence that the consent was obtained by fraud or collusion or by an agreement contrary to the policy of court.

25. To the contrary, the Applicant was an official of the Board which made decision that led to the settlement of the petition.

26. Accordingly, the application is mis-conceived and an abuse of the court process and also the same lack merit and is dismissed.

Parties to meet their costs of the application.

DATED AT NAIROBI THIS 20TH DAY OF MARCH 2025

MATHEWS NDUMA

JUDGE

Appearance:

Ms. Tanui for Applicant

Mr. Rakoro for 1st, 2nd and 3rd Respondents

Petitioner in person

Mr. Kemboi – Court Assistant

