



Harrison & 3 others (Suing as the promoters of the proposed Kenya Musicians Union) v Registrar of Trade Unions; Kenya Union of Entertainment and Music Industry Employees (Intended Interested Party) (Appeal E130 of 2022) [2024] KEELRC 1520 (KLR) (14 June 2024) (Ruling)

Neutral citation: [2024] KEELRC 1520 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E130 OF 2022**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

**JOHN KATANA HARRISON 1ST APPELLANT
JUMA ODEMBA 2ND APPELLANT
GEORGE ODHIAMBO 3RD APPELLANT
MARTIN MURURIA 4TH APPELLANT
SUING AS THE PROMOTERS OF THE PROPOSED KENYA MUSICIANS
UNION**

AND

THE REGISTRAR OF TRADE UNIONS RESPONDENT

AND

**KENYA UNION OF ENTERTAINMENT AND MUSIC INDUSTRY
EMPLOYEES INTENDED INTERESTED PARTY**

RULING

1. Judgment was delivered way back on 22nd August 2023, directing the Respondent herein, to register the Appellants’ proposed Trade Union.
2. The Respondent has not, to-date, registered the Appellants’ proposed Trade Union.
3. This prompted the Appellants to file an Application dated 14th November 2023, asking the Court to find the Respondent, a Public Officer and a Lawyer who is sworn to protect the *Constitution* and the Rule of Law, in contempt of Court, and impose on her a sentence of 6 months’ imprisonment.



4. The Application is founded on the Affidavit of the 1st Appellant sworn on 14th November 2023, and a Supplementary Affidavit sworn on 27th February 2024.
5. The Appellants also filed an Affidavit sworn on 27th February 2024 by Thomas Dayan, Deputy Secretary General of the International Federation of Musicians [FIM]. The Federation represents Musicians' Trade Unions globally, and is headquartered in France. It ensures that International Labour Standards are availed to Musicians everywhere. It straddles five continents, and has been in existence since 1945. Thomas states that the Memorandum of Understanding between the Appellants and the Intended Interested Party, was drafted by him. The International Federation brought together representatives from the Appellants, the Intended Interested Party, COTU-K, and the Swedish Musicians Union. It was an international consultative forum, which birthed the Memorandum of Understanding, leading to the Judgment of the Court, directing the registration of the Appellants' proposed Trade Union.
6. The Respondent/ Contemnor filed two lengthy Affidavits in her defence. She swore the first, on 30th November 2023. Her further Affidavit was sworn on 29th January 2024.
7. In the subsistence of the Application, the Court was presented with another Application from the Intended Interested Party. The Application is dated 30th January 2024. The Applicant prays the Court to be "enjoined to this suit as a third party." The Applicant relies on the Affidavit of Godfrey Mwangi, who is described as the Applicant's Chairman. He states that the Applicant did not validly enter into the Memorandum of Understanding with the Appellants, and did not therefore lift its objection, against registration of the Appellants' proposed Trade Union.
8. Parties agreed that the Applications be considered and determined on the strength of their Affidavits and Submissions. They confirmed filing and exchange of their Submissions at the last mention, on 4th April 2024.

The Court Finds: -

9. The Application filed by the Intended Interested Party has no merit. There is no suit pending before the Court, to allow enjoining of Interested or 3rd Parties.
10. The Appellants came before the Court pursuant to Section 30 of the [Labour Relations Act](#), 2007. Before the Court was an Appeal, dealing with specific grounds of appeal.
11. What the Intended Interested Party is asking the Court to do, is to reopen, and rehear its objection against the registration of the Appellant's proposed Trade Union. This matter was settled by the Court on Appeal, and the Court became *functus officio*. There is no mandate granted to the Court under the [Labour Relations Act](#), or under the [Employment and Labour Relations Court \[Procedure\] Rules](#), 2016, to reopen and rehear Appeals. Appeals are only heard once. If Parties or other persons are dissatisfied with a Judgment on Appeal, they ought to consider further Appeal, but not in the same jurisdiction. This Court cannot hear an Appeal twice.
12. The Memorandum of Understanding which was concluded between the Appellants and the Intended Interested Party, was executed by the Intended Interested Party's General Secretary. The Intended Interested Party's Application before the Court is presented by a person who identifies himself as the Chairman. Section 2 of the [Labour Relations Act](#), does not recognize a Chairman, as an authorized representative of a Trade Union. It recognizes a General Secretary or his designates. Trade Unions act through their General Secretaries. The Chairman has not disclosed if he was authorized by the



- General Secretary, to file the Application. The Application filed by the Intended Interested Party is incompetent.
13. As observed above, the Memorandum of Understanding was crafted through the instrumentality of an International Trade Union Federation. It incorporated global and domestic players.
 14. The attempt by a section of the Intended Interested Party, to re-litigate its initial objection, is not acceptable. In any event, the Appeal was not granted solely because the Intended Interested Party had withdrawn its objection; the Court found that the Appellants' proposed Trade Union is a specific industry player, with an identifiable community of interests, not shared with any other Trade Union. This finding would stand, even in the absence of the Memorandum of Understanding. Registration was not dependent on the status of the objection. The Intended Interested Party's Application has no merit. It is declined.
 15. The position of the Appellants on the Application for contempt is that Judgment was delivered in their favour, and to-date, the Respondent has not complied with that Judgment. It is a correct reading of the record, and requires no restating by the Court.
 16. The Respondent, in explaining her obvious contempt of court, gave various irrelevant narratives, which appear to compound rather than mitigate contempt. It has been noted from the outset that the Registrar of Trade Unions, is a Lawyer and an Officer of the Court, which makes it difficult to understand why she has joined the bandwagon of Kenyan State apparatchiks, in serial disobedience of orders issued by the Courts.
 17. She states that she received a copy of the Judgment, but had not been able to peruse the same, due to pressure of work; she has a huge backlog of work, owing to the fact that she is the only technical officer in her office; she is holding the office in an acting capacity; she promised to register the Union in 2 weeks' time; she found a lot of pending work in office, and prepared a work schedule which she is reviewing regularly; and that there was pressure from some officers of the State, not to register the Appellants' Trade Union.
 18. This is a very sad showcase, of a Public Officer, and no less an Officer of the Court, who has received a Judgment of the Court for implementation, but who, displaying a gut-wrenching contumacy, has opted to treat the Judgment like a gold ring, in the snout of a pig.
 19. The Respondent is an Officer of the Court, sworn to uphold the *Constitution* and the Rule of Law. She should not be taking instructions from apparatchiks. She should not be hosting shadowy characters at her Public Office, to be tutored how to disobey orders of the Court. She refers to the CEO Music Copyright Society of Kenya, as one of her guests, who paid her a visit, and impressed on her why she should not comply with the Judgment of the Court. The Respondent should have an aversion for these characters.
 20. Such Public Officers are warned, if indeed they visited the Respondent, that they can themselves be held to be in contempt of court. Their interference with the Respondent's work, can result in contempt of court.
 21. The Affidavits filed by the Respondent, compound rather than mitigate, or expunge contempt of the court. The sort of explanations in the Respondent's Affidavits expose the Kenyan Judiciary and Labour Relations to ridicule, not least from International Labour Relations groups, such as the International Federation of Musicians, who brokered the Memorandum of Understanding between the Appellants' proposed Trade Union and the Intended Interested Party. The Respondent's explanations for her contumacy, make a mockery of our espousal of International Labour Standards, on freedom of association.



22. The Court has not seen any explanation by the Respondent, to justify dismissal of the Application, brought against her, for contempt of court. There is no redeeming feature to her conduct, disclosed in her lengthy Affidavits.
23. The Respondent has become a serial contemnor, who was recently convicted, and sentenced to pay a fine of Kshs. 100,000 or serve a prison term of 1 month, in Appeal E087 of 2022 and Petition E194 of 2022 [consolidated], *Kenya Medical Practitioners and Dentists Union & 2 Others, Commissioner for Labour & 5 others [Interested Parties]* [2023] e-KLR. In the Appeal, the Respondent had declined to comply with a Judgment of the Court on registration of the Appellant's Officials. The Respondent had given similar unacceptable explanations on non-compliance, such as, that she was new in office and understaffed. She also alleged that she was a first-time offender, pleading with the Court to be lenient. The Court found that the Respondent is a Public Officer, and Public Officers are partners with the Courts, in sustaining the integrity of the Judiciary. The Respondent is therefore a repeat offender, who merits a stiffer penalty.

It is ordered: -

- a. The Application by the Intended Interested Party / Third Party dated 30th January 2024 is dismissed with costs to the Appellants.
- b. The Application by the Appellants dated 14th November 2023 is allowed on the following terms:
 - i. It is declared that the Respondent is in contempt of Court.
 - ii. The Respondent is convicted of contempt of court.
 - iii. She is sentenced to imprisonment of 3 months.
 - iv. Alternatively, she is to personally pay a fine of Kshs. 200,000.
 - v. The Appellants are at liberty to initiate further contempt of court proceedings, as long as non-registration of their Trade Union persists.
- c. The Respondent shall personally pay costs of the Application to the Appellants.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

