



Kinoti & 3 others v Kenya Union of Post Primary Education (KUPPET) Teachers & another; Lengoyiap (Intended Interested Party) (Employment and Labour Relations Petition E044 of 2024) [2024] KEELRC 2707 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2707 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E044 OF 2024
MN NDUMA, J
OCTOBER 31, 2024**

BETWEEN

**REGINA KINOTI 1ST PETITIONER
WILLY KIPKOECH KEMBOI 2ND PETITIONER
HILLARY KIBET CHEPKONY 3RD PETITIONER
JOSEPH NZULAI 4TH PETITIONER**

AND

**KENYA UNION OF POST PRIMARY EDUCATION (KUPPET)
TEACHERS 1ST RESPONDENT
REGISTRAR OF TRADE UNIONS 2ND RESPONDENT**

AND

WILLIAM LENGUYIAP INTENDED INTERESTED PARTY

RULING

1. The applicant William Lengoyiap in the application dated 6/6/2024 prays to be joined to the suit as an interested party on the grounds that the applicant is a teacher and a member of the 1st respondent union, Kenya Union of Post Primary Education Teachers (KUPPET). The applicant states also that he is the Executive Secretary of the Samburu Branch of the 1st respondent. That he also doubles as a delegate to all national functions of the 1st respondent and is a member of the 1st respondent's National Governing Council (NGC).
2. That as a member of the NGC he has the role of ensuring that the business of the union is properly transacted between the Annual Delegates Conference (ADC); ensure that the decisions and policies of



- the Delegate's Conference are fully executed; enforce decisions of the union as determined by Delegates Conference; and ensure adherence to the constitution, rules and regulations standing orders and by laws of the union.
3. That the petition before court relates to amendment of the constitution of the 1st respondent which issue was discussed in the Annual Delegates Conference held on 16/12/2023 at Kasarani.
 4. That the issue has been contentious where the Secretary General was trying to force the amendment of the constitution at the ADC of 16/12/2023.
 5. That the applicant has been shut out of the proceedings of the meetings and proceedings of the 1st respondents National Governing Council (NGC) to which he is rightfully a member by virtue of being an elected executive secretary for example at the meeting held on 29/5/2024 when the applicant was denied entry by NGC. That the applicant has reliably learnt that resolutions which go to the core of proposed amendments were passed. That other Executive Secretaries were also locked out of the said meeting held on 29/5/2024 at Kasarani which action is unconstitutional and discriminatory.
 6. That the applicant and other teachers intended to file a petition seeking declaration of some of the sections of the 1st respondent's constitution as being unconstitutional, some of which are subject of the current petition.
 7. That it would not be best use of court's time for the applicants to file a separate suit when the applicant can be joined to these proceedings and be heard and the issue of constitutionality and on amendment of the 1st respondent's constitution be laid to rest.
 8. The applicant has also written to the Registrar of Trade Unions, the 2nd respondent complaining of the manner in which the meeting of 29/5/2024 was conducted and the purported resolution passed therein. That the application be granted as prayed.
 9. Other applicants in an application dated 5th July 2024 being Rose Nyambura Kiiru; Pauline Regina Waceke Thangwa; Yusuf Abdullahi Mohammed; Alex Mugambi Njue and Lynette Khamadi; filed application dated 5th July 2024 seeking joinder to this suit on similar grounds as those set out in the application dated 6th June 2024 but as petitioners. The court shall not regurgitate the similar grounds set out in the said application of 5th July 2024 as matters have been consolidated and same issues are ripe for disposal.

Replying Affidavit

10. The Secretary General of the 1st respondent deposed to a replying affidavit sworn to on 7/8/2024 opposing the twin applications. The deponent states that based on advice from the advocates on record the application dated 5/7/2024 meets the threshold established under Muruatetu and another versus Republic; Kenya National Commission on Human Rights and 2 others (Interested Party); Death Penalty (intended amicus curiae (Petition 15 and 16 of 2015 (consolidated, [2016] KESC 12 (KLK) Civ (28th January 2016 (Ruling) that:-
 - a. The applicants have an identifiable interest in the matter and are proximate enough to the issues in controversy herein. The issues raised entail elements such as gender inclusivity, regional balance, inclusivity of persons living with disability as well as appreciation of the youth in policy, all of which the union seeks to address in aligning its constitution to the Constitution of Kenya.



- b. The applicants have demonstrated that they will suffer prejudice if they are not joined as interested parties herein: in that there would be continued violation of their respective constitutional rights under Article 27(3), (4), (5) and (6).
- c. The applicants have clearly set out their case before this court and the union is agreeable to the issues raised being relevant to this matter.

Grounds of opposition by 2nd Respondent

11. The Registrar of Trade unions filed grounds of opposition to the application dated 6/6/2024 alleging that the application does not meet the threshold to be joined as an interested party in this matter and states that the personal interest or stake, the applicant has in the matter is not identifiable from the application and issues raised are not proximate to the suit before court. That no prejudice to be suffered by the intended interested party if not joined has been disclosed. Application dated 5th July 2024 is not opposed.
12. That the applicant has not raised any new or unique issues and that intended joinder adds no value to the suit. That the applicant should await for the outcome of the suit. That the application merely causes delay in hearing and disposal of the suit.

Determination

13. The court has carefully considered all the depositions by the parties and the submissions filed in respect of the twin applications.
14. The court is satisfied that the applicants in the twin applications meet the threshold set out by the Supreme Court in the Muratetu case (Supra).
15. Accordingly, the court finds both applications to have merit and allows them accordingly. The intended interested party and co-petitioners are granted leave to join the petition and shall file their depositions and submissions as guided by the court upon delivery of this ruling.

Costs in the cause.

DATED AT NAIROBI THIS 31ST DAY OF OCTOBER 2024

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Obel for petitioner

Ms. Akello for 1st respondent

Attorney General for 2nd respondent

Mr. Kemboi – Court Assistant

