



**Mutisya & 3 others v Registrar of Trade Unions (Appeal E273 of 2024)
[2024] KEELRC 13182 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13182 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E273 OF 2024
JW KELI, J
NOVEMBER 18, 2024**

BETWEEN

**ROSE MUTISYA 1ST APPELLANT
SAMUEL MBAE 2ND APPELLANT
GABRIEL MNENE 3RD APPELLANT
NATIONAL UNION OF NON-TEACHING EMPLOYEE OF TEACHERS
SERVICE COMMISSION 4TH APPELLANT

AND
REGISTRAR OF TRADE UNIONS RESPONDENT**

RULING

(On the Notice of Motion Application dated 19th September 2024 by the Appellants/Applicants)

1. The ruling is on application by way of a Notice of Motion application by the Appellant (herein “Applicant”) dated 19th September 2024 and filed on 26th September 2024 brought under the provisions of Sections 12 & 30 of the *Labour Relations Act*, 2007, sections 1A, 1B & 3A of the *Civil Procedure Act*, Chapter 21 Laws of Kenya, and Order 42 Rule 6, and Order 51 Rule 1 of the Civil Procedure Rules, 2010, seeking the following orders: -
 - a. Spent.
 - b. Spent
 - c. That pending hearing and determination of the appeal, the Honourable Court, be pleased to issue permanent orders staying the decision of the respondent contained in its letter reference No. MLSP/TU/R/389 of 20th August 2024.



- d. That the Honourable court be pleased to nullify the decision of the Respondent contained in its letter reference No. MSLP/TU/R/389 of 20th August 2024 for failure to follow the laid down procedures set out under the Labour Relations Act, 2007 and instead direct the Respondent to issue the Petitioners with a certificate of Registration within 7 days from the date of the order
 - e. That the Honourable court be pleased to make any further other orders within its inherent jurisdiction
 - f. That the costs of this application be provided for.
2. The Notice of Motion was premised on the grounds on the face of the Application and the grounds in the Supporting Affidavit of Rose Mutisya sworn on 19th day of September 2024. The gist of the application was that vide a letter dated 20th September 2024 to the Respondent, the 1st to 3rd applicants being promoters of a proposed trade union, the 4th respondent, wrote seeking for registration of a trade union, the 4th respondent, proposed to be known as, “ National Union of Non- Teaching Employees of the Teachers Service Commission”. The promoters of the proposed union requested for issuance of a certificate of registration (RM-02). The applicants contend that the Respondent did not issue a response to their application within 30 days as required under section 12(3) of the Labour Relations Act of receipt of their applications. The response was a year later vide letter dated 20th August 2024 by one Ann Kagwiria Kanake(Ms) rejecting their application on the basis that there were existing two unions representing the group of workers the proposed union sought to represent.
 3. The applicant aggrieved by the said decision filed the memorandum of appeal dated 19th September 2024 together with the instant application challenging the procedure leading to the decision.
 4. The respondent vide replying affidavit of Ann Kagwiria Kanake sworn on the 24th October 2024 responded to both the Notice of Motion and the appeal. The deponent reiterated what was written in her letter of 20th August 2024(RM03).

Decision

5. The Applicant relied on the application and the supporting affidavit of Rose Mutisya, the 1st Applicant. The application sought for the following substantive orders:-
 - a. That pending hearing and determination of the appeal, the Honourable Court, be pleased to issue permanent orders staying the decision of the respondent contained in its letter reference No. MLSP/TU/R/389 of 20th August 2024.
 - b. That the Honourable court be pleased to nullify the decision of the Respondent contained in its letter reference No. MSLP/TU/R/389 of 20th August 2024 for failure to follow the laid down procedures set out under the Labour Relations Act, 2007 and instead direct the Respondent to issue the Petitioners with a certificate of Registration within 7 days from the date of the order
6. The court finds that the orders sought are permanent in nature and cannot be issued in interlocutory application. They can only be granted under the appeal. Secondly, the decision challenged under the appeal was a negative one. Under the letter dated 24th October 2024 by the Acting Registrar of Trade Unions, the applicants were not ordered to do anything or to refrain from doing anything. The decision was like a negative order incapable of execution and as such there is nothing before this court to stay. The Court upholds the decision of the Court of Appeal in Nthiga v Keeru & 2 others (Civil Application 19 of 2020) [2024] KECA 320 (KLR) (22 March 2024) (Ruling) where the Bench upheld the decision



in *Western College of Arts and Applied Sciences v EP Oranga & 3 others* [1976] e KRL where it was held as relates a negative order that:- “The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In *Wilson v Church*, the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, it is so ordered.” Similarly in the instant application the decision of rejection of registration of the proposed trade union, the 4th Respondent, vide letter of the acting Registration of Trade unions of 24th October 2024 was a negative order incapable of being stayed. A court can only stay a positive order.

7. As regards the prayer that; “the Honourable court be pleased to nullify the decision of the Respondent contained in its letter reference No. MSLP/TU/R/389 of 20th August 2024 for failure to follow the laid down procedures set out under the *Labour Relations Act*, 2007 and instead direct the Respondent to issue the Petitioners with a certificate of Registration within 7 days from the date of the order,” the Court returns that this is a prayer permanent in nature and cannot be granted at the interlocutory stage. It is an issue for determination under the appeal.
8. In the upshot the Notice of Motion Application dated 19th September 2024 seeking a stay of the negative order/ decision of the Acting Registrar of Trade Unions and for the permanent order is dismissed as the Court cannot stay a negative order or issue a permanent order at interlocutory stage. Costs in the cause.
9. The parties are ordered to take directions on the hearing of the appeal. Mention 11th December 2024 for directions on the appeal hearing.
10. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF NOVEMBER 2024.

JEMIMAH KELI,

JUDGE.

In the presence of:

Court Assistant: Caleb

Applicant: - Samuel Mbae

Respondent: Absent – Notice to issue

