



**Republic v Registrar of Trade Unions; Hamadi (Exparte Applicant); Kenya County Government Workers Union & another (Interested Parties); Murongoro (Proposed Interested Party) (Judicial Review Application E004 of 2023) [2024] KEELRC 2738 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2738 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
JUDICIAL REVIEW APPLICATION E004 OF 2023  
M MBARŪ, J  
NOVEMBER 7, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**REGISTRAR OF TRADE UNIONS ..... RESPONDENT**

**AND**

**ALI HAMADI ..... EXPARTE APPLICANT**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION . INTERESTED PARTY**

**KENYA COUNTY GOVERNMENT WORKERS UNION BUNGOMA BRANCH  
EXECUTIVE COMMITTEE ..... INTERESTED PARTY**

**AND**

**MARY NAMUBUYA MURONGORO ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The ruling herein relates to two applications filed by the proposed interested parties, the Kenya County Government Workers Union Bungoma Branch Executive Committee and Mary Namubuya Murongoro dated 13 February 2024 and 25 March 2024.
2. The application dated 13 February 2024 is seeking orders;
  1. Spent.



2. The court be pleased to enjoin the applicants herein to these proceedings in the first instance as interested parties.
  3. That subject to such joinder this court be pleased to stay the execution of the ruling in the matter herein and all consequential orders issued pursuant to the said ruling pending the hearing and determination of this application inter parties.
  4. This court be pleased to review, vary, set aside and or discharge the ruling issued in the matter herein and all consequential orders resulting therefrom.
  5. That upon such stay, the interested parties/applicants be allowed to enter appearance and be heard in the matter herein before any orders are made against them,
3. The application is supported by Mary Murongoro's affidavit on the grounds that the applicant is a member of the interested party union, Bungoma Branch Executive Committee (Bungoma NEC). The matter herein relates to the disbandment of the Bungoma NEC and the removal of the Bungoma Branch chairperson, the national chairperson of the interested party union. It would be necessary to enjoin the Bungoma NEC as an interested party in these proceedings to allow them to attend and defend their position and not be condemned unheard. The subject matter of this application is prejudicial to the applicant and, hence, only fair to be enjoined as a party.
  4. In the Supporting Affidavit, Mary Murongoro aver that as the chairperson of the interested party, she is conversant with the proceedings herein. She has authority from Bungoma NEC to seek the enjoinder in these proceedings so they can enjoy the right to be heard on the merits.
  5. On 11 October 2023, the union's general secretary purported to disband the Bungoma NEC without reasonable cause. There was no notice to her or the other branch members. At the time, the branch received no remittances from the national office. On this account filed Bungoma ELRC JR No. 1 of 2022, Bungoma ELRC Petition No. 1 of 2019, and Bungoma ELRC Misc. Application No.E008 of 2023 to remove the applicant from office.
  6. The general secretary has held haphazard hearings in the matter, which were followed by a decision to disband the applicant branch. The proceedings herein are meant to apply illegal procedures leading to the orders issued, and unless the applicant is allowed as an interested party, great injustice will be visited.
  7. The application dated 25 March 2024 is seeking the following:

This court be pleased to enjoin Mary Namubuya Murongoro as the Interested Party in these proceedings.
  8. The application is supported by Mary Murongoro's affidavit because she is the national and branch chairperson of the Kenya County Government Workers Union. The orders sought by the ex-parte applicant directly affect her as a person as they seek deregistration by the respondent. The ex-parte applicant is also seeking to deregister the Bungoma branch, where she is the chairperson.
  9. In her Supporting Affidavit, the applicant avers that she is not a party in these proceedings and will be condemned unheard contrary to the principles of natural justice. It is only fair that the court enjoins the applicant as an interested party and gives a hearing to defend herself before a determination.
  10. The applicant also aver that a decree has been issued in this matter compelling the respondent to remove her name from the register of the interested party. At the same time, she was not given time or served with proceedings herein to attend and defend herself. She stands to suffer great prejudice if not allowed to defend herself in these proceedings.



11. In reply, the interested party filed the Replying Affidavit of Hon. Roba Duba, the General Secretary, who averred that the union suspended the proposed applicant through a letter dated 7 October 2023. The applicant's Affidavit of 4 December 2023 noted that she was suspended as a member of the union and was no longer an official. The proposed interested party cannot thus represent the Bungoma NEC or the union and its members.
12. Hon. Duba averred that he wrote a letter dated 11 October 2023 bearing the decision of the interested party to disband the applicant. This is no longer an entity that can sue or be sued. A caretaker committee was established to perform its functions under a resolution of the interested party held on 7 October 2023. The Bungoma NEC ceased to exist and, therefore, cannot purport to lodge this application and has no standing.
13. Parties attended court, filed skeleton submissions, and also made oral submissions in open court.
14. The Bungoma NEC counsel submitted that they have the standing to file an application and be enjoined in these proceedings. The right to be heard is constitutional and necessary to avoid a party being condemned unheard under Article 50 of *the Constitution*. In the case of *Skov Estate Limited & 5 others v Agricultural Development Corporation & another* [2015] eKLR, the court held that a person whose presence before the court may be necessary to wholly and effectually adjudicate and settle a matter should be joined as a party. In *Kingori v Chege & 3 others* [2002] 2 KLR, the court held that for a party to be enjoined in a suit, there must be a demonstration of the following;
  1. He must be a necessary party;
  2. He must be a proper party.
  3. In the case of the defendant, there must be relief flowing from that defendant to the plaintiff;
  4. The ultimate order or decree cannot be enforced without his presence in the matter;
  5. His presence is necessary to enable the court to adjudicate and settle all questions involved in the suit effectively and completely.
15. The proposed interested parties submitted that the orders sought by the ex parte applicant relate to an order of mandamus compelling the respondent to remove Mary Murongoro from the interested party's register under Form Q dated 7 October 2023. The applicant is not a party to the suit and will be seriously affected by the orders sought.
16. The proposed interested party's recourse is to seek to set aside the decree and advance orders against her by being allowed to join these proceedings and defend herself.
17. A joinder as an interested party is necessary to describe the applicant's interests. The prejudice to be suffered can only be related to the applicant. The proceedings affect the Bungoma NEC and the members; therefore, they seek a hearing.
18. The applicants submitted that there were wrangles within the branch, which were brought to the respondent's attention and are pending conclusion. The applicants only learnt of these proceedings and immediately applied to be enjoined as an interested party, and only fair and just that this be allowed.
19. Mary Murongoro, though counsel submitted that the issues relating to the Bungoma branch of the interested party are substantially the same, and hence, the orders sought herein by the ex parte applicant will affect her rights by removing her from the register and as an official of the branch.



20. The rules of natural justice dictate that a party must be allowed the right to a hearing before a decision is taken. The proposed interested party was not involved in these proceedings, but her name was prominently mentioned. As the chair of the Bungoma branch, the orders sought to compel the respondent to remove her from the register and to disband the branch are adverse, and without being served to attend and defend herself, she only visits injustice.
21. The interested party submitted that judgment is in this case, and the orders sought were issued. The Bungoma branch has since been deregistered as of 7 October 2023, and hence, it is not a legal entity with the capacity to sue or be sued. There is no standing before the court.
22. The interested party submitted that there was an exhaustion of internal dispute mechanisms, and the organ of the Bungoma branch was dissolved by the members and endorsed by the national committee with a resolution. The union constitution allows for such procedures to be applied, and once a resolution of the National Executive Committee passed a resolution, the union applied to the respondent to effect the same, which has since been addressed. The fact of the disciplinary process against Mary Murongoro is not denied, and the ex parte applicant in the application herein outlined the various instances the proceedings were conducted under the union constitution.
23. The ex parte applicant submitted that the proceedings herein relate to him and the respondent, and the orders for mandamus have since been issued. The decision to disband the Bungoma branch and deregister the chairperson was not made by the court but by the interested party. The ex-parte applicant only approached the court to enforce the union's decision.
24. The intended interested parties seek to appeal the union's decisions through joinder in these procedures, which should not be the case. There is an appeal mechanism under the union constitution that has not been exhausted. The court has adjudged the matter and is ex officio.
25. The respondent opted to remain neutral.

### **Determination**

26. The ex-parte applicant moved the court through judicial review proceedings. What matters in such proceedings is the objective for which the court procedures are being utilized, because the nature of judicial review proceedings is concerned with the manner and not the merits of any decision-making process.
27. The judicial review jurisdiction is the power granted to the court to review the lawfulness of a decision, action, or failure to act in relation to a public function, as held in the case of *Grain Bulk Handers Limited v J B Maina & Co. Limited & 2 others* [2006] eKLR. The court's jurisdiction is limited to applying the test of legality, procedural propriety and rationality by the decision-making authority as held in the case of *Republic v Public Procurement Administrative Review Board & another ex parte Gibb Africa Ltd & another* [2012] eKLR.
28. As a special function, judicial review proceedings should be separated from an appeal or ordinary civil suit, which, unlike the case here, is the public authority whose decision and lack of decision were implicated in the respondent's office. Judicial review is, therefore, different from ordinary suits, which allow adversarial litigation between private parties and does not entail evaluation of evidence with a view of deciding the substantial merits of the case, but rather, an examination as to whether there was compliance with the applicable constitutional, statutory and procedural requirements.



29. In the case of *Commissioner of Land v Kunste Hotel Ltd* [1995-1998] 1EA 1 (CAK) the court held that;

Judicial Review is concerned not with the private rights or the merits of the decision being challenged but with the decision-making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he has been subjected

30. In *Republic v The Land Registrar, Kilifi & Anor. ex parte Cecilia Gathoni Wangare*, Mombasa HC JR No. 64 of 2011 the court held that;

... Judicial Review Jurisdiction is a special Jurisdiction that it is neither criminal nor civil. It operates within narrow confines of the *Law Reform Act* and order 53 of the Civil Procedure Rules. As it is narrow, it should never be mixed or combined with other Jurisdictions. In this appeal we note that though the appellants came to Court specifically seeking Judicial Review orders, they also wittingly or unwittingly roped in Constitutional Jurisdiction. We do not think that this was proper or appropriate. The two are different jurisdictions that should not be mixed. We appreciate that under Article 23 of *the Constitution* that deals with authority of courts to uphold and enforce the bill of rights, the Court may grant many reliefs including an order of Judicial Review. However, this can only happen where a party has properly invoked the Constitutional Jurisdiction of the Court. One cannot come to Court vide Judicial Review proceedings and expect to be granted Judicial Review orders on the basis of an infringement of a constitutional right. A party should make an election.

31. In this case, the ex parte applicant moved the court to compel the respondent to act on its mandate under the *Labour Relations Act*. There is judgment and the respondent has complied as directed by undertaking its statutory mandate.

32. In the case of *Shah v Attorney General of Uganda* (No. 3) [1976] EA 543 the court held that;

where a duty has been directly imposed by statute for the benefit of the subject upon a Crown servant as persona designate and the duty is to be wholly discharged by him in his own official capacity, as distinct from his capacity as an adviser to or instrument of the crown, the courts have shown readiness to grant applications for persons who have a direct and substantial interest in securing the performance of this duty.

33. The special nature of judicial review proceedings is shown in the strict regime for the consideration and grant of an order of certiorari, mandamus or prohibition under Order 53 Rule 7 of the Civil Procedure rules as follows:

7. (1) In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall not question the validity of any order, warrant, commitment, conviction, inquisition or record, unless before the hearing of the motion he has lodged a copy thereof verified by affidavit with the registrar, or accounts for his failure to do so to the satisfaction of the High Court.

(2) Where an order of certiorari is made in any such case as aforesaid, the order shall direct that the proceedings shall be quashed forthwith on their removal into the High Court.”

34. The ex-parte applicant invoked this special jurisdiction with a conclusion. The matter is spent on the respondent making the necessary statutory decision regarding the orders sought.



35. The Bungoma branch has since disbanded as of 7 October 2023 and is enforced by the union, which is the interested party. The proposed grievances of the interested parties cannot be addressed within these proceedings.
36. Upon deregistration, the Bungoma NEC ceased to exist. It has no legal standing under the *Labour Relations Act*, and the office of the General Secretary is allowed to take charge.
37. Upon removal from the register, Mary Murongoro ceased working for the interested party. Based on the special judicial review mandate that the court is conferred with, any grievances regarding the removal cannot be urged under these proceedings.
38. Under Section 35 of the *Labour Relations Act*, it is an offence for a branch or official who is deregistered or removed to operate at any place its registered office may have been removed or deregistered. An aggrieved party must address the issue with the respondent's office.
39. To enjoin the proposed interested parties in these proceedings at this stage would not address the questions posed and allegations that their constitutional rights to a fair hearing to attend and defend themselves have been violated. That would not be within the purview of judicial review proceedings as held in *Mumo Matemu v Trusted Society of Human Rights Alliance, Attorney General, and Minister of Justice & Constitutional Affairs, Director of Public Prosecutions, and Kenyan Section of the International Commission of Jurists & Kenya Human Rights Commission* [2013] KECA 445 (KLR).
40. The purpose of the proceedings herein is addressed with finality; application overtaken by events for the proposed interested parties to be enjoined. Participation in these proceedings will not elicit or address the issues outlined.
41. Accordingly, applications dated 13 February 2024 and 25 March 2024 are overtaken by events, they are without merit and are hereby dismissed. The proceedings spent, no orders on costs.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M. MBARŪ**

**JUDGE**

