



**Kenya Tertiary & Schools Workers Union (KETASWU) v Registrar of Trade Unions & another
(Cause 1065 of 2021 & Employment and Labour Relations Appeal 197 of 2022 & Miscellaneous
Case E230 of 2021 (Consolidated)) [2024] KEELRC 13552 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13552 (KLR)

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1065 OF 2021 & EMPLOYMENT AND LABOUR RELATIONS APPEAL
197 OF 2022 & MISCELLANEOUS CASE E230 OF 2021 (CONSOLIDATED)**

B ONGAYA, J

DECEMBER 19, 2024

BETWEEN

**KENYA TERTIARY & SCHOOLS WORKERS UNION
(KETASWU) CLAIMANT**

AND

**REGISTRAR OF TRADE UNIONS 1ST RESPONDENT
ABSA BANK 2ND RESPONDENT**

RULING

1. The claimant (applicant) filed a Notice of Motion application dated 17.07.2024 through Maina Omoro & Mwaura Advocates. The application was under Order 51 rule 1 Order 10 rule 11 of the Civil Procedure Rules and sections 1A and 3A of the Civil Procedure Act and section 16 of the Employment and Labour Relations Court Act and all enabling provisions of the law, The application seeks the following orders:
 - a. That the Honourable Court be pleased to certify and find that the notice of motion application filed herewith is urgent and fit to be heard ex-parte in the first instance.
 - b. That the Honourable Court be pleased to review its decision and order made on 31.05.2023.
 - c. That in particular the Honourable Court be pleased to make orders as follows:
 - i. That the consent dated 12.07.2024 before this court is hereby confirmed and adopted as an order of the court.
 - ii. That upon the grant of prayer (c) (i) above, the Honourable Court be pleased and mark the matter as settled with no orders as to costs.



2. The application is supported by the affidavit of Japheth Anyira Agura, the Secretary General of the applicant and made on the following grounds:
 - a. That there is sufficient reason and cause to warrant the Honourable Court to review its decision and order made on 31.05.2023 since the same has been overtaken by events.
 - b. That there is sufficient reason and cause to warrant the Honourable Court to grant the orders sought since the members of the union have agreed to resolve these matters out of court for the smooth running of the union.
 - c. That it is in the interest of justice that the orders sought are granted.
3. The applicant consent referred to in the application and which the applicant seeks to be adopted as an order of the Court is dated 17.07.2024 and is exhibit JAA1 of the supporting affidavit. It is signed by Maina, Omoro & Mwaura Advocates for Claimant/1st Appellant/Applicant; Onyango Oyieko & Associates for 2nd Appellant; and, Momanyi Magare & Co. Advocates for interested parties. The terms of the consent are as follows:
 - a. That the matter herein be and is hereby marked as settled out of Court with no orders as to costs.
 - b. That the Miscellaneous Application E230 of 2021 against the appellants in ELRC Appeal No.197 of 2022 and the ELRC Cause No. 1065 of 2021 against ABSA Bank is hereby withdrawn with no orders as to costs.
 - c. The executions and other consequential orders arising from the directions and orders issued on the 31st of May 2023 are hereby set aside with no orders as to costs.
 - d. That the union in due compliance of election regulations enshrined in the [Labour Relations Act](#) and its constitution, through the board to call for and hold an all-inclusive election within a period of three months from the date of confirmation and adoptions of the consent.
4. The 1st respondent filed the replying affidavit of Ann K. Kanake, the Acting Registrar of Trade Unions, sworn on 16.10.2024 and filed through the Honourable Attorney General. It was stated and urged as follows:
 - a. That the 1st respondent is not aware of any consent entered into or signed between the claimant and other parties to the suit.
 - b. That the 1st respondent was neither consulted nor involved in the drafting, signing or filing of any consent mentioned in the application.
 - c. That the fresh election the former Secretary General is seeking to organize has been overtaken by events since the Form Q from the elections that were held on 16.06.2023 was registered.
 - d. As a result of the registration of the said Form Q, the union has new officials to carry out its operations.
5. The 2nd respondent filed the replying affidavit of Michael Massawa the 2nd respondent's legal officer, through Owiti, Otieno & Ragot Advocates, sworn on 11.09.2024 and stated thus:
 - a. That the 2nd respondent is not aware of any consent entered into or signed between the claimant and other parties to the suit.



- b. The 2nd respondent was neither consulted nor involved in the drafting, signing or filing of any consent mentioned in the application.
 - c. The 2nd respondent had no interest or involvement in the internal disputes of the claimant, including the proposed elections or reconciliation processes. The bank's operations are purely governed by the terms of the contract and applicable laws, which do not extend to the internal governance or management issues of the claimant.
 - d. The 2nd respondent's role in this matter is strictly limited to fulfilling its contractual obligations and complying with the law and the internal dispute of the claimant has made it unclear on who has the mandate to operate the bank account.
 - e. The contract outlines the relationship between the bank and the customer, which is based on the customer's accounts operated within the bank. This relationship is governed by the terms of the agreement signed by both parties. The agreement specifies the recognized signatories for the account and any changes to these signatories must be made by the same individuals with written communication to that effect.
 - f. The claimant has not produced proof of duly elected officials and registered with the 1st respondent to warrant unfreezing of accounts, which even if the claimant withdraws the suit as against the 2nd respondent as per the purported consent shall still remain the position until they comply with the law.
 - g. That the 2nd respondent is not amenable to having the suit withdrawn as against it with no orders as to costs as per the purported consent
6. The 15th interested party in Nairobi ELRC Appeal no. 197/2023 (formerly Nyeri Appeal E007/2021) and applicant in Nairobi Miscellaneous Application No. E230 of 2021, filed the replying affidavit of George L. Ambale through KETASWU National Trustee and sworn on 24.07.2024 and stated thus;
- a. That no meeting has ever been held by all interested parties in KETASWU affairs, composed of either the outgoing officials, newly elected officials, trustees or members of KETASWU to endorse any resolution in the name of the consent dated 17.07.2023.
 - b. The purported consent does not meet the criteria and threshold of consent known in law or fact.
 - c. That the interested party has no idea of such consent.
7. The parties filed their respective submissions. The court has considered the parties' respective positions and makes finding as follows:
- a. The consent sought to be adopted is unknown to some of the parties to suits and appeal. If adopted, it will have far reaching consequences on parties not party to the consent and members of the union.
 - b. The acting registrar of trade unions has exhibited an extract from the register of trade unions with respect to the registered officials of the Kenya Tertiary and School Workers Union (Headquarters) dated 11.09.2025. The listed Secretary General is Paul M. Kinyangi and who, together with the other listed officials appear not to have participated in the consent sought to be adopted. It therefore appears to the Court that the union as a body corporate is not a party to the consent and indeed there is no exhibited minutes of the appropriate union authority



that may have authorised the entering into of the consent sought to be adopted as an order of the Court.

- c. While the application is actually in the nature of a review application, the applicant has not established any of the known grounds upon which the Court may grant a review. Further, it appears that the order sought to be reviewed is the one, which directed the holding of union elections. The record shows that the elections have already been held per the terms of the order and the Registrar of Trade Unions has already registered the officials in accordance with the law. The order having been fully implemented, the Court in allowing the review as applied for would be acting in vain. The courts do not act in vain, as it would be superfluous to do so. The Court further observes that the applicant has failed to invoke the Court's rules of procedure and which serves as an impetus to decline the application.
- d. While making the findings and in view of the extract on the duly registered officials of the union dated 11.09.2025, the Court has considered section 35 of the *Labour Relations Act* 14 of 2007 thus:
- (1) A trade union, employers' organisation or federation shall exhibit prominently—
 - (a) in its registered office, a notice giving the names of all officials and their titles;
 - (b) in every branch office the notice specified in paragraph (a) and in addition, a notice giving the names and titles of the officials of the branch.
 - (2) Notice of any changes of officials or of the title of any officials shall be submitted to the Registrar in Form Q set out in the Second Schedule, within fourteen days after the change, together with prescribed fee, and the Registrar shall register the change, subject to subsection (4) and subsection (5).
 - (3) Before registering any change of officials or correcting any register, the Registrar may require the production of any relevant evidence of the change.
 - (4) If, after inquiry, the Registrar is not satisfied as to the validity of any appointment or the propriety of any proposed correction, the Registrar may refuse to register the change of officials or to correct the register.
 - (5) No change of officials shall have effect until it is registered by the Registrar.
 - (6) No person who is not registered by the Registrar in accordance with this section shall act or purport to act as an official of a trade union, employers' organisation, or federation or of any branch.”
- e. Accordingly, the Court finds that in absence of any other material before the Court the prevailing officials as registered and communicated by the Registrar of Trade Unions as notified after the last union elections would be entitled to act as union officials, and, not any other person not being so registered as envisaged in subsection 35(6) of the Act.
- f. The Court has considered that the dispute significantly relates to members of the union, the union, and, the Registrar of Trade Unions and no orders on costs of the application will issue.

In conclusion, the application dated 17.07.2024 is hereby dismissed with no orders on costs of the application.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19TH DECEMBER 2024



**BYRAM ONGAYA
PRINCIPAL JUDGE**

