



REPUBLIC OF KENYA



**Momanyi & 8 others v Aviation and Airport Services Workers Union  
& 2 others; Yegon & 18 others (Intended Interested Party) (Petition  
E162 of 2021) [2023] KEELRC 160 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 160 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E162 OF 2021**

**J RIKA, J  
JANUARY 31, 2023**

**BETWEEN**

**CHARLES NDEGE MOMANYI ..... 1<sup>ST</sup> PETITIONER  
EUGENE MAKAMBA ..... 2<sup>ND</sup> PETITIONER  
STEPHEN MALONGO ..... 3<sup>RD</sup> PETITIONER  
JOHN KARUHA ..... 4<sup>TH</sup> PETITIONER  
WANYAMA SHIUNDU ..... 5<sup>TH</sup> PETITIONER  
SOLOMON FEDHA ..... 6<sup>TH</sup> PETITIONER  
TERESIA ANYANGO ..... 7<sup>TH</sup> PETITIONER  
FANUEL ELKANA ONYANDO ..... 8<sup>TH</sup> PETITIONER  
JOHN MASINDE ..... 9<sup>TH</sup> PETITIONER**

**AND**

**AVIATION AND AIRPORT SERVICES WORKERS UNION . 1<sup>ST</sup> RESPONDENT  
REGISTRAR OF TRADE UNIONS ..... 2<sup>ND</sup> RESPONDENT  
BONNIE NICHOLAS BARASA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**LIVINGSTONE YEGON ..... INTENDED INTERESTED PARTY  
MOSES MALINGA ..... INTENDED INTERESTED PARTY  
EBU LOTER ..... INTENDED INTERESTED PARTY  
GEOFFREY THOMAS ..... INTENDED INTERESTED PARTY**



<b>EVANS KPROP .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>MATHEW MATI .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>PAUL KIPSUM .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>IBRAHIM NOOR .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>BENJAMIN RUTO .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>MOHAMMED ALI .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>HILARY MUHALIA .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>AGNES MUTHONI .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>PAUL AMBASA .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>SYDNEY OTIENO .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>SHERRINGTON ODARA .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>EDWIN WABURIRI .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>HARRY NYAGA .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>JOSEPH KIUGI .....</b>	<b>INTENDED INTERESTED PARTY</b>
<b>KENYA AVIATION WORKERS UNION .....</b>	<b>INTENDED INTERESTED PARTY</b>

## **RULING**

1. This Ruling relates to 2 Applications, filed by the Intended Interested Parties.
2. The first Application is dated October 6, 2022, filed by 1<sup>st</sup> -18<sup>th</sup> Applicants. They are members of the 19<sup>th</sup> Applicant.
3. The 19<sup>th</sup> Applicant is a registered Trade Union, representing the aviation industry.
4. The Petitioners are previous members of the 1<sup>st</sup> Respondent, a Trade Union which was dissolved on July 8, 2019, vide Notice of Dissolution issued by the 2<sup>nd</sup> Respondent.
5. The Petitioners are challenging dissolution of the defunct Trade Union, named as the 1<sup>st</sup> Respondent herein. They seek Judgment as follows: -
  - a. A declaration that procedure leading to dissolution was in violation of the Petitioners' rights and therefore null and void.
  - b. Declaration, that dissolution is null and void [repetitious].
  - c. Certiorari, removing into this Court [and quash?] the Certificate of Dissolution dated July 8, 2019.
  - d. The 2<sup>nd</sup> Respondent is compelled to reinstate the registration of the Union and its membership.
6. The 1<sup>st</sup> to 18<sup>th</sup> Applicants rely on the Affidavit of 1<sup>st</sup> Applicant, Livingstone Yegon, filed on October 6, 2022. He states that he and his colleagues are Employees working in aviation industry. They are represented by the 19<sup>th</sup> Applicant, and state that they are enjoying industrial harmony, which would be disrupted by re-registration of the defunct Union.



7. The 19<sup>th</sup> Applicant relies on the Affidavit of its Secretary- General Moses Ndiema, sworn on October 5, 2022. He states that dissolution of the 1<sup>st</sup> Respondent was voluntary. Its members and officials were taken in by the 19<sup>th</sup> Applicant. The dissolution-cum-merger, has strengthened worker representation in the aviation industry.
8. Both Applications are founded on the principle of sufficient and identifiable interest in the subject matter.
9. It was agreed by the Parties that the Applications are considered and determined on the basis of their Affidavits and Submissions.

**The Court Finds: -**

10. The Petition is in abuse of the process of the Court, and it is not necessary to join the Intended Interested Parties to the Petition.
11. The Notice of Dissolution issued on July 8, 2019.
12. Dissolution was a decision made by the 2<sup>nd</sup> Respondent, after the 1<sup>st</sup> Respondent voluntarily moved the 2<sup>nd</sup> Respondent for dissolution. Section 30 of the *Labour Relations Act, 2007*, states that any person, aggrieved by a decision of the Registrar made under the Act, may appeal to the Industrial Court [E&LRC] against the decision, within 30 days of the decision.
13. The Petitioners have not explained why they did not appeal. They filed their Petition on October 22, 2021, over 2 years after the Registrar made her decision. They cannot sidestep the Legislation under which dissolution was made, through a manipulation of the *Constitution*. There is a Legislation dealing with the subject matter, and resort to the *Constitution* is clearly in abuse of the process of the Court.
14. The dissolution of a Trade Union; Employer's Organisation; or Federation takes effect from the date of its registration, under Section 29[3] of the *Labour Relations Act*. Dissolution Notice issued on July 8, 2019. The effect of dissolution can be read from Section 21, which is on the converse effect of registration. A dissolved Union ceases to be a body corporate; it does not have perpetual succession and common seal; it no longer has the capacity to sue and be sued, and to enter into contracts; and can no longer hold, purchase or otherwise acquire and dispose of movable and immovable property. It no longer exists.
15. The Petitioners cannot sustain their Petition against the 1<sup>st</sup> Respondent. It no longer has capacity to sue or be sued, in its own name. It is no longer a corporate body. It is no longer a juristic person, capable of suing or being sued. The 1<sup>st</sup> Respondent died on July 8, 2019. The Petition as a whole is in abuse of the process of the Court.

**It is Ordered: -**

- a. The 2 Applications by the Intended Interested Parties are declined.
- b. The Petition is declined.
- c. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31<sup>ST</sup> DAY OF JANUARY 2023.**

**JAMES RIKA**



**JUDGE**

