



National Union for Water and Sewerage Employees Union v Garissa Water and Sewerage Company Ltd; First Community Bank Garissa Branch & another (Garnishee) (Cause 1162 of 2018) [2023] KEELRC 2145 (KLR) (22 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2145 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1162 OF 2018
NJ ABUODHA, J
SEPTEMBER 22, 2023**

BETWEEN

NATIONAL UNION FOR WATER AND SEWERAGE EMPLOYEES UNION CLAIMANT

AND

GARISSA WATER AND SEWERAGE COMPANY LTD RESPONDENT

AND

**FIRST COMMUNITY BANK GARISSA BRANCH GARNISHEE
COMMERCIAL BANK OF KENYA GARISSA BRANCH GARNISHEE**

RULING

1. The claimant herein raised a preliminary objection dated February 27, 2023 in which it stated in the main that National Union for Water and Sewerage (NUWASE) Garissa Branch did not have locus standi to bring the application dated February 22, 2023 and further that the deponent to the affidavit to the application lacked the capacity to swear the affidavit as General Secretary of the claimant as he was not the registered Secretary of the claimant. The claimant relied on sections 2(a) and (e) of the [Labour Relations Act](#) read together with section 35(5) of the same.
2. On April 17, 2023, the court directed that the claimant serves the interested party with the preliminary objection alongside its submissions over the same. The interested party was to in return respond within 14 days of service. The court at the same time granted the claimant leave to file and serve an amended Notice of Motion and further affidavit within fourteen as well with similar corresponding leave to the respondent to respond to the same.



3. The court has perused the record and has not found any submissions or responses to the amended Notice of Motion dated May 2, 2023 from either the interested party or Garnishee. It may not be clear whether the same was served on them but the court shall revert to this later on in this ruling.
4. The claimant in response to the application dated February 22, 2023 produced as exhibit “EOA1”, an extract from the Register of Trade Unions showing its registered officers, committee members and trustees as at May 26, 2022. The claimant further attached a letter dated March 18, 2020 from the Registrar of Trade Unions informing the claimants of the registration of changes to the Union’s constitution including change of name from National Union for Water and Sewerage Employees Union to Kenya Union of Water and Sewerage Employees. Nothing on record shows the applicant/interested party rebutted these allegations.
5. Section 35(6) of the *Labour Relations Act* provides that:

“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 any branch.”

Section 2(a) further provides that authorised representative means the general secretary of the trade union or any person appointed in writing by an authorised representative to perform the functions of the authorised representative. The applicant in the application dated February 22, 2023 has not demonstrated that it meets these threshold set by law. The preliminary objection is therefore found merited and is allowed with the consequence that the application dated February 22, 2023 is hereby found incompetent and is hereby struck out with costs.

6. Concerning the amended Notice of Motion dated May 2, 2023, the claimant/decreed holder is seeking reinstatement of the garnishee order nisi order issued on August 20, 2020. This court (Mbaru J) however by its ruling delivered on December 1, 2020 made the same absolute and hence the funds held by the garnishee ought to have been subject to execution to the extent and in satisfaction of the decretal sum. The matter therefore as stands now is an issue for execution against the garnishee if they should be holding any funds on behalf of the judgment debtor in defiance of the garnishee order.
7. It is so ordered

DATED AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2023

ABUODHA J.N

JUDGE

DELIVERED VIRTUALLY THIS 22ND DAY OF SEPTEMBER, 2023

