



Kenya County Government Workers Union v Nairobi City Water & Sewerage Co Ltd & 3 others; National Union of Water Sewerage Employees (Interested Party) (Employment and Labour Relations Cause E747 of 2021) [2023] KEELRC 2502 (KLR) (13 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2502 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E747 OF 2021
AN MWAURE, J
OCTOBER 13, 2023**

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION CLAIMANT

AND

NAIROBI CITY WATER & SEWERAGE CO LTD 1ST RESPONDENT

**KENYA UNION OF COMMERCIAL AND ALLIED WORKERS ... 2ND
RESPONDENT**

KENYA UNION OF WATER & SEWERAGE EMPLOYEES 3RD RESPONDENT

REGISTRAR OF TRADE UNIONS 4TH RESPONDENT

AND

**NATIONAL UNION OF WATER SEWERAGE EMPLOYEES INTERESTED
PARTY**

RULING

1. The interested party applicant has filed a notice of motion application dated 2nd October 2023. He is asking for the following:-
 1. That this application be certified as urgent and be heard ex parte and service be dispensed with in the 1st instance.
 2. That pending the hearing and determination of this application and or claim, the respondent to deposit the same amount kshs 17,011,241.95 which are the union dues to the union account for the operations of the branch.



3. That the said amount of kshs 320,000,000.00 which is 95 percent of the amount to the union, were about to be deposited in court by the respondent forthwith.
 4. That the Kenya union of water and sewerage employee, KUWASE Kenya Union of commercial, food and allied workers, KUCFAW, KCGWU. The registrar of trade unions is granted leave to be incorporated as the respondents. In these proceedings.
 5. That the unions mentioned to be forcefully evicted from offices in the water sector, and the union dues illegally received recovered from them. The inspector general of police and director of criminal investigations to execute the orders accordingly.
 6. That the registrar of trade unions be compelled or directed to issue and certify the mentioned extracts dated 26th March 2015. As the legitimate officials of the trade unions of water and sewerage employees. Headquarters and branches as at 7th march 2012.
 7. That the order to inspector general of police and director of criminal investigation to carry on the eviction.
 8. That the CBA no E172 of 2022, between KUWASE and NCWSC dated 28th July 2022 to be expunge from the court records. And any others with the unions without capacities.
 9. That the registrar of trade unions, respondents and claimant NCWSC. Be cited for contempt for disobedience of the court orders affecting the rights of the interested party/applicant as granted in cause ELRC No. E747 of 2021. ELRC No 513 of 2009. constitutional application no 114 of 2010 and cause ELRC no 1896 of 2013. Civil Appeal No 18 of 2013. civil Application No Nai 243 of 2012 (174/2012).
 10. That the warrant of arrest order to issue to impersonators, contemnor, fraudsters, and plagiarisms Elijah Otieno Awach No. 70658 of NCWSC and Matilda Jabot Kimetto No. 17821 of NCWSC. And the registrar of trade unions E. N. Gicheha Mrs and W.K. Langat, criminal actions they committed.
2. The applicant states that a ruling was made on 27th June 2022 by Justice Nzioki Wa Makau and order was issued on 22nd September 2022 in ELRC E747 of 2021 between the claimant Kenya County Workers Union and the KUWASE, NCWSC and KCCWU which orders he claims were disobeyed.
 3. He says the respondent took advantage of them and took some of their branches and as a result the applicant reported fraud involving the claimant and the respondent of kshs.17,011,241.95 being 5% of 100% of union dues belonging to NUWASE. The matter was reported to the director of public prosecution and director of criminal investigations as well as Anti-corruption commission.
 4. He says KUWASE, KCGWU and KUCTAW are still disobeying court orders. He states the respondent continue to disobey court orders from 6th July 2021, 7th June 2022 and 2nd August 2021.
 5. He says a warrant of arrest should be issued against the fraudsters.
 6. Its averments are supported by the affidavit of Philemon Otieno Atik the branch Secretary of the interested Party.
 7. The 3rd respondent KUWASE by its replying affidavit dated 2nd June 2023 deponed that the interested/ party applicant lacks locus standi to bring this suit as is contrary to sections 2(a) and section 35(6) of the *Labour Relations Act*.



8. He avers the suit is res judicata as issues raised were decided in suit E747/2021 and 1648/2011 where he says claimant was paid the decretal sum.
9. He further says there is no union known as National Union of Water and Sewerage employees as confirmed by Registrar of Trade Unions in court on 21st March 2023.
10. He informs the court the union changed its name from National Union of Water and Sewerage employees.
11. The deponent avers that he partially agrees with the averment of the applicant's affidavit on paragraph 2 save to state it was just an admission of existence of the union but he says there are other pending applications thereto.
12. He says the averment of the interested party that there was misrepresentation in legal notice number 36 of 2023 is not proved.
13. He further says that the allegations of fraud has not cited actual individuals who can be directly connected to the allegations.
14. He further says that the 3rd respondent party was not a party to the suit E747/2021 but was made a party by the interested party who did not have capacity to do so.
15. The deponent avers the agency fees claimed by the interested party were paid to Philemon Atik when he was the national treasurer in 2021. This affidavit was in response to the applicant dated 24th May 2023 but raises almost similar issues to this application and so is found useful. The court considered the replying affidavit deposed by the claimant union.

Analysis and determination

16. The interested party applicant is praying for kshs 17,011,241/95 to be deposited in their account among other prayers.
17. The court has considered that the most crucial issues for determination are the legality of the interested party as a union to represent members of the water sector and to qualify for the prayers sought.
18. There are two unions purporting to represent members of water sector and these are Kenya Union of water and sewerage Employees (KUWASE and National Union of Water and Sewerage (NUWASE).
19. The court on 27th June 2022 made a ruling and held that the appropriate union was NUWASE the proposed interested party. The proposed interested party was not yet enjoined as a party to the suit. The court is not aware the said interested party was given an order to enjoin him as a party to this suit as the court in its ruling of 27th June 2022 in E747/2021 did not find any ground to enjoin the interested party to the suit. Even if the interested party was said to be the union to represent the water sector it changed this name voluntarily.
20. The court had the benefit of summoning the Registrar of Trade Union Mrs Beatrice Mathenge on 21st March 2023 and she informed the court the registered union was KUWASE as there was a change of name from NUWASE to KUWASE and she produced a change of name certificate. She affirmed there was no Union known as NUWASE currently. She produced a certificate of registrar of Kenya Union of Water and Sewerage employees (KUWASE dated 18th March 2020). She also produced a letter dated 17th February 2022 which conformed the duly registered union is KUWASE.



21. The registrar of trade unions is the regulator and custodian of matters of trade union and the court sought their assistance to be double certain as to which was the legally, current trade union. The court has no reason to doubt that KUWASE is the duly registered trade union of this relevant water sector.
22. The court finds and holds that NUWASE is not a legally recognised union. Therefore, its application dated 2nd October 2022 is dismissed in its entirety and costs will be borne by the interested party/ applicant.
23. If the interested party wishes to proceed with his application dated 24th May, 2023 he could proceed to take a hearing date before any other Judge of this division.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF OCTOBER 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

