



Republic v County Secretary, The County Government of Bungoma & 5 others; Kenya County Government Workers Union Bungoma County Branch (Exparte); General Secretary Kenya County Government Workers Union (Intended Interested Party) (Judicial Review E001 of 2022) [2023] KEELRC 3164 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3164 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
JUDICIAL REVIEW E001 OF 2022**

JW KELI, J

NOVEMBER 30, 2023

IN THE MATTER OF ORDERS 53 OF THE CIVIL PROCEDURE RULES

**IN THE MATTER OF AN APPLICATION BY KENYA COUNTY
GOVERNMENT WORKERS UNION BUNGOMA COUNTY
BRANCH FOR JUDICIAL REVIEW ORDERS OF MANDAMUS.**

**IN THE MATTER OF A JUDGEMENT DELIVRED ON 13TH MAY 2020 IN FAVOUR OF
THE EXPARTE APPLICANT IN BUNGOMA EMPLOYMENT AND LABOUR RELATIONS
COURT CONSTITUTIONAL PETITION NO. 1 OF 2019 AS AGAINST THE BUNGOMA
COUNTY PUBLIC SERVICE BOARD AND COUNTY GOVERNMENT OF BUNGOMA.**

**IN THE MATTER OF THE TRANSITION TO
DEVOLVED GOVERNMENT ACT NO. 1 OF 2012**

IN THE MATTER OF THE COUNTY GOVERNMENT ACT

**IN THE MATTER OF THE COUNTY GOVERNMENT
PUBLIC FINANCE MANAGEMENT ACT**

IN THE MATTER OF THE SECTION 8 &9 OF THE LAW REFORM ACT

**IN THE MATTER OF SECTION 23 (3) (E) OF THE INTERPRETATION
AND GENERAL PROVISIONS ACT, CAP 2 LAWS OF KENYA**

ON APPLICATION DATED 14TH JULY 2023

BETWEEN

REPUBLIC APPLICANT



AND

COUNTY SECRETARY, THE COUNTY GOVERNMENT OF
BUNGOMA 1ST RESPONDENT

SECRETARY COUNTY PUBLIC SERVICE BOARD BUNGOMA
COUNTY 2ND RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE COUNTY
GOVERNMENT OF BUNGOMA 3RD RESPONDENT

THE CHIEF OFFICER IN CHARGE OF FINANCE COUNTY GOVERNMENT
OF BUNGOMA 4TH RESPONDENT

THE GOVERNOR, COUNTY GOVERNMENT OF BUNGOMA 5TH
RESPONDENT

COUNTY GOVERNMENT OF BUNGOMA 6TH RESPONDENT

AND

KENYA COUNTY GOVERNMENT WORKERS UNION BUNGOMA COUNTY
BRANCH EXPARTE

AND

THE GENERAL SECRETARY KENYA COUNTY GOVERNMENT WORKERS
UNION INTENDED INTERESTED PARTY

RULING

1. The application dated 14th July, 2023 and filed in court on the 25th July 2023 by the Law firm of James Oketch & Company Advocates for the Applicant seeks the following orders:-
 - a. That leave be given to the firm of James Oketch & Company Advocates for formally come on record as the advocates of the 1st Applicant /Exparte applicant / Kenya County Government Workers Union Bungoma County Branch
 - b. That the Honorable Court be pleased the Kenya County Government Workers Union be joined in the suit as 2nd interested party
 - c. That leave be given to the firm of James Oketch & Company advocates to come on record for the 2nd interested party/ Kenya County Government Workers Union
 - d. That costs of the application be provided for.
2. The application was grounded on reasons that the Exparte Applicant wished James Oketch & Company Advocates to come on record for it the firm of Robert Wamalwa& Co Advocates having ceased to act for it. The gist of the application was related to the Notice of Withdraw of this suit and the main claim on basis that the Exparte Applicant had no authority to withdraw the suit the authorized representative of the union being the General Secretary under section 2 of the *Labour Relations Act* who has a duty to represent the union in the dispute resolution bodies.



3. The General Secretary further sought to be joined as interested party in these proceedings to enable him file a substantive response to the Exparte- Applicant's judicial review application and to defend its interest or stake in the matter.
4. The Application was based the grounds stated therein and the a supporting affidavit of James Oketch of 14th July 2023 where he annexed notice of appointment by General secretary dated 13th July 2023.
5. The Court entered judgment in this judicial review application on the 7th July 2022. There is no response to this judicial review application due from any party. The Court is *functus officio* having delivered in its judgment on 7th July 2022. The Judicial review application sought for Order of Mandamus to execute against Government Proceedings Act the Respondent being a county Government. The suit was thus an execution proceeding under judgment in Bungoma ELRC 1 of 2019. It was not a claim for a party to be joined. The interested parties ought to be joined in the main suit so as to have locus to participate in the execution proceedings.
6. The intended interested party is not a party to the main suit leading to these proceedings. They have no locus in the circumstances to appear in the instant proceedings. I have looked into the submissions filed in court by the Applicant on the 30th October 2023 and authorities cited. The submissions and authorities would only be relevant if this application is made under the main suit. The court finds that a stranger in the main suit cannot appear in applications under the suit. That is the situation under the instant application. The Court in making this finding is guided by the provisions of Order 1 rule 10 of the Civil Procedure Rules to wit:-

“ 10. Substitution and addition of parties [Order 1, rule 10.]

- (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
- (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

7. On the application for change of advocates, just like the application for joinder of parties, the change of advocates should be done in the main suit Bungoma ELRC no. 1 of 2019 wherein the Exparte Applicant is represented by lawfirm of J.O Makali Advocates who the court noted were not served with the instant application.
8. For the forgoing reasons the court holds the application incompetent. The application dated 14th July 2023 is dismissed.



9. No order as to costs.
10. Right of appeal in 30 days.
11. It is so ordered.

SIGNED, DATED AND DELIVERED AT BUNGOMA THIS 30TH NOVEMBER 2023

JEMIMAH KELI

JUDGE.

In the Presence of :-

Applicant- Oketch

For Exparte Applicant:- Masekeli

1st Respondent: - Makokha

2nd Respondent- Wekesa

