



**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 3162 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3162 (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**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, THE COUNTY GOVERNMENT OF  
BUNGOMA ..... 1<sup>ST</sup> RESPONDENT**

**SECRETARY COUNTY PUBLIC SERVICE BOARD BUNGOMA  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE COUNTY  
GOVERNMENT OF BUNGOMA ..... 3<sup>RD</sup> RESPONDENT**

**THE CHIEF OFFICER IN CHARGE OF FINANCE COUNTY GOVERNMENT  
OF BUNGOMA ..... 4<sup>TH</sup> RESPONDENT**

**THE GOVERNOR, COUNTY GOVERNMENT OF BUNGOMA .... 5<sup>TH</sup>  
RESPONDENT**

**COUNTY GOVERNMENT OF BUNGOMA ..... 6<sup>TH</sup> 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 was dated 7<sup>th</sup> June 2023 and filed in Court on the 12<sup>th</sup> June 2023 by the Law firm of Mathenge Mwiti Advocates for the intended interested party seeks the following orders:-
  - a. That the Honorable Court be pleased to join the intended interested party herein the General Secretary Kenya County Government Workers Union , as interested party in these proceedings to enable him file a substantive responses to the exparte applicant’s judicial review application and to defend its interest or stake in the matter.
2. The gist of the application as per the grounds stated therein and the a supporting affidavit of Roba Sharu Duba , the intended interested party of even date ignited by the notice of withdraw of the suit dated 18<sup>th</sup> April 2023 by the Exparte Applicant with relation to application dated 27<sup>th</sup> September 2023 being garnishee proceedings with respect to judgment in Bungoma ELRC Petition No. 1 of 2019. The Court declined the Notice of withdraw of the suit in a separate ruling.



3. The Court did not find in its proceedings the intended interested party submissions allegedly filed by the law firm of Mathenge Mwiti Advocates on 26<sup>th</sup> October 2023 as stated by Counsel at last proceedings.
4. The Respondents opposed the joining of the intended interested parties broadly based on the Court having determined the dispute with finality thus functus officio and they also stated the Applicant had not demonstrated the prejudice they would suffer if not joined.
5. The intended interested party stated that under section 2 of the *Labour Relations Act* it is the authorized representative of the Union to wit “authorised representative” means— (a) the general secretary of a trade union; .... (e) any person appointed in writing by an authorised representative to perform the functions of the authorised representative;”. This was not in dispute.
6. The Court entered judgment in this judicial review application on the 7<sup>th</sup> 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 7<sup>th</sup> July 2022 and thus it would be in vain to grant the order sought namely:-<sup>4</sup> That the Honourable Court be pleased to join the intended interested party herein the General Secretary Kenya County Government Workers Union, as interested party in these proceedings to enable him file a substantive responses to the exparte applicant’s judicial review application and to defend its interest or stake in the matter”(emphasis given) The Court holds that the application is overtaken by events.
7. Further the Court s holds that the intended interested party for lack of being a party to the main suit leading to these proceedings lacks locus to be in this application which sought for grant of *Order of Mandamus* to compel the County Government of Bungoma being a government to comply with the Judgment in Bungoma ELRC No. 1 of 2019. The Court holds the intended interested party would have no locus in the circumstances to appear in the instant proceedings. 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.’”
8. In the upshot the Application dated 7<sup>th</sup> June 2023 is dismissed for being overtaken by events and further incompetent.
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 30<sup>TH</sup> NOVEMBER 2023**

**JEMIMAH KELI,**



**JUDGE.**

In the Presence of :-

Applicant – Oginga

For Exparte Applicant:- Masengeli

1<sup>st</sup> Respondent: - Makokha

2<sup>nd</sup> Respondent – Wekesa

