



Kenya Concrete, Ceramic Tiles, Interior Design Workers Union & 4 others v Central Organization of Trade Unions [K]; Cabinet Secretary Ministry of Labour & another (Interested Party) (Petition E025 of 2020) [2022] KEELRC 30 (KLR) (27 May 2022) (Judgment)

Neutral citation: [2022] KEELRC 30 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E025 OF 2020**

**J RIKA, J
MAY 27, 2022**

BETWEEN

**KENYA CONCRETE, CERAMIC TILES, INTERIOR DESIGN WORKERS
UNION 1ST PETITIONER
KENYA NATIONAL UNION OF DOMESTIC WORKERS 2ND PETITIONER
PUBLIC TRANSPORT WORKERS UNION 3RD PETITIONER
RIFT VALLEY RAILWAYS WORKERS UNION 4TH PETITIONER
KENYA UNION OF SECONDARY SCHOOLS NONE-TEACHING
STAFF 5TH PETITIONER**

AND

CENTRAL ORGANIZATION OF TRADE UNIONS [K] RESPONDENT

AND

**CABINET SECRETARY MINISTRY OF LABOUR INTERESTED PARTY
REGISTRAR OF TRADE UNIONS INTERESTED PARTY**

JUDGMENT

1. In their Petition presented before the Court, dated 5th February 2020, the Petitioners pray the Court to declare and order that: -
 - a. The Respondent is bound to admit the Petitioners as its Affiliates.
 - b. The failure to admit the Petitioners as such, is inconsistent with Articles 36 and 41 of *the Constitution*, and Rule 3 of the Respondent's constitution.



- c. The Respondent has violated Articles 36 and 41 of *the Constitution* of Kenya and Rule 3 of the Respondent's constitution.
 - d. The Respondent is compelled to admit the Petitioners as Affiliates.
 - e. The Respondent is restrained from proceeding with its elections until the Petitioners are admitted as Affiliates.
 - f. The Respondent to serve the Petitioners with the notices and/or other documents relating to the said elections.
 - g. Delay in affiliating the Petitioners, is an infringement of the principle of fair labour practices.
 - h. The Respondent to issue the Petitioners each with a certificate of affiliation.
 - i. That the Petitioners are entitled to participate in democratic processes of the Respondent.
2. The Petitioners rely of the Affidavit of the General Secretary of the 4th Petitioner, Munayi Opondo Issac [he refers to himself as MOI], sworn on 5th February 2020.
 3. He explains that the Petitioners are all registered Trade Unions. The Respondent is the registered umbrella Workers Organization, the Trade Union Centre. The 1st Interested Party is the Cabinet Secretary responsible for employment and labour relations. The 2nd Interested Party is the Registrar of Trade Unions responsible for registration and regulation of Trade Unions.
 4. The Petitioners submit that they have severally attempted to have affiliation with the Respondent. Their attempts have been thwarted by the Respondent. They submit that once a registered Trade Union has applied for affiliation from the Respondent, the Respondent is bound to grant affiliation. The Respondent is bound to issue certificate of affiliation to any registered Trade Union, who has lodged an application in accordance with the Respondent's constitution.
 5. The Petitioners argue that denial of affiliation has prejudiced them. They cannot participate in international trade unionism. They have been denied their right and freedom of association.
 6. The Respondent opposes the Petition. It submits that the Articles 36 and 41 of *the Constitution* of Kenya, are not unlimited. They are subject to reasonable limitations under Article 24. The Petitioners have a right under Article 41[4] [c] of *the Constitution*, to form and join a federation of their choice.
 7. Rule 3 of the Respondent's constitution opens up its membership to all registered Trade Unions. Membership however is open to individual Trade Unions, not a combination of Trade Unions such as the Petitioners. The Petitioners have no role in interpreting the internal rules and regulations of the Respondent.
 8. The 2nd Interested Party relies on her Replying Affidavit on record. Her position is that she is mandated to register and regulate Trade Unions, Employer Organizations, and Federations. The Petitioners are all registered Trade Unions. The Respondent has a constitution, which governs its operations. Under Section 8 [d] of the *Labour Relations Act*, 2007, the Petitioners have the right to join a Federation of Trade Unions, subject to their constitutions, and to participate in the lawful activities of such Federation. Affiliation is a matter to be agreed between the individual Petitioners and the Respondent. The 2nd Interested Party has no role. The Respondent's constitution has a clause 3, which the Petitioners must comply with, before they can be affiliated. The 2nd Interested Party prays to be excused from the proceedings.



9. The Attorney-General for the 1st Interested Party associates with the position taken by the 2nd Interested Party, invoking Section 8 [d] of the *Labour Relations Act*. He submits that affiliation is matter to be agreed, between the Parties who desire affiliation. The interested Parties have no role to play.
10. It was agreed by the Parties that the Petition is considered and determined on the strength of the Documents filed by the Parties, their Pleadings, Affidavits and Submissions on record.
11. The issues are whether, the Petitioners merit orders for affiliation with the Respondent; whether affiliation has been withheld unreasonably and in violation of the Petitioner's constitutional rights; whether the interested Parties have properly been joined to the Petition; and whether the Respondent should be compelled to affiliate with the Petitioners.

The Court Finds: -

12. The Petitioners have not established why the Interested Parties have been joined to their Petition. The Cabinet Secretary Labour, and the Registrar of Trade Unions, have no role assigned to them under the *Labour Relations Act*, on affiliation of Trade Unions. They do not direct Trade Unions, Employers Organizations and Federations, on who to affiliate with. It is not shown what the Interest of the Cabinet Secretary Labour and the Registrar of Trade Unions, in the affiliation dispute between the Petitioners and the Respondent, is.
13. The Petition against the Interested Parties is rejected from the outset.
14. The Respondent is a Trade Union Centre. Its membership is not automatic, and is regulated by clause 3 of its constitution. Individual Trade Unions desiring affiliation must apply individually and satisfy the conditions set under the clause, including payment of requisite affiliation fees.
15. The Petitioners are less than candid in their Petition. They have failed to highlight that they, have applied to register their own Trade Union Federation, known as Federation of Kenya Workers Congress. They submitted their own constitution and other requisite registration documents, to the 2nd Interested Party. Gazette Notice No. 13761 was issued by the 2nd Interested Party on 8th December 2021, calling on registered Trade Union Federations, the Respondent herein and Trade Union Congress [K]- TUC [K], to raise objection if any, on the registration of the Petitioners' Federation.
16. The Petitioners have therefore opted to affiliate amongst themselves, by forming their own Federation, as they are entitled to do under Articles 36 and 41 of *the Constitution* of Kenya, and Section 8 [d] of the *Labour Relations Act*.
17. Why then do they at the same time seek orders, compelling another Federation of Trade Unions, to have them on board? Shall they join the Respondent as a Federation or as Individuals?
18. They are oblivious of the Respondent's own right to freedom of association under Article 36 of *the Constitution*. Article 36 [2] forbids any person from being compelled to join an association of any kind. By compelling the Respondent to affiliate with the Petitioners, the Court would in effect be compelling the Respondent into an association it does not desire to have, with the Petitioners. The Court cannot order the Respondent to grant the Petitioners' membership, just as much as it cannot order any of the Respondent's members to affiliate with any, or all the Petitioners. Membership to any Trade Union Federation is subject to the internal constitutions, rules and regulations of the particular Federation. It is not based on the mere fact that a Trade Union is registered. The Petitioners have carved for themselves a path, different from that they wish the Court to pave for them. They have pursued registration of their own Trade Union Federation, away from the Respondent. They should pursue their own path.



19. Affiliation is based on freedom of association. It cannot be coerced through an order of any Court.
20. The Petition is misconceived.

It is Ordered: -

- a. The Petition as a whole is declined.
- b. The Petitioners shall meet the Respondent's and Interested Parties' costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH
DAY OF MAY 2022.**

JAMES RIKA

JUDGE

