



Owuor & others v Registrar of Trade Unions; Emisembe (Suing on behalf of Kenya Union of Technical and Vocational Education Trainers) (Applicant); Sebastian Lidigu & 2 others (Interested Parties) (Appeal 26 of 2016) [2022] KEELRC 1290 (KLR) (12 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1290 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 26 OF 2016
NZIOKI WA MAKAU, J
JULY 12, 2022

BETWEEN

MURDOCK OWUOR & OTHERS APPELLANT

AND

THE REGISTRAR OF TRADE UNIONS RESPONDENT

AND

JAYNE EMISEMBE (SUING ON BEHALF OF KENYA UNION OF TECHNICAL AND VOCATIONAL EDUCATION TRAINERS) APPLICANT

AND

SEBASTIAN LIDIGU INTERESTED PARTY

KEFA OGWI INTERESTED PARTY

ELIZABETH CHEPTOO INTERESTED PARTY

RULING

1. The Ruling herein relates to the preliminary objection by the 1st to 3rd Interested Parties. They assert in the main as follows:-
 - a. That there is another matter pending before the Court of Appeal in Kisumu between the same parties herein, concerning the same issue of registration of KUTVET being Civil Appeal No. E208 of 2021.
 - b. That the issues raised in support of the Applicant's application dated March 15, 2022 are *res judicata*, the same having been directly and substantially in issues between the same parties



herein in Petition Appeal No. 12 of 2019 and E208 of 2021 wherein, the ruling was delivered on October 6, 2021.

- c. That the orders sought by the Applicants were already dealt with in the Ruling of October 6, 2021 by Radido J. in which the Judge stated that the issues have been overtaken by the events as the union had already been issued with the interim certificate dated 21st day of February 2017 and as such the matters raised by the Appellant in the said application are res judicata and sub judice.
 - d. That the Appellant already filed an Application dated 1st July 2021 in Appeal No. 12 of 2019 and hence the instant application offends the legal doctrine of duplicity of lawsuits espoused in Section 6 of the Civil Procedure Act.
 - e. That this Honourable Court has therefore no jurisdiction to entertain the Application.
2. The Applicant is opposed and filed a replying affidavit in which she states that she is not a party to the matter in Kisumu and that she has not been served with the pleadings in respect of the matter from Kisumu. On the issue of res judicata she asserts that the matters before this Court are not res judicata and that the Applicant only applied to be enjoined in Appeal No. 12 of 2019. She states that the matter before this Court is on contempt by the Respondent who has declined to act in conformity with the decision of this Court. She asserts the matter at Kisumu has been overtaken by events as the same has been concluded by the Employment and Labour Relations Court with the said Court pronouncing itself on the Appellants/Application that the matter had been overtaken by events, the issue having conclusively been determined in the said Employment Court. She asserts that it should be noted that the Kisumu matter as was filed by the Interested Party was filed with the parties fully being aware that there was another matter being Appeal 26 of 2016 that was alive in court and had not been finalized and in which matter the said Interested Parties were parties thereto. She states that this is an abuse of the court processes and procedures that ought not to be entertained. It is her averment that the Objector is clearly misrepresenting the facts and is as well in an attempt to purgerize the provision of the law. Further to the above the Appellant avers that in accordance to the Employment and Labour Relations Court Act 2011, this Court has been bestowed with both unlimited Original and Appellate Jurisdiction in matters of Employment and Labour Relations and that to allege that the court does not have Jurisdiction to litigate the matter herein when the said Court has been well seized of the matter since the year 2016 is less than candid.
3. The application by the Applicant has exposed the ongoing proceedings. There is another matter pending at the Employment and Labour Relations Court at Kisumu and which matter is subject of an ongoing appeal at the Court of Appeal. The preliminary objection therefore has merit and in view of the fact that duplicity of suits is not something this Court can sanction, this suit is transferred to Employment and Labour Relations Court at Kisumu where it will abide the outcome in the appeal alongside the matter at the ELRC Court Kisumu being Petition Appeal No. 12 of 2019 - Kefa Langi Oguwi (suing on behalf of Kenya Union of the Technical and Vocational Education Trainers) v Registrar of Trade Unions; Kenya Union of Post-Primary Education Teachers (Kuppet) (Interested Party).
4. There are no orders as to costs since the Petitioner herein and the Interested Parties are alleged to the part of the proponents of the Kenya Union of Technical and Vocational Education Trainers.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2022

NZIOKI WA MAKAU



JUDGE

