



Kenya Tertiary & Schools Workers’ Union “KETASWU” & another v Registrar of Trade Unions; Mathew C Nge’tich & 16 others (Intended Interested Party) (Appeal E007 of 2021) [2022] KEELRC 3905 (KLR) (16 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 3905 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
APPEAL E007 OF 2021
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN

**KENYA TERTIARY & SCHOOLS WORKERS’ UNION
“KETASWU” 1ST APPELLANT**

**KENYA TERTIARY & SCHOOLS WORKERS’ UNION “BUNGOMA
BRANCH” 2ND APPELLANT**

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

MATHEW C NGE’TICH & 16 OTHERS INTENDED INTERESTED PARTY

RULING

1. Here, we have a combined application dated August 25, 2021 and a preliminary objection dated February 11, 2022.
2. The application comes out as follows;
 1. That the hon court be pleased to have the application certified as urgent, and that same be heard urgently and ex-parte in the first instance.
 2. That the application be served upon the parties and an earlier inter-partes hearing date be set.
 3. That the application be heard in accordance to the hon court vacation rules.
 4. That the applicant and the intended interested party be enjoined in the matter for the respective interests the said parties have in the matter and for reasons of assisting the court serve justice to the parties in the herein Appeal.



5. That the directives issued by the Hon. justice Njagi D Marete be varied to conform to the findings of the court with respect to the instant application and to conform as well to the state directives on the elections of trade unions through the 2nd respondent.
 6. That the Deputy Secretary General of the 1st respondent be and is hereby directed to forthwith issue notice of election of the union to the relevant organs for reasons of conforming to the state directives with respect to the elections of trade unions, and the members wish that union elections be conducted forthwith.
 7. That the 2nd respondent be, and is hereby, directed to ensure that the trustees of the union ensure that, The chairman, trustee, and the treasurer being part of the signatories to the 1st respondent's account, operate the said account domiciled at the interested party in the interim, and in a manner as would ensure the continuity of the operations of the said 1st respondent, and or as shall be directed by the honourable court.
 8. That costs of the application be provided for.
3. This application seeks an immediate conduct of union elections in place of the previous purportedly flawed ones. It also calls in place the previous office bearers to continue in office but on an interim basis pending such elections.
 4. The preliminary objection comes out as follows; That the notice of motion dated 23rd August, 2021 is totally defective. Mischievous and grossly offend the mandatory provisions of section 33 (a) & (c) of the Labour Relations Act, 2007 Laws of Kenya. That the Employment and Labour Relations court at Nyeri is a court of record and has jurisdiction to hear and determine the Appeal under section 12 of the Employment & Labour Relations Court Act, and section 30 of the Labour Relations Act, 2007. The Appellant preferred an appeal to this court and the union, KETASWU and the Registrar of Trade Unions are principle parties within the meaning of section 30 of the Labour Relations Act, 2007. That the role of the Principal Judge is supervisory and not dictatorial as envisaged under section 5 (4) of the Labour Relations Act, 2007. Any attempt to remove and or relocate this appeal without the Appellant's consent shall be a direct infringement of their rights in glaring impunity. That the applicants have all due rights to fair administrative action as envisioned under article 47 of the Constitution of Kenya, 2010. That this application is totally defective, mischievous and grossly offends the provisions of article 19 (3) (a) of the Constitution of Kenya, 2010 and, article 3 of the ILO Convention, No 87 of 1948 besides section 31 of the labour Institutions Act, 2007. This application should instantly be dismissed with costs.
 5. The appellant faults the application on grounds that the General Secretary of the union is the only party mandated to act on his behalf. It is her further case and submissions that this court is endowed with the competency and jurisdiction to handle the issues in dispute. It is therefore unnecessary that this matter be relocated to Nairobi or any other court for hearing and determination.
 6. Again, the intended interested party has no legal authority or entitlement to dealings in respect of the appellant union. This is because he is not an elected official or in any way authorized to deal or act for the union. He is in essence an outsider who is out to merely stir waters in the running of the union.
 7. The application should therefore be dismissed and the preliminary objection upheld.
 8. The preliminary objection comes out in opposition and objection to the application. It's basis is that the applicant for joinder has no *locus standi* in the matter. This is on ground of his lack of legitimate interest in the affairs of the union.



9. This matter comes out in favour of the appellant/respondent and objector. Her case overwhelms that of the respondent and intended interested party. It is merited and retains good standing on a scale of balance of probabilities.
10. I am therefore inclined to dismiss the application and uphold the preliminary objection as set out. Each party shall bear their costs of this litigation.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF SEPTEMBER 2022.

D.K. NJAGI MARETE

JUDGE

Appearances

Mr. Japheth Agura for the Appellant Union/Respondent/Objector

Mr. Orenge for the Intended Interested Party.

Mr. Gisemba instructed by State Law Office for the Respondent.

Mr. Watabwa for the Union/Bungoma Branch for the 2nd Appellant.

