



Kenya Medical Practitioners Pharmacists and Dentists Union v Registrar of Trade Unions; Commissioner for Labour (Interested Party); Benjamin & 3 others (Intended Interested Party) ((An appeal by Appellant herein, being dissatisfied with the decision of the Registrar of Trade Unions, communicated vide its letter dated 21st June, 2022, refusing to register the duly elected officials of the Appellant herein)) (Appeal E087 of 2022) [2022] KEELRC 12840 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELRC 12840 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL E087 OF 2022

MA ONYANGO, J

OCTOBER 13, 2022

BETWEEN

KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS UNION APPELLANT

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

COMMISSIONER FOR LABOUR INTERESTED PARTY

AND

MAGARE GIKENYI J. BENJAMIN INTENDED INTERESTED PARTY

KAUGIRIA ALEXANDER THURANIRA INTENDED INTERESTED PARTY

STEPHEN OMONDI OLOO INTENDED INTERESTED PARTY

WILLIAM WATURU MURIUKI INTENDED INTERESTED PARTY

(AN APPEAL BY APPELLANT HEREIN, BEING DISSATISFIED WITH THE DECISION OF THE REGISTRAR OF TRADE UNIONS, COMMUNICATED VIDE ITS LETTER DATED 21ST JUNE, 2022, REFUSING TO REGISTER THE DULY ELECTED OFFICIALS OF THE APPELLANT HEREIN)

(An appeal by Appellant herein, being dissatisfied with the decision of the Registrar of Trade Unions, communicated vide its letter dated 21st June, 2022, refusing to register the duly elected officials of the Appellant herein)



RULING

1. The applicant herein, Dr William Muriuki Waturu, seeks to be enjoined as an interested party to this suit vide his application dated July 25, 2022. The grounds in support of this application as set out on the face of the application and in the affidavit in support thereof are that he was a party to the cases leading to the instant appeal being Nairobi ELRC Petition E080 of 2021 and Court of Appeal Application No E477 of 2021.
2. Further, that he was declared elected a Central Branch Secretary in both the nullified election of May 2021 and the voting that occurred on June 11, 2022.
3. His other reason is that he is a bona fide member of the union and one of the officials whose registration is the subject of this appeal.
4. The application is supported by the affidavit of Dr William Muriuki, the applicant in which he reiterates the averments on the face of the application.
5. There is another application dated July 14, 2022 filed by Dr Magare Gikenyi J Benjamin, Dr Kaugiria Alexander Thurairara and Dr Stephen Omondi Oloo to be joined as interested parties. The said applicants further seek orders setting aside clarifying/reviewing the interlocutory orders issued ex parte on July 7, 2022.
6. The applicants further pray for orders that an injunction do issue that the former officials whose election was invalidated in Nairobi ELRC Petition No E080 of 2021 be restrained from expending, using, withdrawing or in any other way dealing with funds, property or resources of the union or in any other way purporting to be union officials pending the hearing and determination of the application dated June 30, 2022.
7. The application is supported by the grounds on the face thereof and supporting affidavit of Dr Magare Gikenyi J Benjamin, a member of the appellant, practicing as a consultant general surgeon at Nakuru.
8. In both the grounds and the affidavit, the applicants state that there are contrasting court decisions in the same set of facts between the same set of parties by different judges in Nrb ELRC Pet E080 of 2021 delivered on December 15, 2022, Nrb COAPPL/E477/2021, COAPPL/E002/2022, COAPPL/E005/2022 and COAPPL/E008/2022. Decisions/rulings delivered on June 3, 2022 and now ruling in Nrb ELRC Appeal E087 of 2022.
9. That the court is being called upon to review its own decision on the basis of apparent error on the face of the record pursuant to section 16 of the *Employment and Labour Relations Court Act, 2011* as read with section 33(1)(b) and (d) of *Employment and Labour Relations Court (Procedure) Rules, 2016* to prevent the calamitous effects to the orderliness, confidence in and to avoid embarrassment of the judicial process contrary to article 73(1)(iii) of the *Constitution 2010* and to prevent the irreversible negative effects upon the union and its members.
10. The applications are opposed by the Appellant who filed a replying affidavit of Dr Davji Ouma Atela, who states that this court did not issue any orders on July 7, 2022 as alleged by the applicants.
11. The affiant points out that there is no application for joinder of Dr William Waturu Muriuki and his name ought to be expunged from the pleadings herein.



12. The affiant deposes that the applications for joinder are premised on a mistaken belief that since they were interested parties in ELRC Petition No E080 of 2021 they must be parties in the present proceedings. That they have grossly misunderstood the purpose for the instant appeal
13. The affiant deposes that following the orders in Petition No E080 of 2021, repeat elections were held on June 11, 2022. That the instant appeal is against the refusal to register the officials elected on June 11, 2022 as communicated to respondent vide Form Q following the repeat elections.
14. The affiant deposes that following the said repeat elections held on June 11, 2021 no member of the union has filed a petition challenging the elections, the deadline for filing such challenge being seven days from the date of elections as provided in the Labour Relations Act. That the intended interested parties are therefore time barred under section 30 of the Act.
15. On the application for review, the affiant deposes that the intended interested parties do not have locus standi to seek the prayers sought by the applicants.
16. The affiant denies that the orders in the file were made through concealment of material facts as alleged by the applicants.
17. The affiant further deposes that had the interim orders on record not been granted the affairs and functions of the union would have stalled following the registrar's refusal to register the duly elected officials and it was therefore fair and just for the court to grant the interim orders.
18. Further that the term of the trustees expired in April 2021 and no new trustees have been appointed due to court cases filed by the intended interested parties.
19. That in any case all that the court ordered was that the officials whose names remain in the register remain in office in the interim pending determination of the appeal
20. With respect to the averment of the applicants that there are conflicting orders from the courts, the affiant deposes that the only matter that was before the Court of Appeal was an application for stay pending appeal. That the effect of the dismissal of the application for stay by the Court of Appeal was that the orders in ELRC Petition No E080 of 2021 remained in force and the repeat elections were held on June 11, 2022 pursuant to the said order.
21. The affiant prayed that the applications for joinder be dismissed. the applications were argued orally in court on July 20, 2022.
22. I have considered the pleadings and submissions by the parties.
The issues for determination are whether the applicants qualify to be enjoined as interested parties to the instant appeal and whether the court should review/set aside the orders of July 7, 2022.
23. On the date of hearing the application for joinder the court noted that there were more names of proposed interested parties than those in the two applications before court. The additional names, being Dr Osuri and Dr Kabaiko were expunged from the proceedings as they had not applied to be enjoined.
24. Joinder of parties is provided for in order 1 rule 10(2) of the Civil Procedure Rules as follows –
 - (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.

25. In the case of *Kingori v Chege & 3 others* [2002] 2KLR, Nambuye J. (as she then was) restated the guiding principles for joinder of parties as follows –
1. “He must be a necessary party.
 2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.”
26. In *Civicon Limited v Kivuwatt Limited and 2 others* [2015] eKLR the court observed as follows:
- “Again the power given under the rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”
27. In the instant applications the applicant’s wish to be joined as interested parties. They have stated that they are members of the appellant and in their view this court is likely to make orders that conflict with earlier orders made by other courts in matters that concern the same parties and the same subject matter.
28. It is only fair that they are given a chance to be heard in the suit as they have a proprietary interest in the outcome of the appeal in their capacities or members.
29. In the replying affidavit the appellant has raised issues of locus standi which can only be dealt with once the applicants are enjoined as parties.
30. The appellant has further raised issues whether the applicants have approached the court in the proper manner arguing that they should have filed an appeal if they are dissatisfied with the manner in which the elections of June 11, 2022 was conducted.
31. This court takes the view that such a process would only lead to a multiplicity of cases in respect of the same subject matter which is the elections of June 11, 2022. This court frowns upon multiplicity of suits as that would unnecessarily clog the court system which is already choking under the weight of pending cases. Such an approach is also likely to lead to conflicting decisions, which is one of the grounds the applicants have cited as their reason for seeking to be enjoined in this suit.



32. From the foregoing, I find that the joinder of the applicants as interested parties to this suit would be necessary to avoid the filing of another suit by them.
33. On the second prayer for review and setting aside of the court's orders made on July 7, 2022, I agree with the appellant that no orders were made on that day. indeed there is no record that the matter was before court on July 7, 2022.
34. The date on which this matter came up when interim orders were made was July 5, 2022. On that date the court made orders that the officials in office continue holding office pending inter partes hearing of the application.
35. The view of the court is that for those orders to be set aside and/or reviewed, the court will require to hear the parties on their arguments in support of and against the said orders. This can be done at the hearing of the appeal. I note from the record that the applicants have already filed submissions in respect of the same.
36. In conclusion, having made the findings above, I make the following orders:
 - i. Dr Magare Gikenyi J Benjamin; Dr Kaugiria Alexander Thurania, Dr Stephen Omondi Oloo and Dr William Waturu Muriuki are enjoined to the appeal as the 2nd, 3rd, 4th and 5th interested parties respectively.
 - ii. The application for review and/or setting aside of orders on record will be heard and determined together with the appeal.
 - iii. Each party shall bear its costs of the application for joinder.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13TH DAY OF OCTOBER 2022

MAUREEN ONYANGO

JUDGE

