



Kenya Concrete Ceramic Tiles, Interior Design Workers Union & 4 others (Suing as the appointed representatives of the Intended Affiliates of COTU) v Central Organization of Trade Unions [K]; Cabinet Secretary Ministry of Labour & another (Interested Parties) (Petition E025 of 2021) [2022] KEELRC 13312 (KLR) (30 November 2022) (Ruling)

Neutral citation: [2022] KEELRC 13312 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION E025 OF 2021

J RIKA, J

NOVEMBER 30, 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 WORKERS UNION[K] 4TH PETITIONER

KENYA UNION OF SECONDARY SCHOOLS NON-TEACHING STAFF AND OTHERS 5TH PETITIONER

SUING AS THE APPOINTED REPRESENTATIVES OF THE INTENDED AFFILIATES OF COTU

AND

CENTRAL ORGANIZATION OF TRADE UNIONS [K] RESPONDENT

AND

CABINET SECRETARY MINISTRY OF LABOUR INTERESTED PARTY

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

RULING

1. The petitioners are registered trade unions.
2. They filed this petition on February 18, 2018.



3. They sought a raft of orders, principally that the respondent herein, COTU [K], unconditionally admits them as its affiliates, and that they are allowed to participate in the elections of COTU[K], which have since taken place without the inclusion of the petitioners.
4. The court heard the petition, and delivered a judgment dated May 27, 2022. It was the finding of the court that the petitioners had not shown why the interested parties were joined to the petition, and that the petitioners could not be affiliated to COTU[K] by a compelling order of the court. The petition was declined.
5. The petitioners have lodged an application dated June 10, 2022, seeking review of judgment, and recusal of the undersigned judge. The ground for review is basically that the petitioners had amended their original petition, and that Judgment was made based on the pleadings in the original petition. They argue that the court did not consider the amendments. On recusal, they allege that the undersigned judge has demonstrated lack of impartiality in the dispute, and they have lost faith in his ability to act fairly.
6. The application is opposed. The Attorney-General, filed grounds of opposition dated July 22, 2022. The amended petition did not comply with the *Civil Procedure Rules* on amendment of pleadings, and ought to have been struck out in the first instance. The prayer for recusal is baseless. Judgment on record is specific to the facts, and applicable principles of the law. The court addressed the first prayer sought by the petitioners, which is that they have a constitutional right to form, join and participate in the lawful activities of an organization of their choice. The second prayer in the amended petition is premature as the Registrar Of Trade Unions had not been given an opportunity to make a decision on the petitioner's application for registration of their federation. The respondents submit that the application has no merit.
7. The application was placed before the court under certificate of urgency, on June 17, 2022. The court gave directions on June 17, 2022. It was ordered that the prayer for recusal has no foundation in law or fact, and the prayer was declined. Judges do not recuse themselves at the drop of a hat, or simply because they have made a previous decision in a matter, which does not favour the applicant for recusal. Dissatisfied parties have the option of challenging unfavourable decisions on appeal. The prayer for recusal, is no longer a matter subject of the court's determination.
8. The court also directed that petitioners confirm with the court assistant, Emmanuel Kiprono, that at the time the judgment was made, they had placed a copy of the amended petition in the physical file.
9. A copy of the amended petition now on record, indicates that it was received in court on June 20, 2022. It was received more than a month after the judgment was delivered on May 27, 2022. It was therefore not the fault of the court, that the amended petition was not taken into account, in making the judgment delivered on May 27, 2022. The court made judgment, based on the entirety of the physical file, as forwarded to it for judgment-writing, by the registry.
10. The amended petition has 3 prayers: -
 - a. Declaration that the petitioners have the right to form, join and or participate in the lawful activities of an organization of their choice.
 - b. The 2nd respondent [who is named as the 2nd interested party in the petition] is directed to register the petitioners in accordance with the application lodged with the office of the 2nd respondent, subject to fulfilment by the petitioners of the conditionalities precedent.
 - c. Each party to bear its own costs.



11. Parties recorded a consent order on July 26, 2022, to have the application considered and determined on the strength of the record.

The Court Finds:-

12. As observed above, the amended petition was placed in the physical file by the petitioners, on June 20, 2022, while the judgment was delivered earlier, on May 27, 2022. The court did not have the benefit of a copy of the amended petition, in preparing the judgment on record.
13. Paragraph 16 of the judgment on record, states that the petitioners, are entitled to affiliate amongst themselves, under articles 36 and 41 of the Constitution of Kenya, and section 8[d] of the Labour Relations Act.
14. It is needless for the court to review its judgment, and declare what it has already affirmed- that the petitioners have a right to form, join and/ or participate in the lawful activities of an organization of their choice.
15. The second prayer in the amended petition is that the Registrar of Trade Union is compelled to register the petitioners' federation.
16. Registration of a federation of trade unions, is regulated by section 16 of the Labour Relations Act, 2007. The petitioners initiated registration process under the Labour Relations Act.
17. They have not clarified if the Registrar of Trade Unions declined to register them, through form D, set out in the second schedule of the Labour Relations Act.
18. If they were refused registration, the recourse is in section 30 of the Labour Relations Act, which states: -

“ Any person aggrieved by a decision of the registrar made under this act, may appeal to the Industrial Court [ELRC] against the decision, within 30 days of the decision.”
19. Why then, file a petition and convolute issues, including attacking the impartiality of the Judge, instead of espousing fidelity to the law? Was there a decision made by the Registrar of Trade Unions, against the application made by the petitioners for registration of their federation of trade unions? When was the decision made, and was an appeal made to this court within 30 days of the decision? These are the issues that the petitioners should have focused their minds on.
20. The petition in its original form and amended form, is in abuse of the process of the court. No amount of review of judgment can cure this abuse. There is an act of parliament governing registration of trade unions, federation of trade unions and employer organizations. It has a clear dispute resolution mechanism, in event registration is denied. The petitioners sought registration under that legal regime. They ought to have challenged any decision of the Registrar of Trade Unions through the procedure provided for, under the act, not file an amended petition seeking registration.
21. Lastly, the petitioners plead that they present the petition as the appointed representatives of the intended affiliates of COTU[K]. Who are the intended affiliates of COTU[K], unnamed in the amended petition? Where is the deed of appointment of the petitioners as representatives of the intended affiliates? Why is COTU[K] retained in the amended petition, and what order is sought against COTU[K] in the amended petition?

IT IS ORDERED:-

- a. The application for review of judgment, filed by the petitioners is declined.



b. Judgment declining the petition is sustained.

c. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30TH
DAY OF NOVEMBER 2022.**

James Rika

Judge

