



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**ELRC APPEAL NO. 12 OF 2019**

**KEFA LANGI OGUWI** (*suing on behalf of*

**KENYA UNION OF THE TECHNICAL AND**

**VOCATIONAL EDUCATION TRAINERS .....APPELLANT/APPLICANT**

**VERSUS**

**REGISTRAR OF TRADE UNIONS.....RESPONDENT**

**AND**

**KENYA UNION OF POST-PRIMARY EDUCATION**

**TEACHERS (KUPPET).....INTERESTED PARTY**

**JUDGMENT**

1. The appellant filed a Memorandum of Appeal dated 29/5/2019 seeking the Court to set aside the decision of the respondent, Registrar of Trade Unions on the following grounds:

- (i) The Labour Board was misguided and arrived at a decision which is unreasonable and unconstitutional.
- (ii) The Labour Board failed to appreciate their earlier decision to give the appellant an interim registration which they have now turned against.
- (iii) The Labour Board did not take into consideration that the petition filed by KUPPET and the judgment dated 1<sup>st</sup> March, 2019 was set aside by the same Court in its Order dated 19/3/2019.
- (iv) The Labour Board disregarded all the requirements which were already attained by the appellant /applicant.

2. The appellant in sum prays the Court to set aside the decision of the Registrar of Trade Unions dated 14<sup>th</sup> May, 2019, to refuse to register the Kenya Union of Technical and Vocational Education Trainers (the Appellant/Applicant) as a trade union.

3. In his decision communicated to the Appellant on 14/5/2019, the Registrar of Trade Unions gave the following reasons for the refusal, *interalia*-

- (i) The cadre of trainers sought to be represented being all trainers/teachers, in vocational tertiary institutions falling under the Technical and Vocational Education Training Authority (TVET). Under the Technical and Vocational Education and Training Act, 2013 are already represented by the Kenya Union of Post Primary Education Teachers (KUPPET) the interested party in this Appeal.
- (ii) The National Labour Board while considering the application advised against the registration of the appellant in that the Circular Ref. TSC/ADM/192A/Vol. 1x 47 dated 27/7/2018 which transferred TVET trainers from TSC to the ministry of Education, Science and Technology i.e from TSC to Public Service Commissions (PSC) was nullified by the Court in ELRC Petition No. 97 of 2018 at Nairobi in a judgment delivered on 1/3/2019.

4. The appellant submits that the advisory by the National Labour Board was wrong in that the judgment delivered on 1/3/2019 by Abuodha

J. was stayed by Ongaya J. by an Order dated 14/13/2019 pending the inter-parties hearing of an application dated the even date being 14/3/2019.

5. From the Appeal record, at page 83, Ongaya, J. whilst granting stay of the judgment of Abuodha J. gave directions for the hearing and determination of the Application on 21/3/2019 so as to extend the stay of execution pending the hearing and determination of the intended Appeal against the judgment by Abuodha J. delivered on 1/3/2019.

6. The appellant in the Memorandum of Appeal does not disclose to the Court whether the application dated 14/3/2019 was heard and determined on 21/3/2019 and what was the outcome of the application.

7. The Appellant has also not informed the Court whether the intended Appeal against the judgment by Abuodha J. dated 1/3/2019 was filed and if so what was the outcome of the Appeal.

8. There is no Memorandum of Appeal against the judgment of Abuodha J. dated 1/3/2019 which is attached to the Appeal record.

9. It is not alleged in the Memorandum of Appeal that as at 14/5/2019, when the Registrar of Trade Unions made decision to refuse registration of the Appellant, there was an Appeal duly filed against the judgment by Abuodha J. dated 1/3/2019 nor does the record show any extension of the interim injunction issued by Ongaya J. on 14/3/2019 which interim Order was due to lapse on the return date on 21/3/2019 unless extended by the Court.

10. The submissions by the Appellant that the Labour Board failed to appreciate the decision by Ongaya, J. dated 19/3/2019 is without merit and is not borne out by facts on the Appeal record.

11. The appellant has not in its grounds of Appeal faulted directly the decision by the decision maker, the Registrar of Trade Unions, but instead attacks the advice by the National Labour Board to the Registrar of Trade Unions.

12. The Court notes that it is the decision by the Registrar of Trade Unions to refuse to register the Appellant which ought to be the subject of the appeal and not the advisory by the Board which in any event is not bidding on the Registrar of Trade Unions.

13. Accordingly, the Court finds that the Memorandum of Appeal lacks any meritorious ground at all against the decision by the registrar made on 14<sup>th</sup> May, 2019. This decision was not a decision of the board as alleged by the Appellant in the Memorandum of Appeal in the opening paragraph, but was a statutory decision by the Registrar of Trade Unions.

14. Application for registration of a trade union is in terms of Section 18 of the Labour Relations Act, No. 14 of 2007.

15. In terms thereof, the application is made to the Registrar of Trade Unions and not to the National Labour Board.

16. It is the Registrar who considers the application and makes a decision under Section 20 of the Labour Relations Act, whether to register the union or to refuse to register the Union.

17. The appellant has completely failed to demonstrate how the Registrar of Trade Unions failed in his Mandate in the present Appeal.

18. The Appeal lacks merit and is dismissed with costs.

**Dated and delivered at Nairobi this 28<sup>th</sup> day of January, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Keta Langi Oguwi, Appellant

Hon. Attorney General for Registrar of Trade Unions

Otieno Ayayo for interested party.

Chrispo: Court clerk