



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 19 OF 2020

KENYA FOREIGN RECRUITMENT & EMPLOYMENT AGENCIES

WORKERS' UNION.....1ST CLAIMANT

ABUBAKAR KILWA OMAR.....2ND CLAIMANT

ABDULKADIR JUMA ALI.....3RD CLAIMANT

KOTI KITAVI NGAO.....4TH CLAIMANT

FATUMA ABDULKADIR.....5TH CLAIMANT

ELIZABETH ADHIAMBO OBONYO.....6TH CLAIMANT

VS

THE REGISTRAR OF TRADE UNIONS.....RESPONDENT

RULING

1. By their Notice of Motion dated 18th March 2020, the Claimants sought the following:

a) That the matter be certified urgent and service thereof be dispensed with in the first instance;

b) That the Court be pleased to allow the Claimants to file their suit against the Respondent (Registrar of Trade Unions) before the expiry of thirty (30) days from the date of the decision and serve.

2. The Motion was supported by an affidavit sworn by the 2nd Claimant, Abubakar Kilwa Omar and was based on the following grounds:

a) That on 20th October 2014, the 2nd, 3rd, 4th, 5th and 6th Claimants made an application to the Respondent seeking registration of the 1st Claimant;

b) That on 20th February 2020, the Respondent notified the Claimants, through 'Form D' dated 18th February 2020, of the refusal to register the 1st Claimant as a trade union;

c) That Section 30 of the Labour Relations Act requires any person aggrieved by the decision of the Registrar to appeal within 30 days of the decision.

3. In response to the Claimants' Motion, the Respondent filed her replying affidavit sworn on 15th October 2020.

4. The Respondent states that the Claimants' application for registration of a trade union was denied and communication to that effect sent to the 2nd Claimant on 20th February 2020.

5. The Respondent adds that the 2nd Claimant picked a copy of the letter communicating the refusal of registration on 4th March 2020.

6. The Respondent therefore concludes that the Claimants had ample time, from 4th March 2020, to file an appeal under the provisions of

Section 30 of the Labour Relations Act.

7. I have struggled to understand what relief the Claimants are seeking in their Notice of Motion. I say so because first, what the Claimants ought to have filed was an appeal and not a Memorandum of Claim. Second, at the time the Claimants filed their Notice of Motion, on which a lot of time has been spent, they could well have filed their appeal.

8. The Notification of Refusal of Registration is dated 18th February 2020. It follows therefore that at the time the Claimants came to court to file their Notice of Motion on 18th March 2020, they could have chosen to file their appeal.

9. The Court however takes judicial notice that at the time, court operations had been scaled down due to restrictions occasioned by the onset of COVID-19. It is therefore possible that the Claimants were not properly guided.

10. For this reason, I will allow the Claimants to file and serve their appeal against the refusal of registration of the proposed Kenya Foreign Recruitment and Employment Agencies Workers' Union, within the next fourteen (14) days from the date of this ruling.

11. The costs of this Motion will be costs in the appeal.

12. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF APRIL 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Abubakar Kilwa Omar (the 2nd Claimant in person)

Mr. Mwanjeje for the Respondent