



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CUASE NO.E210 OF 2021

TOGETHER WITH

CAUSE NO.E255 OF 2021

KENYA PETROLIUM OIL WORKERS UNION.....1ST CLAIMANT

RAPHAEL OLALA.....2ND CLAIMANT

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

PATRICK EKWAM.....1ST CLAIMANT

WYCLIFFE MANANI.....2ND CLAIMANT

CATHERINE WANJIHIA.....3RD CLAIMANT

IRENE SOMBEL.....4TH CLAIMANT

JOHN LIMO.....5TH CLAIMANT

JOSEPH KURIA.....6TH CLAIMANT

SAMSON OMUNE.....7TH CLAIMANT

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

KENYA PETROLIUM OIL WORKERS UNION.....INTERESTED PARTY

RULING

The instant ruling relates to application dated 15th March, 2021 by intended the *interested parties*.

Background - The claimants in Cause E210 of 2021, Kenya Petroleum Oil Workers Union and Raphael Olala filed its Memorandum of Claim and a Notice of Motion under Certificate of Urgency on 9th March, 2021 and registered the issues in dispute as the unprocedural, irregular and unlawful change of the 1st claimant registered officials following the aborted elections of the Nairobi branch in violation so article 36 and 41 of the constitution and section 31, 33, 34 and 34 of the Labour Relations Act.

On 10th March, 2021 the court considered the Certificate of Urgency, the application and the motion and directed the respondent and Registrar of Trade Unions be served and to hold in abeyance the election returns with regard to the 1st claimant and for parties to attend on 16th March, 2021 for taking hearing directions.

On 16th March, 2021 parties attended and also in attendance was the *intended interested parties* and claimants in Cause No.E255 of 2021 and the court allowed them to serve their application seeking joinder in the suit upon the claimant and respondent and to take a hearing date at the registry. Taking into account the urgency of the matter the court allowed for filing and service of all pleading and main hearing on 20th April, 2021.

On 8th April, 2021 the intended interested parties were allocated a hearing date for **15th April, 2021** for application and seeking for the orders that;

1. Upon hearing interparties this court do grant leave to the applicants herein to be enjoined in these proceedings as interested parties.
2. This court be pleased to stay any interim orders issued as the same were issued without the applicants herein being accorded an opportunity to be heard.
3. Upon the grant of payer (1) above, this court do issue or give directions on the hearing and determination of the claimant's application herein.
4. Costs of this application be provided for.

The application is supported by the affidavit of George Okoth and on the grounds that on 6th March, 2021 the 1st claimant held their national elections at the Tom Mboya College Kisumu and the applicants were elected as the new officials. A list with names of the elected officials was submitted to the Registrar of Trade Unions for registration as required by law but the 2nd claimant, former general secretary of the 1st claimant has moved the court for injunctive orders purporting to stop the registration.

The claimants' application is based on malice and in a desperate attempt to extend the 2nd claimant's term already expired and it is important for the applicants to be enjoined herein as interested parties since they are duly elected new officials for the 1st claimant upon garnering majority votes. This will ensure a fair hearing pursuant to article 50 of the constitution.

The union affairs are currently at a standstill which jeopardises the running of its operations and the large number of employees under it would suffer under the crisis.

The joinder as interested parties will not prejudice the claimants.

In his Supporting Affidavit, George Okoth avers that he has authority for all the intended interested parties and all support the application before court seeking for joinder as interested parties.

In reply, the **1st claimant filed a Replying Affidavit** sworn by the 2nd claimant, Mr Olala and avers that the *intended interested parties* application is supported by the affidavit of George Okoth but has no authority to sue on behalf of the other *intended interested parties* and the authority given was obtained through fraud and without their knowledge. There are affidavits to confirm this and sworn by Charles Toye, James Maengwe.

Mr Olala also avers that the 1st claimant national delegates meeting main agenda was for election of national officials and none was held. It was botched up as confirmed by the *intended interested parties* and in the report of the returning officers that the results of the elections were unknown. The certified schedule containing names of the newly elected officials were generated by the returning officer without any basis since the elections were not announced without confirmation by the returning officers.

There was violence hence the results were not announced. No winner could be ascertained.

The claimants claim is meant to protect the sanctity of the 1st claimant office under the law. The elections scheduled for 6th March, 2021 was not properly conducted and the *intended interested parties* are desperately attempting to invade the offices of the 1st claimant without having legal authority. The respondent has issued the list of current officials of the 1st claimant and the same should apply until the main claim is heard.

Parties attended and made oral submissions.

The 2nd claimant submitted that they have become aware that the *intended interested parties* filed ELRC Cause No.E255 of 2021 against the Registrar of Trade Unions and the 1st claimant as the interested party and make claims seeking to be registered as officials of the 1st claimant union. The *intended interested parties* went before a different court and the presiding judge directed this suit be placed together, a matter the *intended interested parties* have failed to inform this court. This results in multiplicity of suits.

The *intended interested parties* submitted that it is true a different suit was filed out of fear and threat that the elections would proceed and out of apprehension and running out of time file a different suit while aware of the instant suit. In the current suit and application there is no mention of the other suit, Cause No.E255 of 2021.

The 2nd claimant submitted that under Cause No.E255 of 2021 the *intended interested parties* failed to disclose to the court that there was another suit and which in abuse of court process.

The *intended interested parties* further submitted that they seek joinder in the suit as the elected officials of the union and 1st claimant and have a clear interest in the outcome of this suit and hence the applicant should be enjoined.

There shall be no harm and or prejudice visited upon the claimants where the joinder herein is allowed. They shall withdraw the other suit even though this was not disclosed.

The orders under this suit were served on 15th March, 2021 and the Cause No.E2555 of 2021 was filed on 29th March, 2021.

The respondent supports the joinder of the *intended interested parties*.

The 2nd claimant also submitted that the listed *intended interested parties* some have denounced ever giving the deponent of the application, George Okoth authority to filed application seeking joinder as *intended interested parties*. The signatures have been placed fraudulently and disown the authority alleged to have been granted.

On the application for joinder as interested parties, the 2nd claimant submitted that George Okoth avers that he is the secretary general of the 1st claimant save, under the law, one can only be secretary general and official of a trade union upon registration which has not been done. The respondent has admitted there were no returns filed and the elections on 6th March, 2021 were marred with irregularities.

The *intended interested parties* have not demonstrated sufficient cause for joinder herein per section 35 of the Labour Relations act and to act for the union. The 2nd claimant shall suffer prejudice with the joinder of the *intended interested parties* as the suit is clearly against the respondent and no harm shall be suffered by the non-joinder of the *intended interested parties*.

The orders sought to stop the proceedings herein cannot issue to a party who is not part of the suit. The *intended interested parties* have come to court with unclean hands through multiplicity of suits by filing Cause No.E255 of 2021 while aware of these proceedings and after being served with an order herein.

Determination

At this stage, the only issue for determination is whether the *intended interested parties* should be enjoined herein as interested parties.

The court will enjoin a party to the suit as an interested party under the parameters and as defined by the Supreme Court decision in **Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others Petition No. 15 OF [2014] eKLR** that an Interested Party is as follows;

In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court's decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) **held**:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- i. Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation. ... “

The interested party must be affected by the decision of the court once made either way and requires to attend to defend the stake, the joinder will result in a holistic settlement of the issue(s) in dispute and all rights shall be addressed and prevent further litigation. The interest(s) and stake must be clear. In the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR** the court held that;

An interested party is someone who is identified as being directly affected by the case (in particular, the relief that may or may not be granted by the court depending on whether it finds for or against the claimant)

As the background above outlined, on the admissions by the *intended interested parties* that they were served with orders herein on 15th

March, 2021 and opted to file a different suit on 29th March, 2021 on the grounds that *they were running out of* time and as a knee-jack reaction ... the different suit was filed out of fear the elections would proceed and we were apprehensive we were running out of time and while aware of this suit were filed ELCR Cause E255 of 2021 ... wish to withdraw the suit and well aware that the suit herein touched on events and relating to elections held on 6th March, 2021.

There is a hearing date for the main suit for 20th April, 2021. This issued due to the urgency of the matter and the *intended interested parties* aware of the stake(s) alleged subsisting herein squandered their rime in pursuant of a different suit. to come in at the 11th hours seeking joinder and the proceedings be set aside to allow them defend their interests on the face of admissions that Cause No.E255 of 2021 was filed as a kneejerk reaction to stop elections which elections had already been held, is engaging in rush practice, forum shopping to sway the court and circumvent the orders issued herein and served upon them and to stop instant proceedings to allow joinder would be to reward a party/parties who have come to court with unclean hands.

The offer by the *intended interested party* to withdraw Cause No.E255 of 2021 was not actualised. Such suit remains alive.

Accordingly, suits shall remain together, there shall be no joinder of the *intended interested parties* herein and the instant suit shall proceed on the merits. The costs shall follow the outcome of the main suit. Application dated 15th April, 2021 is hereby dismissed.

DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF APRIL, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and