



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

APPEAL NO.E01 OF 2021

KENYA NATIONAL UNION OF PRIVATE

SCHOOLS TEACHERS.....APPELLANT

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

JUDGEMENT

1. The Appellant herein being dissatisfied with the decision of the Respondent made on 13th July 2020 not to register its change of name from KENYA NATIONAL UNION OF PRIVATE SCHOOLS TEACHERS to KENYA UNION OF PRIVATE AND PUBLIC PRIMARY SCHOOL TEACHERS and to amend its constitution preferred this appeal based on the following grounds;

a) A declaration that the registrar of trade Union decision to refuse to register the change of name from KENYA NATIONAL UNION OF PRIVATE SCHOOLS TEACHERS to KENYA UNION OF PRIVATE AND PUBLIC PRIMARY SCHOOL TEACHERS and to amend the constitution, is unlawful unconstitutional and thus null and void and of no legal effect.

b) An order to issue compelling the Registrar of trade unions to register the change of name of the Appellant union from NATIONAL UNION OF PRIVATE SCHOOLS TEACHERS to KENYA UNION OF PRIVATE AND PUBLIC PRIMARY SCHOOL TEACHERS and to register the amended Constitution, by issuing a certificate of change of name or change of constitution in Form K or Form L.

c) That the Respondent be condemned to meet the costs of this Appeal.

d) Any other further or better relief that this Court may deem fit.

Brief facts

2. It is averred that the Appellant's Union was registered in the year 2002 and its constitution registered in the year 2002 and later amended on 23rd June, 2008.

3. That on 16th September, 2019 the delegates of the Appellant's union met and resolved to change the name of the union and amend its Constitution, the proposed name was to change to KENYA UNION OF PRIVATE AND PUBLIC PRIMARY SCHOOL TEACHERS. Subsequently that the Appellant applied for the change of name on 16th September, 2019 in accordance with section 27 of the Labour Relations Act.

4. That the Respondent published in the Kenya Gazette the said application on 27th September, 2019 under Gazette Notice Number. 9130 calling for any objections, pursuant to Section 27(4) of the Act.

5. That any objection were to be received within 21 days failure to which the Respondent was to effect the changes, However the Respondent took an inordinately long time about 1 year and on 13th July, 2020, the Respondent rejected the change of name on allegation that KNUT had raised an objection but failed to indicate when the said objection was filed with them.

6. That a review application was filed with the Respondent on 28th July, 2020 which the Respondent declined on the grounds that there was sufficient representation in the education sector. later on in November, 2020 a meeting was scheduled between the Appellant's officials and the principal Secretary-Department of Labour who indicated that she was not going to issue the certificate of change of name to the

Appellant for the reason indicated earlier and further served the Appellant with a letter dated 13th March, 2020 from the Attorney General chambers advising against the registration of the change of name.

7. It is contended that the refusal by the Respondent to effect the change of name is contrary to Article 36(1),(3), Article 41(2)(c), Article 47(1) of the Constitution. Further that the objection received and considered by the Respondent from KNUT and the Attorney General were received out of time contrary to section 27(4) of the Labour Relations Act.

8. It is contended that the refusal of the Respondent to register the Appellant's change of name went against the express provisions of sections 27 (5),(6) and (7) of the Labour Relations Act.

9. The Respondent filed a replying Affidavit in response to the Memorandum of Appeal on 13th May, 2021, deposed upon by Elizabeth N. Gicheha, the Registrar of Trade Unions on the 10th May, 2021.

10. The Respondent contends that the Appellant followed due procedure in applying for its name to be changed and the Constitution amended, which it received and caused it to be gazette in accordance with the law.

11. That upon consideration, it was noted that the Appellant who was registered on 24th June, 2008 had 30 members in 2014, 26 in 2015, 55 in 2016, 47 in 2017 and 46 in 2018 which indicated that the Appellant was not engaged in active recruitment of members, despite the large number of teachers under the employ of the private schools countrywide.

12. That among the reason for the need to change name and scope was to include teacher in public primary schools who were not represented by any other trade union, having been allegedly approached by teachers in public primary school to represent them however that they failed to provide evidence in form of check off form to show that indeed the Appellant had been approached.

13. That upon causing the gazette of the intended changes on the Kenya Gazette, Kenya National Union of Teacher(KNUT) objected to the changes by its letters of 1st October, 2019, 29th October, 2019 and 3rd September 2019 in accordance with section 14(1)(d) of the Basic Education Act on the grounds that public primary school teacher had sufficient representation being KNUT and to include some public primary teachers in the Appellant Union will cause a lot of confusion.

14. The Respondent contends that primary school teachers already have a union that represent them and to expand the Appellant to be able to represent some public primary teacher would be tantamount to registering a trade Union through the Back door.

15. It was averred that the delay in communicating the decline in effecting the changes to the Appellant name was not inordinate since the Respondent upon receipt of the request sought for legal advice from the Attorney General by it letter of 20th November, 2019 which was responded on 11th March, 2020 and the outcome of the change of name communicated to the Appellant on 13th July, 2020.

16. It was further stated that the law does not provide for Review of the Respondent decision therefore the Review made by the Appellant was without any basis.

17. This appeal proceeded by way of written submissions with the Appellant filing on 11th June, 2021 while the Respondent filed on 23rd June, 2021.

Appellant's submissions.

18. The appellant's Counsel submitted that the Appellant followed the due process as provided for under section 27(2) & (3) of the Labour Relations Act in seeking to change its name and scope of representation and to amend its constitution and attached the requisite form I and J. Furthermore the Respondent in the affidavit affirmed that the Appellant followed due procedure.

19. It is submitted that the Respondent erred in rejecting the application and relying on flimsy reason such as the fact that there will be confusion when the said confusion has not been demonstrated. Also that the fact that the Appellant has not recruited a lot of teacher is non-issue when considering registration of trade Union and change of name.

20. He further argued that the Respondent is an independent body that needs to make its own decision not rely on the advice of a third party, which only showed that the Respondent is not an independent mind in conducting its core mandate and had to wait for the Attorney Generals advice to make its decision. In this he cited the case of **Kenya concrete, structural ceramics, tiles wood plys and interior designs workers Union –v- Registrar f Trade Union and another [2013] eKLR**.

21. On whether more than one trade Union can exist in one sector, the Appellant submitted that several sectors including the Education sector have several trade Union i.e KUPPET, KNUT in Education sector . further that Article 41 of the constitution enjoins all person to join any trade Union of their Choice as such the restriction imposed by the Respondent are without basis. Also KNUT represent about 5,000 teachers countywide out of 280,000 teachers who need representation which the Appellant had seen the need to and sought to enlarge its scope to reach out to such teachers.

22. The Appellant further relied on the case of **Kenya Union of Printing, paper manufacturers and Allied workers –v- Packaging Industries Limited and another [2014] eKLR** and submitted that the Public primary teacher are not sufficiently represented.

23. It was thus submitted that the Reasons given for rejection of its change of name is without basis and the same ought to be rejected and

this Court compels the Respondent to effect the changes sought.

Respondent's Submissions

24. The respondent on the other hand submitted that it followed the procedure required of it and published the change of name of the Appellant in the Kenya Gazette and within the 21 days it received an objection from the Kenya National Union of Teachers (KNUT) causing it to carry out some investigations on the validity of the said objection and sought further advice from the Attorney General in accordance with section 5(1) of the Attorney General Act and after analysis of generality of the circumstances decline the said changes.

25. On whether the existence of two trade union in one sector can cause confusion, the Respondent submitted that section 27(5) of the Labour Relations Act bestowed upon the Respondent the mandate to approve or decline an application for change of name or constitution while section 12 of the Labour Relations Act provides that a registrar can decline a change of name if the proposed change of name is similar to an already existing Trade Union. Also that section 18 (4) precludes the Respondent from accepting proposed amendments to the name and constitution of a trade Union if the same shall cause confusion for the sector.

26. Accordingly, the Respondent submitted that the confusion that will be caused in the sector is the fact that the Appellant will have similar scope as another trade Union in the sector which action is likely to cause confusion in the sector. He reinforced this by citing the case of **Charles Ogutu & 2 others –v- the Registrar of Trade Union [2016] eKLR**.

27. It was also submitted that section 14 of the Labour Relations Act, precludes the Respondent from registering any other trade Union where it is found that there is sufficient representation of workers or members by another existing Union.

28. On whether there was inordinate delay in communicating the objection and the verdict to the Appellant, it was submitted that the delay was caused by time taken to carry out its investigation as to the objection raised by KNUT and the Advisory Opinion sought from the Attorney General which in the Respondent opinion was not inordinate.

29. The Respondent submitted also that the decision the Appellant is seeking to quash was not made illegally or irrationally and procedurally improper on the part of the Respondent to require this Court's intervention.

30. The Respondent in conclusion submitted that the Appellant has not made out a case backed with evidence to warrant the issuance of the Orders sought and prayed that the Appeal be dismissed with costs to the Respondent.

31. I have examined all the evidence and submissions from the parties herein. The complaint by the appellant is that their request for change of name of their Union was rejected by the respondent without any valid reasons.

32. Section 27 of the Labour Relations Act provides as follows:-

“27.(1) A trade union, employers’ organisation or federation may resolve to?

(a) change or replace its constitution; or

(b) change its name.

(2) A registered trade union, employer’s organisation or federation may apply to the Registrar to approve a change of name or an amendment to its constitution and rules by submitting to the Registrar –

(a) a notice in Form I or Form J as the case may be set out in the Second Schedule duly completed and signed by the secretary;

(b) a copy of the resolution containing details of the change; and The Labour Relations Act, 2007 30

(c) a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution and rules.

(3) Notice of the change specified in subsection (2) shall be submitted to the Registrar within fourteen days of any resolution to change the name or constitution.

(4) Upon receipt of the notice of change of name or constitution, the Registrar shall give a notice of at least twenty-one days in the Gazette and in three daily newspapers of national circulation inviting any objections to the proposed change of name or constitution by members of the trade union and where any such objection is raised, the Registrar shall investigate the complaint and the grounds relied upon and may-

(a) refer the matter to the Industrial Court;

(b) refuse to accept the proposed amendments; or

(c) make any orders that he may deem fit in the circumstances.

(5) The Registrar may approve a change of name or to the constitution if the applicable requirements of registration of a trade union, employer's organisation or federation are met.

(6) The Registrar shall issue a certificate of change of name or change of the constitution in Form K or Form L, as the case may be.

(7) Any change of name or change to the constitution and rules of a registered trade union, organisation or federation shall take effect when the registrar approves the change under this section.

(8) A change in the name of a trade union, employers' organisation or federation does not – The Labour Relations Act, 2007 31

(a) affect any right or obligation of that trade union, employers' organisation or federation;

(b) render defective any legal proceedings by or against it and any proceeding instituted under the former name may be continued or commenced by or against it under the new name.

(9) Where the Registrar refuses to approve a change under this section, the Registrar shall give written notice of that decision and the reasons for the refusal”.

33. Under Section 27(4) above upon the request for change of name being submitted, Registrar of Trade Unions is required to proceed and institute certain measures.

34. The Registrar of Trade Unions is expected to issue a notice of at least 21 days in the gazette and in three daily newspapers of national circulation inviting any objection to the proposed changes of name or constitution.

35. In this regard, the Registrar of Trade Unions secured the request for change of name and Constitution on 29/10/2019.

36. The respondent issued Gazette Notice No.9130 as envisaged and also received objection from KNUT on the changes requested by the appellant. Section 27 of the Labour Relations Act further envisages that where there are such objections, the Registrar of Trade Unions may investigate the complaint and grounds relied upon and act.

37. The Registrar of Trade Union has demonstrated that she carried out investigations in the matter of the objections. An opinion was sought from the Solicitor General on this issue. The Registrar of Trade Union received advise from the Solicitor General on 11/3/2020 advising on what the Registrar of Trade Unions was to do.

38. The Registrar of Trade Unions subsequently wrote to the appellants on 12/11/2020 declining to allow the requested changes to the name and constitution of the appellant.

39. This court now called upon to consider whether the Registrar of Trade Unions was justified in declining the appellant's application.

40. As indicated above, Section 27 of the Labour Relations Act obligates the Registrar of Trade Unions to consider any request made to change a name or constitution of a trade union. In making this determination the Registrar of Trade Unions is expected to consider the law and section 27(5) of the Labour Relations Act envisages that the Registrar of Trade Unions will consider if the applicable requirements of registration of a trade union, employer, organization or federation are met.

41. Section 27(5) of the Labour Relations Act provides as follows;-

“27(5) The Registrar may approve a change of name or to the constitution if the applicable requirements of registration of a trade union, employer's organisation or federation are met”.

42. So what are the applicable requirements for registration of a trade union? Section 14(1) of the Labour Relations Act provides as follows;-

“14.(1) A trade union may apply for registration if?

(a) the trade union has applied for registration in accordance with this Act;

(b) the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;

(c) the trade union has an office and postal address within Kenya;

(d) no other trade union already registered is-

(i) in the case of a trade union of employers or The Labour Relations Act, 2007 18 of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek

registration; or

(ii) in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof: Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organisation which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers' organisation concerned to submit in writing, within a period to be specified in the notice, any objections to the registration;

(e) subject to subsection (2), only members in a sector specified in the constitution qualify for membership of the trade union;

(f) the name of the trade union is not the same as that of an existing trade union, or sufficiently similar so as to mislead or cause confusion;

(g) the decision to register the trade union was made at a meeting attended by the least fifty members of the trade union;

(h) the trade union is independent from the control, either direct or indirect, of any employer or employers' organisations; and

(i) the trade union's sole purpose is to pursue the activities of a trade union".

43. The operative provision in Section 14(1) above is Section 14(1)(d) which precludes the Registrar of Trade Unions from registering a Trade Union when there exists another trade union that is sufficiently representative of the whole or at a substantial proportion of the interests in respect of which the applicant seeks registration.

44. The Registrar of Trade Unions in assessing the application by the appellant noted that the proposed amendments would cause confusion in the section by being the same and sufficiently similar to that of an existing organization.

45. The Registrar of Trade Unions rightly referred to **Charles Ogutu & 2 others VS The Registrar of Trade Unions (2018) eKLR** where the court held that sufficiently or similarly the court's view is not limited to the name only but also the intended scope of operations. It is evident that public primary school teachers are sufficiently represented by KNUT.

46. I also wish to point out that indeed Article 41 of the constitution envisages that every person has a right to participate in activities of a trade union. This right under the constitution is however limited under Article 24 of the constitution.

47. Indeed the appellant has been in existence for years but has only managed to register a paltry less than 50 members. They have not exhausted even the membership of the private schools.

48. It is not now clear what the appellant would gain by expanding their scope when they have not managed to capture registration from private schools. My view is that the respondent was well guided in rejecting the proposed changes in name and constitution of the appellant on the grounds that the change would cause confusion in the sector and on the ground that there exists other unions which are sufficiently able to represent members proposed to be covered.

49. I find this appeal without merit in the circumstances. The appeal is thus dismissed accordingly.

50. There will be no order of costs.

Dated and delivered virtually this 23RD day of SEPTEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Rakoro for Appellant - present

Cheruiyot for respondent – present

Court Assistant - Fred