REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

APPEAL NO. 12 OF 2019

KEFA LANGI OGUWI

(suing on behalf of the Technical & Vocational EducationTrainers).....APPELLANT

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

KENYA UNION OF POST-PRIMARY

EDUCATION TEACHERS (KUPPET).....INTERESTED PARTY

AND

MURDOCK OWUOR

ARNOLD KEDENGE

JAYNE N. EMISEMBE

ZACHARYCHEBULOBI

JOHN MUTHINI

BEATRICE AYUMA

JOHN MURAYA

JAMES M. MUNYAO

LEGIDU SEBASTIAN

JOSEPHINE NYAKWACHI

EMMANUEL R. LOYAMORU'RO

(all suing as the proposers of the proposed Kenya Union of

Technical and Vocational Education Trainers)....PROPOSED 2nd INTERESTED PARTIES

RULING

1. In a judgment delivered on 28 January 2021, the Court dismissed an appeal by the Appellant in which he had challenged the decision of

the Registrar of Trade Unions to deny to issue a certificate of interim registration for a proposed trade union.

2. The Appellant was dissatisfied with the judgment, and on 9 February 2021, he filed a Motion seeking orders:

(i) …

(ii) THAT the Court be pleased to find and hereby finds that there was an error apparent on the face of the record in its judgment delivered on 28th day of January 2021, the final orders of the Court in the said judgment are not in line with the prayers in the record of appeal and are not capable of being executed by the Respondent to whom they are directed.

(iii) The judgment delivered on 28th day of January 2021 be and is hereby reviewed and order made in line with prayer C in the appeal directing the Registrar of Trade Unions to register the Kenya Union of Technical and Vocational Education Trainers (KUTUVET) forthwith.

(iv) Costs of this application be provided for which application is based on the following ground the affidavit of Kefa Langi Oguwi and such submissions as shall be made at the hearing hereof.

3. The Kenya Union of Post-Primary Education Teachers (Interested Party) filed Grounds of Opposition to the Motion on 19 February 2021, while the Registrar of Trade Unions (the Respondent) filed Grounds of Opposition on 25 February 2021.

4. When the parties appeared for directions on 26 April 2021, the Appellant informed the Court that he had filed submissions that day in the morning, and the Court scheduled delivery of a Ruling to today.

5. However, on 1 July 2021, Murdoch Owuor, Arnold Kedenge, Jayne E. Emisebe, Zachary Chebulobi, John Muthini, Beatrice Ayuma, John Muraya, James M. Munyao, Legidu Sebastian, Josephine Nyakwachi, and Emanuel R. Loyamoru'ro (being interim officials of Kenya Union of Technical and Vocation Education Trainers) filed an application seeking to be joined as 2nd Interested Parties.

6. The Interested Party filed a Notice of Preliminary Objection to the joinder application on 22 July 2021 and a replying affidavit on 29 July 2021.

7. The Court will issue appropriate directions on the joinder application after this Ruling.

8. The grounds advanced by the Appellant in support of the review application were: that he was not a party in Nairobi Petition No. 97 of 2018, *Rose Nyambura Chege & Ors v Teachers Service Commission & Ors* (consolidated with Petition No. 85 of 2018, *Kenya Union of Post Primary Education Teachers v Teachers Service Commission & Ors*), where a consent order had been entered on the payment of agency fees and therefore he could not appeal against it; that the Appellants were not members of any other union and they had not given consent for the deduction of union dues to any other union and that there had been material non-disclosure in Petition No. 85 of 2018, *Kenya Union of Post Primary Education Teachers v Teachers Service Commission & Ors.*

9. The Registrar opposed the Motion on the grounds that it was frivolous, vexatious and an abuse of the court process.

10. The Registrar further contended that the Appellant had not met the threshold for review as envisaged under Order 45 of the Civil Procedure Rules.

11. The Court has considered the Motion, affidavit, Grounds of Opposition and submissions on record and come to the conclusion that the Motion is not only frivolous but lacks merit.

12. In reaching the conclusion, the Court notes that the Appellant did not disclose the error apparent on the face of the record of the judgment.

13. The Appellant merely raised arguments that had been presented before the Court before delivery of judgment on 28 January 2021, and which arguments were considered by the Court in paragraphs 4 to 10 of the judgment sought to be reviewed.

14. The Appellant was attempting to have a second bite at the cherry through the review jurisdiction instead of preferring an Appeal to the Court of Appeal.

15. The Motion is dismissed with costs to the Respondent.

16. With the conclusion, the Court finds the Motion filed in Court on 1 July 2021 by Jayne N. Emisembe on behalf of the proposed new Interested Parties to be enjoined as the 2nd Interested Parties as having been overtaken by events as there are no live proceedings before this Court.

17. The aforesaid Motion is therefore also dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 6TH DAY OF OCTOBER 2021.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR APPELLANT IN PERSON

FOR RESPONDENT MS ESSENDI, SENIOR LITIGATION COUNSEL

FOR INTERESTED PARTY OTIENO C.O. AYAYO & CO. ADVOCATES

FOR PROPOSED INTERESTED PARTIES IN PERSON

COURT ASSISTANT CHRISPO AURA