



**REPUBLIC OF KENYA**

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

**AT MALINDI**

**ELRC APPEAL NO 1 OF 2019**

**THE PROMOTERS, KENYA SALT WORKERS UNION**

**(LAWRENCE K MAJALI, FOLLENI CHEA BOSHEI,**

**MOSES H KELLAH, SAFARI KAZUNGU NYANJE, KAZUNGU KONDODUKA**

**AND DETHITARSS MAKO KOFA).....APPELLANTS**

**VERSUS**

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

**KENYA CHEMICAL WORKERS UNION.....PROPOSED INTERESTED PARTY**

**(Being an appeal from the decision of the Registrar of Trade Unions dated 20<sup>th</sup> May 2019)**

**BETWEEN**

**THE PROMOTERS, KENYA SALT WORKERS UNION (LAWRENCE K MAJALI,**

**FOLLENI CHEA BOSHEI, MOSES H KELLAH, SAFARI KAZUNGU NYANJE,**

**KAZUNGU KONDODUKA AND DETHITARSS MAKO KOFA).....APPLICANTS**

**VERSUS**

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

**KENYA CHEMICAL WORKERS UNION.....PROPOSED INTERESTED PARTY**

**RULING**

1. The application before me is the one dated 14<sup>th</sup> November 2019 by the proposed Interested Party. By it, the proposed Interested Party prays for leave to be joined in the current appeal so that it can make representations in the matter. The application is opposed by the Appellants.
2. The parties agreed to proceed by way of written submissions. Both the proposed Interested Party and Appellants have since filed their submissions.
3. The appeal arises from the decision by the Respondent on 20<sup>th</sup> May 2019 declining to register the Kenya Salt Workers Union as a Trade Union. According to the Respondent, the field in respect of which the Appellants sought to register the proposed Trade Union was already served by an existing Trade Union (the proposed Interested Party). Consequently and by virtue of the provisions of section 14(1)(d) of the Labour Relations Act, the Respondent was obligated to reject the application.
4. Aggrieved by the Respondent's decision, the Appellants preferred the current appeal. Since the issue on appeal revolves around the sector in which the proposed Interested Party represents workers, the proposed Interested Party holds the view that it ought to be heard in the cause.

And hence this application.

5. The application is said to have been filed pursuant to the provisions of sections 4 and 12 of the Industrial Court Act 2011, section 87 of the Employment Act, rule 4 of the Industrial Court (Procedure) Rules and section 14(1) (d), 20 and 23(4) of the Labour Relations Act, 2007. It is perhaps important to mention that both the Industrial Court Act and Industrial Court (Procedure) Rules have since been renamed the Employment and Labour Relations Court Act (ELRC Act) and Employment and Labour Relations Court (Procedure) Rules (ELRC Rules) respectively. However, the provisions of law referred to in the said pieces of legislation remain the same in the now renamed statute and rules.

6. The jurisdiction of this court to entertain appeals from decisions of the Registrar of Trade Unions is granted by section 12(5) (a) of the ELRC Act. In my view, this jurisdiction must be construed purposively in order to cover matters incidental to the proper determination of such appeals.

7. Indeed, section 12(3) of the ELRC Act requires the court, in exercising its jurisdiction under the Act, to grant any appropriate relief as it may deem fit in order to meet the ends of justice. This is particularly so where the reliefs sought are intended to facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by the Act.

8. In *Wilbert Kipsang Choge & 6 others v Communications Authority of Kenya & another [2016] eKLR*, the learned Judge said this of the court's jurisdiction:-

***“The vesting of power by the Constitution and the Employment & Labour Relations Act on the Court to deal with disputes relating to employment and labour relations and connected purposes carries with it the implied power as is necessarily inherent in the nature of the exercise of that jurisdiction.”***

In my view therefore, this court has jurisdiction to determine applications for joinder of parties to matters properly pending before it pursuant to this inherent powers.

9. The Applicant seeks to be joined to the appeal as an Interested Party. Is there merit in this request?

10. To answer this question it is perhaps necessary to determine who an interested party is in a dispute pending before a court of law. In *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2015] eKLR* the Supreme Court described an interested party as follows:-

***“..... 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.”***

11. In *Meme v Republic, [2004] 1 EA 124*, court observed that a party could be enjoined in a matter for the reasons that: his or her presence will result in the complete settlement of all the questions involved in the proceedings; or that the joinder of the party is intended to provide protection for the rights of such party who would otherwise be adversely affected in law; or that the joinder is intended to prevent a likely course of proliferated litigation.

12. In my view, the Applicant fits the above description of an interested party. There is evidence on record that the Applicant is a Trade Union whose mandate covers the salt extraction sector that is directly affected by these proceedings. Indeed, the fact that the Applicant is already serving workers in this sector is the very reason why the Respondent rejected the Appellants' application to register their proposed Trade Union to serve the same sector. It must therefore be obvious that the decision in this appeal will directly affect the Applicant in so far as the appeal arises from the Respondent's decision aforesaid.

13. But most importantly, the presence of the Applicant in these proceedings is necessary for the just and effectual disposition of the matter. There are questions that the Appellants raise in the appeal such as whether the Applicant objected to the registration of their proposed Trade Union which will be effectively resolved once the Applicant's input on the issue is taken on board.

14. In *Osugo Paul Makombi v Britam General Insurance Co. (K) Ltd; Samwel Ondieki Momanyi (Intended Interested Party) [2021] eKLR*, it is clearly demonstrated that applications for joinder of interested parties to proceedings may be entertained at any stage of a matter. Indeed, this may happen even on appeal. The only burden that the applicant must discharge is to demonstrate how the ends of justice would better be served by admitting him/her in the appeal. And I think that the Applicant in the case before me has done this.

15. For the reasons aforesaid, I allow the application dated 14<sup>th</sup> November 2019 and order that the proposed Interested Party be and is hereby joined to this action as an Interested Party. I further order that the Interested Party files its representations in the appeal within 14 days of this ruling to enable the taking of directions on hearing of the appeal. Should the representations not have been filed by the 14<sup>th</sup> day as ordered, the orders issued herein shall stand vacated.

16. Costs of the application shall be in the cause.

**Dated, signed and delivered on the 16<sup>th</sup> day of November, 2021**

**B O M MANANI**

**JUDGE**

In the presence of:

.....for the Appellants

..... for the Interested Party.

.....for the Respondent

**ORDER**

**In view of the declaration of measures restricting court 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> April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**B O M MANANI**