



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

APPEAL NO. 57 OF 2019

APPEAL UNDER SECTION 30 OF THE LABOUR RELATIONS ACT, SECTION 12 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT, RULES 8 AND 27 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES

AND

IN THE MATTER OF ARTICLE 36(3)(A) & (B) AND ARTICLE 47 OF THE CONSTITUTION

IN THE MATTER OF APPEAL AGAINST THE DECISION OF THE REGISTRAR OF TRADE UNIONS

AND

IN THE MATTER OF SECTION 4(3)(2)(B) OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

IN THE MATTER OF THE PROPOSED KENYA NATIONAL UNION OF PUBLIC HEALTH OFFICERS (KNUPHO)

BETWEEN

MOHAMED BAGAJO..... 1<sup>ST</sup> APPELLANT

DANIEL ANDATI OKWARA.....2<sup>ND</sup> APPELLANT

V

REGISTRAR OF TRADE UNIONS .....RESPONDENT

**JUDGMENT**

1. The Appellants filed a *Memorandum of Appeal* on 14 November 2019 against the decision of the Registrar of Trade Unions (Registrar) made on 30 October 2019 to decline to register the Kenya National Union of Public Health Officers.
2. The Registrar gave 4 main reasons for declining to register the Kenya National Union of Public Health Officers.
3. The first reason given by the Registrar was that there was another proposed Union, *Kenya Health Professionals Union*, whose name was sufficiently similar to the Kenya National Union of Public Health Officers.
4. The second reason was that said *Kenya Health Professionals Union* had been denied registration and it had filed an appeal Nairobi Petition No. 61 of 2014 which was still pending.
5. The third reason and closely linked to the second reason given by the Registrar was that she had a pending earlier application by Kenya Union of Allied Health Professionals which ranked in priority.
6. The last reason given by the Registrar was that there already existed Unions representing the cadre of employees the Kenya National Union of Public Health Officers wanted to represent.
7. The Appellants filed their submissions on 17 January 2020 while the Registrar filed her submissions on 23 January 2020. The Appellants

raised two Issues as arising for the Court's determination while the Respondent identified three Issues.

8. The Court has considered the material placed before it and identified one primary Issue for determination.

**Whether there are other trade unions sufficiently representative of the cadre of employees the Appellants proposed Union intended to represent.**

9. The Appellants contended in the submissions that currently there is no union representing *public health officers* and further asserted that its area of coverage was within the public health sector.

10. In her replying affidavit, the Respondent asserted that the Kenya Medical Practitioners and Dentists Union, the Kenya National Union of Nurses, the Kenya Union of Clinical Officers, the Kenya National Union of Medical Laboratory Officers and Kenya Union of Domestic, Hotels, Educational Institutions and Allied Workers were sufficiently representative of the workers the Appellants proposed union wanted to represent.

11. The Appellants did not deny the existence of these other Unions.

12. The parties did not place before the Court copies of the Constitutions of the already existing Unions to enable the Court to determine in any meaningful way whether these other Unions were sufficiently representative of the workers (*public health workers*) in the sector the proposed union intended to cover.

13. But from the names of the Unions already in existence, the question begs whether the public health workers the Appellants proposed union intend to represent are not *nurses, clinical officers or medical/laboratory technicians* who currently have a myriad of options of unions to choose from.

14. The Court is unable to answer the question posed as sufficient material was not placed before it.

15. The Respondent had also defended her decision on the ground that there was a pending dispute before this Court being Petition No. 61 of 2014, *Wesley Tomno & 13 Ors v Registrar of Trade Unions & Ar* involving a proposed union (Kenya Health Professionals Union) which intended to represent *public health workers* and that it was prudent to await the outcome of the case.

16. The Court has looked at the record of the above suit and established that this Court differently constituted found on 31 May 2018 *Wesley Tomno & 13 Ors v Registrar of Trade Unions & Ar* (2018) eKLR that the suit had been dismissed on 29 July 2015.

17. For whatever it is worth, the first, second and third reasons given by the Respondent for declining to process the Appellants proposed union were not based on material fact, as the litigation cited had been determined.

**Conclusion and Orders**

18. Both the Appellants and the Registrar did not take this litigation seriously. They failed to place before the Court sufficient evidentiary material to enable the Court to determine the Appeal.

19. In light of the above, the Court finds no merit in the Appeal and orders it dismissed with no order on costs.

**Delivered, dated and signed in Nairobi on this 6<sup>th</sup> day of March 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Appellants Mr. Abdirizak instructed by Roba & Odero Advocates

For Respondent Mr. Kioko, State Counsel, Office of the Hon Attorney General.

Court Assistant Judy Maina