



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

APPEAL NO. 1 OF 2018

(Before Hon. Justice Mathews N. Nduma)

KENYA NATIONAL UNION OF DOMESTIC WORKERSAPPELLANT

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

RULING

1. In the Application dated 24th 2019, the Appellant/Applicant seek for an order that: -
2. The respondent be committed to civil jail for a term of six (6) months for contempt of Court for having deliberately disobeyed orders of this court issued on 31st May 2019.
3. The application is premised on the grounds set out in the Notice of Motion and the supporting affidavit of the Secretary General of the Appellant/Applicant.
4. The Applicant states that the respondent has deliberately disobeyed the order of the Court issued on 31st May 2019.
5. That the order was served on the respondent and the same has not been stayed, reviewed or set aside yet.
6. The application is opposed by a Replying affidavit of the respondent filed on 14th August 2019 in which the respondent depose that they have noted an appeal against the Judgment of the Court delivered on 31st May 2019.
7. The respondent specifically deposes that had the applicant been registered automatically as per the court order of 31st may 2018 the requirements stipulated under sections 12 to 18 of the Labour Relations Act would have been breached.
8. That the correct procedure would have been for the Appellant/Applicant to be issued with an interim certificate to enable them recruit members and thereafter submit an application for registration in the normal way under the provisions of section 14 of the Labour Relations Act.

Determination

9. The issues now raised by the Registrar were not raised at all in the Appeal and the Court has already determined that the proposed union be registered only subject to review of the union constitution so as to provide for representation of domestic workers employed in private family house only.
10. That averments by the respondent under paragraph 5 of the replying affidavit are contemptuous of the Judgment of the court which is clear and unequivocal.
11. Provided the Judgment of the court has not been stayed, reviewed, varied or set aside, the respondent is duty bound to obey it by registering the proposed union subject only to the limited review of the constitution.
12. The respondent cannot purport to reopen matters that are *res judicata* before the trial court.
13. However, the applicant has not demonstrated that it reviewed its constitution as directed in the Judgment of the Court and that it had served the respondent with the reviewed constitution.

14. Consequently, the Appellant/Applicant has failed to prove its case on a standard slightly above a balance of probabilities but not beyond reasonable doubt.

15. The application is therefore dismissed for lack of merit.

16. The respondent is however admonished to desist from deposing to matters that on the face of it contradict the orders of the Court.

17. The registration be done upon receipt of the amended constitution without any other conditions purported by the Registrar under paragraph 5 of the Replying affidavit.

Ruling Dated, Signed and Delivered at Nairobi this 25th day of June 2020.

Mathews Nderi Nduma

Judge

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 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances:

Moses Mwangi for Appellant/Applicant

Mr. Jairus for Respondent

Chrispo: Court Clerk