



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**  
**APPEAL NUMBER 1 OF 2013**  
**[Formerly Nairobi Industrial Court Appeal Number 6 of 2011]**

**BETWEEN**

**GEORGE O. OLANGO [PROPOSER AND PROMOTER  
OF KENYA PORTS MANAGEMENT WORKERS UNION].....APPELLANT**

**VERSUS**

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

**AND**

**DOCK WORKERS UNION .....INTERESTED PARTY**

***Rika J***

***Court Assistant: Benjamin Kombe***

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***Ameli Inyangi & Partners, Advocates for the Appellant***

***Attorney-General for the Respondent***

***No appearance for the Interested Party***

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**JUDGMENT**

1. The Appellant, among other Proposers of the Kenya Ports Management Workers Union, applied for registration of their Union, to the Registrar of Trade Unions, on 12<sup>th</sup> November 2010. The Application was declined on 30<sup>th</sup> August 2011.
2. The Appellant filed the Appeal at the Court in Nairobi in 2011. The Appeal was subsequently transferred to the Court in Mombasa, and assigned the current registration number.
3. The Appeal is based on the following grounds:-
  - a) The decision of the Registrar contravenes Section 4 [1] and 19[1] of the Labour Relations Act 2007.
  - b) The decision contravenes the Constitution of Kenya.
  - c) The National Labour Board interfered with the independence of the Respondent, occasioning refusal to register Appellant's Trade Union.

d) The Interested Party and the Employer, Kenya Ports Authority [KPA], have a Recognition Agreement, which discriminates against Junior and Middle-Management Employees of the KPA.

4. The Respondent filed Response to the Appeal, on 7<sup>th</sup> November 2012. It is conceded that the Appellant applied for registration to the Respondent on 12<sup>th</sup> November 2010. The National Labour Board met and deliberated on the Application, on 30<sup>th</sup> August 2011. It was recommended that the Appellant's Application is denied on the ground that there is another Trade Union, the Interested Party herein, eligible to represent the Employees sought to be represented by the Appellant's Trade Union. Registration would create multiplicity of Trade Unions in the same workplace and militate against industrial peace and stability. The Registrar exercised his mandate fairly, in accordance with the law. The Court is urged to decline Appeal.

5. Parties agreed to have the Appeal considered through Written Submissions, in an order recorded by the Court on 29<sup>th</sup> October 2018. The Appeal was last mentioned in Court on 14<sup>th</sup> December 2018, when it was confirmed that only the Appellant filed Submissions.

6. It is submitted that Junior and Middle-level Management Employees of the KPA are barred from being represented by the Interested Party. KPA categorizes its Employees into 3 groups- Lower Ranked Category [LARCAT]; Senior Management Category [SEMACAT]; and Junior and Middle Management Category [JAMME].

7. JAMME has been submerged and neutralized by SEMACAT. At the time the Application was made to the Respondent, JAMME had approximately 1,500 Employees. It is these Employees, who converged at Bandari College on 10<sup>th</sup> November 2010, and passed a resolution to register their own Union, Kenya Ports Management Workers Union.

8. There was no objection filed by the Dock Workers Union, when the Respondent invited Parties to object to Appellant's Application, through Gazette Notice number 16718/2010. The Recognition Agreement between the Interested Party and the KPA bars JAMME from joining the Interested Party.

9. The result is that the Interested Party and KPA have joined hands, in oppressing JAMME. Registration of the Appellant's Trade Union is aimed at redressing non-representation of JAMME.

10. The Interested Party has not filed Response to the Appeal, or made Submissions which would assist the Court in determining the Appeal.

**The Court Finds:-**

11. While the Court acknowledges the need for the JAMME category to have a collective mechanism of dealing with their rights, interests and grievances at the workplace, they have not demonstrated that they are entitled to have their Trade Union registered.

12. They are in Management, and as stated by the Court in ***Industrial Court at Nairobi, Cause Number 1567 of the 2011 between Kenya Game Hunting and Safari Workers Union v Lewa Wildlife Conservancy Limited***, it is within the prerogative of the Employer to categorize Management and Unionisable Employees, within the workplace.

13. The Appellant and other Proposers are in Management cadre. Rather than seek to have a new Union at the KPA, representing Managers, they should pursue the KPA to bring them within Unionisable cadre, enabling them to be represented by the Interested Party.

14. Alternatively, they can engage the Employer through other organized mechanisms such as Welfare Groups. Rights, interests and grievances are not articulated at the workplace solely through the agency of the Trade Union. The Court is aware, through other litigation it has dealt with, involving Employees of the KPA, that JAMME Employees such as Gantry Operators have a Welfare Group, which has actively engaged the Employer on work-related issues.

15. The law and the tripartite Industrial Relations Charter do not favour Unionization of Management Employees. How will collective bargaining be carried out between Management and Management, without the potential for conflict of interest?

16. It is not believable that the Interested Party, offered an opportunity to have more Members through co-option of JAMME, would turn down the opportunity, and connive with KPA, to oppress JAMME, as submitted by the Appellant. Unions mainly derive their strength from the number of their Members. It is not likely therefore that the Dock Workers Union would close out JAMME, or oppress JAMME, when association with JAMME would bring more finances and other resources to the Dock Workers Union. It is hard to buy Appellant's argument about connivance between the Interested Party and KPA. The Interested Party stands to gain nothing by such connivance.

17. The Court is satisfied that the Respondent exercised his discretion lawfully and judiciously, with the benefit of advice legally given by the National Labour Board, in declining registration of a new Union at the KPA.

18. The Appeal has no merit.

IT IS ORDERED:-

**a) *The Appeal is rejected.***

**b) *No order on the costs.***

Dated and delivered at Mombasa this 22<sup>nd</sup> day of March 2019.

James Rika

Judge