



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL NO. 9 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

PETERSON WACHIRA AND GEORGE GIBORE

(Suing on behalf of themselves and of Clinical Officers)...APPELLANTS

VERSUS

REGISTRAR OF TRADE UNIONS.....1ST RESPONDENT

THE HON ATTORNEY-GENERAL.....2ND RESPONDENT

AND

KENYA UNION OF DOMESTIC HOTELS

EDUCATIONAL INSTITUTIONS AND HOSPITAL

WORKERS (KUDHEIHA WORKERS).....1ST INTERESTED PARTY

UNION OF KENYA CIVIL SERVANTS.....2ND INTERESTED PARTY

RULING

The application before the Court is dated 22nd June 2018. The Applicant seeks for orders that:

1. That stay of taxation of the Bill of Costs dated 15th August, 2017 is granted pending the determination of the review
2. That this Court be pleased to review/set aside the judgment and the consequential orders emanating from the judgment dated 15th August, 2017 particularly the orders of costs against the 2nd Interested Party.
3. That costs of this application be in the cause.

The Application is premised on the grounds that the judgment delivered and dated 30th June, 2017, was on account of an error. Further that the order of costs is premised on fundamental mistakes which are apparent on the face of the record because the Interested Party is not a party for the purposes of the instant proceedings and in any event they were joined in the proceedings pursuant to a Court Order.

The Applicant contends that apart from the mistakes apparent on the face of the record, the 2nd Interested Party is being condemned to pay costs to the Appellant in the absence of any fault or wrongdoing whatsoever on his part. Further that the 2nd Interested Party was only dragged into the suit and should not shoulder costs.

The Applicant is of the view that the Orders of the court require clarification as to whom orders of costs should be directed to. The Judgment as to costs read: *“The Appeal is allowed with costs to follow the outcome.”* This in the 2nd Interested Party’s view is ambiguous, possibly erroneous and requires clarification. That on 27th September, 2017 the Court issued a further Order on the issue of costs to wit: *“the judgment speaks with clarity, the losers, bear the cost of the Appeal.”*

That the Appellant has filed a Bill of Costs dated 15th August, 2017, and served the 2nd Interested Party with the same. That an interested party is not a party for the purposes of proceedings as its absence/presence does not affect the substance of the proceedings. The 2nd Interested Party is of the view that they have been condemned to pay costs without any wrongdoing whatsoever on their part.

The Respondent on the other hand has opposed the application and states that the 2nd applicant opposed the application by the appellants for registration as a trade union and opposed the appeal herein, thereby causing the appellants to incur costs. Further that the 2nd Interested Party is asking the Court to sit on appeal on the order of Nderi, J. a Judge of equal jurisdiction.

The Appellants/Respondents are of the view that the Registrar of Trade Unions denied them registration as a result of the interested parties raising objection to registration. Upon filing of the Appeal the Court ordered the Appellants to serve the interested parties with the amended memorandum of appeal so that they are given a chance to be heard on their objections.

That the Appellants Notice of Motion dated 12th January, 2017 to amend their Notice of Appeal was opposed by all the parties that is the Respondents and the Interested Parties but the Court allowed the application.

Directions were thereafter issued by the Court, the parties filed their respective submissions and judgment delivered on 30th June, 2017. That no Notice of appeal was filed against the decision by the 2nd Interested Party.

That the Appellants filed a Bill of Costs and set it down for taxation on 30th August, 2017, which the Interested Parties objected to and the Registrar ordered that parties appear before the Judge who delivered the judgement to on 27th September, 2017. When they appeared before the Judge, he clarified that the losers were to pay the costs.

The Respondents also state that the application has been filed one year after the decision of the Court which in their view is unreasonable delay. That the Application should be dismissed because had the Appellants been condemned to pay the costs, the 2nd Interested Party would be entitled to costs. The Appellants urge the Court to disallow the application.

The parties filed their respective submissions.

Determination

The Appellants filed the appeal herein challenging the decision of the Registrar of Trade Unions refusing to register the Kenya Union of Clinical Officers. The Court declared the decision by the Registrar of Trade Unions unlawful, null and void and proceeded to order the Registrar to register the Union. The Court further made Orders that *“The appeal is allowed with costs to follow the outcome”*.

The Respondents thereafter filed a Bill of costs and when the parties appeared before the Deputy Registrar for taxation, there was a contention as to who should pay costs as between the Respondents and the interested parties.

The instant application seeks a review on the order of costs and in the Applicant’s view they should not be condemned to pay costs as they were not a “losing party” and that the events leading to the appeal were not caused by the 2nd Interested Party thus no Orders of costs should be directed to it.

In the Case of ***Republic Vs Communication Authority of Kenya and another ex-parte Legal Advice Centre aka Kituo Cha Sheria (2015) eKLR*** it was held:

“In determining the issue of costs, the Court is entitled to look at the conduct of the parties, the subject of litigation and the circumstances which led to the institution of the legal proceedings and the events which eventually led to their termination. In other words the court may not only consider the conduct of the party in the actual litigation, but the matters which led up to litigation.”

In the case of ***Republic –V- Kenya Ports Authority ex-parte Grain Hulk Handlers Limited and Coast Silos Limited (2015) eKLR***, it was held:

“In my view, with respect, it does not matter how a party joins the suit – whether by original joinder by the applicant as a defendant or respondent, or by leave of Court subsequently. What matters is that the Court found that the party had an interest or is a necessary party in the matter justifying his joinder in the suit. If such party turns out to be the successful party, he should be entitled to costs on the basis of the principle that costs follow the event. It is a question only of occurrence of the event which crystallizes costs of the successful party.”

In the appeal, the orders sought were against the Registrar. The only reason the appellants were joined was because the orders of the court were likely to affect them and because they had raised objections when they were invited to do so by the Registrar of Trade Unions, in compliance with Section 17(3) of the Labour Relations Act.

The judgment of the court was against the Registrar and not the Interested Parties. The judgment overturned the Registrar’s decision and ordered the Registrar to register the Union. It is therefore the view of the court that the losing party is the Registrar of Trade Unions whose decision the court overturned. I thus find that it is the Registrar to bear the costs of the appellants.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 24TH DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE