



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1422 OF 2018

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND
WAREHOUSES WORKERS UNION.....APPLICANT/CLAIMANT**

VERSUS

VEGPRO (K) LIMITED.....RESPONDENT

AND

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS.....THE PROPOSED INTERESTED PARTY**

(Before Hon. Lady Justice Maureen Onyango)

RULING

The proposed Interested Party, Kenya Union of Commercial, Food and Allied Workers, filed a Notice of Motion Application dated 21st November 2018 brought under Section 12 of the Employment & Labour Relations Court Act and the Employment & Labour Relations Court (Procedure) Rules 2016 seeking to be enjoined as an interested party in this suit (***Kenya Shipping Clearing Freight Logistics & Warehouses Workers Union vs. Vegpro (K) Limited***) and upon admission, to be granted leave to file its reply to the pleadings and further raise a preliminary objection for the whole claim to be dismissed for lack of *locus standi*. The Application is based on the grounds that:-

1. The proposed Interested Party herein is a relevant sector Trade Union

whose Constitution and Rules cover Trade Union representation of the Respondent's employees.

2. The proposed Interested Party has negotiated several Collective Bargaining Agreements with the Respondent and the current one registered under the

entry RCA No. 338 of 2017.

3. The said Collective Bargaining Agreement covers terms and conditions of service for all unionisable employees in the Respondent's establishment.

4. The Claimant must be barred from representing the Respondent's employees as it has no *locus standi* and in observance of the principle of Industrial Trade Unionism Kenya.

5. It is improper for the Claimant to keep on interfering with an area which is already organized by the right sector Trade Union.

6. The Claimant should stop abusing court process as it was unable to prosecute Cause No. 645 of 2010 on "Refusal by the employer to sign Recognition Agreement and to deduct trade union dues from the wages of the employees and remittance of the same to the Kenya Shipping, Clearing and Warehouses Workers Union".

7. On 18th April 2016, Cause No. 645 of 2010 filed by the Claimant/Applicant was dismissed by the Radido J..

8. The proposed Interested Party urges the Court to dismiss the demand for payment of Union dues to the Claimant from employees who are already organized and order the Claimant to respect court process and stop interfering in area which is not within its area of representation.

9. That the Court do dismiss the claim on the above grounds and order the claimant union to meet the costs of this suit.

The Application is supported by the Affidavit sworn by the proposed Interested Party's National General Organizing Secretary, Benson Luvayi who avers that the Respondent recognized the proposed Interested Party as required by **Section 54(2) of the Labour Relations Act**. That the Respondent's employees exercised their right under **Section 4 of the Labour Relations Act** and as guaranteed under **Articles 36 and 41 of the Constitution** to register their membership with the proposed Interested Party. That for the said employees to seek refuge in another union would only suffice where they have revoked their union membership with the proposed Interested Party or where there is no recognition or a CBA. The applicant attached a copy of the list of their members who contribute union dues as per the Respondent's payroll for the month of September 2018 arising from check off forms signed by their members is enclosed at Appendix 4. That the current policy on unions in Kenya does not allow for multiplicity of unions within an establishment. The applicant refers to the judgment in **Cause 106 of 2009, Kenya Union of Printing, Publishing Paper Manufacturers and Allied Workers vs. Mombasa Maize Millers** and urges the court to apply the same in this case. He states that he believes that this is a proper case for the proposed Interested Party to be enjoined in this suit pending before this court.

The proposed Interested Party also filed a Memorandum of Interest dated 21st November 2018 by its Secretary General, Boniface Kavuvi who contends that it already has a valid Recognition Agreement with the Respondent and that the preamble clause of the CBA in place confirms that the agreement shall apply to all unionisable employees in the Respondent's establishment. That the interference by the Claimant conflicts the provision of the **Industrial Relations Charter**, the **Recognition Agreement**, the **International Labour Organization (ILO) Convention No. 87** and **Section 54(8) of the Labour Relations Act**. That there has been no complaint from any of the Respondent's employees over inadequate representation and it urges the Court to find that the proposed Interested Party satisfied all necessary requirements to be accorded formal recognition with the Respondent.

Claimant's Case

The Claimant filed its Replying Affidavit dated 1st December 2018 sworn by its General Secretary James Tongi who avers that he opposes the reasons raised in the Application herein which are same as under **Clause 983 of 2017** in that:-

- i. The legality of the proposed interested party's recognition agreement with the Respondent in regards of membership is in question.
- ii. The legality of the current Constitution of the proposed interested party after amending its original constitution is in question.
- iii. There is already a judgment on demarcation between the Applicant/Claimant union and the proposed interested party under Cause 70 of 2003 consequently do exist other judgments addressing demarcation of two trade unions as an exhibit in cause 983 of 2017.

Further, that the relationship between the proposed Interested Party and the Respondent is in doubt because they both frustrated the conciliator's effort by deciding not to attend conciliatory meetings. That the documents filed in court by the proposed Interested Party are unjustified because the September 2018 print out shows that a member is deducted above what is permitted by Gazette Notice No. 11887 of 2007. It prays that the proposed Interested Party's prayers are dismissed with costs and ordered to vacate from the Respondent forthwith.

Submissions

Nyumba for the Applicant submitted before this Court that the Claim as brought by the Claimant seeks recognition and if it is recognised, the proposed Interested Party will be displaced. That it is for this reason the proposed Interested Party has enormous interest in this matter and that the arguments they will put to the court will assist the court in determining the matter. He also confirmed that members of the proposed Interested Party have not revoked their membership, that the applicant has annexed the CBA, check-off sheets and membership subscription fees.

James Tongi for the Claimant submitted that he only has three reasons why the proposed Interested Party should not be enjoined. First, that what is before this court is the same document filed under Cause 1415/2018 under Section 6 of the Civil Procedure Act. Secondly, all the reasons and orders sought are already being challenged under Cause 983/2017, which challenges the legality of the proposed Interested Party including recognition agreement and backed by witness statements. Thirdly that as a balance of justice, an employee has a right to join or leave membership of a union and that reduction of union dues in the Respondent's application should be granted because if they delay they will be affected. He lastly submitted that the Interested Party was never mentioned when the dispute was under conciliation and that it is frustrating for the Interested Party to come to court now.

Mr. Okweh Achiando for the Respondent submitted that it is not opposed to the Application being granted leave to be enjoined as an Interested Party, and that the other causes Mr. Tongi is talking about are subject of the respondent's Preliminary Objection.

Nyumba for the Interested Party then responded by submitting that Mr. Tongi had mentioned causes which are not before this Court. That the applicant only seeks to be enjoined as Interested Party and so the principle of *res judicata* does not affect them. That Mr. Tongi has filed many suits and is not acting in good faith.

Determination

The main issue for determination is whether the proposed Interested Party has proved that it has enough interest for it to be enjoined in this suit as an Interested Party.

The *Black's Law Dictionary 9th Edition, page 1232* defines an interested party as; "**A party who has a recognizable stake (and therefore standing) in the matter**".

In the case of *Kenya Petroleum Oil Workers Union v Kenya Pipeline Company & 2 others [2017] eKLR* the interested parties were enjoined in the cause after Wasilwa J observed at paragraph 29 that since they were bonafide members of the Claimant Union as evidenced in the documents produced in Court, they had a stake in the matter whose issue at hand involved union dues which are deducted from their salaries. Further, in the case of *Yusuf Abdi Adan & another v Hussein Ahmed Farah & 3 others [2016] eKLR*, Nzioka J. held that a person seeking to be enjoined in a suit as an interested party may be allowed under Articles 48 and 50(1) of the Constitution.

In the instance Application, the proposed Interested Party has proved that it has an existing Recognition Agreement with the Respondent together with several CBAs. The applicant has sufficiently demonstrated that it has an interest as it has a valid Recognition Agreement with the respondent, has members among the respondent's employees and has negotiateD several CBAs with the respondent.

For these reasons, the application succeeds. The applicant is accordingly enjoined as an Interested Party in the claim herein.

There shall be no orders for costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6TH DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE