



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 58 OF 2019

(Originally Nairobi High Court Petition No. 50 of 2018)

KENYA NATIONAL UNION OF PHARMACEUTICAL

TECHNOLOGISTS (in formation).....PETITIONER

v

THE REGISTRAR OF TRADE UNIONS.....RESPONDENT

JUDGMENT

1. On or about 23 November 2017, some 6 named persons applied to the Registrar of Trade Unions (Respondent) for an interim certificate of registration for Kenya National Union of Pharmaceutical Technologists (proposed Union). The application was made pursuant to the requirements of section 12 of the Labour Relations Act.
2. The Respondent issued the applicants with a certificate of interim registration on 1 December 2017, and on 16 December 2017, the applicants applied for the registration of the proposed Union in terms of section 14 of the Labour Relations Act.
3. As required by law, the Respondent caused the application to be gazetted vide a notice on 27 April 2018. In the notice, the Respondent sought for any submissions and/or objections to the application.
4. The Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers, and the Union of Kenya Civil Servants consequently lodged with the Respondent submissions objecting to the registration of the proposed Union.
5. The proposed Union thereafter made representations in response to the objections.
6. However, because the Respondent did not revert back to the applicants, the proposed Union's advocates wrote to the Respondent on 8 October 2018 expressing concern about the delayed process of registration.
7. The advocates demand elicited a response from the Respondent and in her letter of reply dated 12 October 2018, the Respondent stated that the application was pending consideration by the National Labour Board.
8. The proposed Union's advocates were not satisfied with the Respondent's response and on 10 November 2018, they gave an ultimatum of 31 December 2018, failure to which they would move to Court.
9. The Respondent replied on 4 December 2018 reiterating that under sections 31(3) of the Labour Institutions Act and 19(1) of the Labour Relations Act, she was under an obligation to act on the advice of the National Labour Board.
10. The proposed Union appeared to be of a contrary view, and on 11 February 2018, it lodged the instant Petition in the High Court seeking orders
 - i. That it be declared that the Respondent has contravened its right to an administrative action which is efficient, expeditious, lawful, reasonable and procedurally fair under Article 47 of the Constitution.
 - ii. That it be declared that in addition to Article 47 of the Constitution, the Respondent has contravened Articles 19(3)(b), 27, 32, 36 and 41 of the Constitution.
 - iii. It be declared that the Respondent has breached the national values under Article 10 of the Constitution requiring her to adhere to

the Constitution, observe the rule of law, respect human rights, good governance, transparency and accountability.

iv. An order of mandamus do issue requiring the Respondent to consider its application as a trade union in accordance with the law.

v. An order that the Respondent do pay the Petitioner general and exemplary damages for contravention of its rights.

11. On 12 March 2019, upon the request of the proposed Union, the High Court ordered the transfer of the Petition to this Court.

12. When the Petition was placed before this Court on 25 March 2019, it directed that it be served upon the Respondent because there was no evidence of service.

13. The proposed Union filed an affidavit of service in Court on 29 March 2019 attesting to service of the Petition upon the office of the Attorney General on 12 March 2019.

14. On 9 April 2019, the Court, on the request of the Respondent allowed her 7 days to file and serve an answer to the Petition.

15. When the Petition was mentioned on 17 June 2019 to confirm compliance, it turned out that the Respondent had not complied. Upon the request of the Respondent, the Court granted her until 24 June 2019 to file and serve her answer to the Petition, and submissions (despite sending representatives twice to Court, the Respondent did not cause a formal notice of representation to be filed in Court).

16. The Respondent, again, did not comply with the order to file an affidavit/answer to the Petition (despite alleging so in the submissions that a replying affidavit was filed on 5 April 2019).

17. The proposed Union filed its submissions on 28 May 2019. The Respondent filed her submissions on 13 September 2019.

18. The Court has considered the material on record including and the submissions.

19. The facts as set out in the supporting affidavit of Elias Mutuma M'Irura remain uncontroverted.

20. The Petitioner applied for registration about 19 months ago.

21. Sections 19(1) and 31(3) of the Labour Relations Act envisages the Respondent consulting the National Labour Board while considering the registration of a trade union.

22. It was in the public domain that the National Labour Board was not in place for some extended length of time. However, the Board is now in place.

23. The Court is therefore of the view that the Respondent should consider the Petitioner's application expeditiously.

24. The Court finds no merit in the submission by the Respondent that the Petition should fail because the National Labour Board was not made a party to the proceedings, or that the Petition was premature.

25. Before concluding, the Court regrets that it could not deliver the judgment as earlier scheduled on 27 September 2019 due to other official commitments.

Conclusion and Orders

26. The Court in the circumstances orders that

(a) An order of mandamus do issue requiring the Respondent to consider the Petitioner's application for registration as a trade union in accordance with the law within 45 days.

27. The Court finds no legal utility in issuing the other declarations sought, and/or damages.

28. Each party to bear own costs.

Delivered, dated and signed in Nairobi on this 11th day of October 2019.

Radido Stephen

Judge

Appearances

For Petitioner Kamau Kuria & Co. Advocates

For Respondent Ms Robi, Litigation Counsel, office of the Attorney General (did not formally come on record)

Court Assistant Lindsey