



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

APPEAL NO. 18 OF 2019

CHARLES A.J OSICHO.....1ST APPELLANT

PETER NGUMA MATHEKA.....2ND APPELLANT

JOSEPH ODIMO.....3RD APPELLANT

GEORGE MAKAU.....4TH APPELLANT

STEPHEN KEKE.....5TH APPELLANT

PAUL OKETCH NYASUGA.....6TH APPELLANT

TONY OMONDI.....7TH APPELLANT

**(ALL SUING ON BEHALF OF THE PROPOSED KENYA UNION
OF ROAD COSTRUCTION AND CIVIL ENGINEERING WORKERS)**

-VERSUS-

REGISTRAR OF TRADE UNIONS..... RESPONDENT

-AND-

KENYA BUILDING CONSTRUCTION TIMBER AND FURNITURE

INDUSTRIES EMPLOYEES UNION.....INTERESTED PARTY

(Before Hon. Justice Byram Ongaya on Thursday 19th December, 2019)

RULING

The Court delivered judgment in the appeal on 08.11.2019 for the appellants against the respondent for:

1. The declaration that the refusal by the respondent (the Registrar of Trade Unions) to register the appellants' proposed trade union was bad in law and that the letter dated 14.05.2019 together with the notification for refusal of registration attached therewith are both invalid, null and void *ab initio*.
2. The declaration that the fundamental right and freedom of association of the appellants were substantially breached by the respondent's refusal to register the appellants' proposed trade union, The Kenya Union of Road Contractors and Civil Engineering Workers (KURCACEW) as sought in the letter dated 12.03.2018.
3. The order compelling the respondent to register the appellants' proposed trade union, The Kenya Union of Road Contractors and Civil Engineering Workers (KURCACEW) in terms of the provisions of section 14, 18, and 19 of the Labour Relations Act, 2007 and to:

a. issue a certificate of registration in Form B set out in the second schedule; and

b. enter the name and details of the trade union in the appropriate register in Form C as set out in the second schedule;

as all factors considered for registration have since been conjunctively determined herein.

4. The respondent to pay the appellants' costs of the appeal.

The interested party filed a notice of motion on 12.11.2019 through King'ori Kariuki & Company Advocates but stating to be on behalf of the 2nd, 3rd, & 4th respondents or applicants. The application invoked Order 42 rule 6 and Order 51 rule 1 of the Civil Procedure Rules 2010, section 1A, 1B, and 3A of the Civil Procedure Act and Article 163 of the Constitution of Kenya and all enabling provisions of the law. The application was supported by the annexed affidavit of Francis Murage the General Secretary of Kenya Building Construction Timber and Furniture Employees Union, the interested party.

The application prays for stay of execution of the judgment delivered by the Court on 08.11.2019 pending the hearing and determination of the intended appeal; the interested party be supplied with typed copies of the proceedings herein; and that costs of the application be provided for.

The grounds in support of the application are as follows:

- a. The interested party is greatly aggrieved by the judgement herein ordering registration of the appellants' proposed trade union.
- b. The execution of the judgment may take place any time after the delivery of the judgment.
- c. The appellants will not suffer any prejudice if the application is granted.
- d. The applicants will comply with such conditions the Court may set as subject to granting the application.
- e. The applicants have lodged a notice of appeal on 11.11.2019 and applied for certified proceedings and judgment herein to enable the applicant to appeal as per the letter by the applicant's advocates dated 11.11.2019.

The appellants have opposed the application by filing the replying affidavit of the 1st appellant on 18.11.2019. The grounds of opposition are as follows:

- a. On 11.11.2019 the 1st appellant served upon the Registrar of Trade Unions, the respondent in the appeal the judgment delivered on 08.11.2019.
- b. The Registrar of Trade Unions has since complied with the judgment and issued the applicants with a certificate of registration of the trade union as had been proposed and the certificate which is exhibited is dated 12.11.2019 and forwarded to the appellants by the Registrar's letter dated 13.11.2019.
- c. The present notice of motion was served on 14.11.2019 and the application should fail because the judgment and decree have already been executed or satisfied.

The Court has considered the parties' respective positions and submissions on the application. First the Court finds that there is no dispute that the trade union as promoted by appellants has already been registered in accordance with the Court's judgment and decree. There is nothing left of the judgment and the decree to be stayed and as submitted for the appellants, granting the stay of execution orders would amount to acting in vain because the respondent has already satisfied the judgment by registering the trade union as promoted by the appellants. The Court follows the holding by Ojwang J (as he then was) in **B –Versus- Attorney General [2004] 1KLR 431** thus, **“The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”**

Second, section 19(2) of the Labour Relations Act, 2007 provides that a certificate of registration issued under subsection (1) is conclusive evidence that the trade union has been duly registered under the Act unless it is proved that the certificate has been withdrawn or cancelled. The procedure to cancel or suspend the certificate is provided for in section 28 of the Act and section 30 of the Act provide for appeals to the Court against the Registrar's decisions. Further section 21 of the Act states that once a trade union is registered as such, it is a body corporate. The Court finds that in view of the statutory provisions, a stay order will not only be in vain but appear to contravene clear statutory provisions on how to deal with the registration of the trade union which has already crystallised. A new body corporate is already in place and the trade union as registered already enjoys independent legal personality. In the opinion of the Court, if the interested party is aggrieved, then the proper action is to pursue the matter as a new cause of action.

Third, the Court has considered the grounds of appeal in the proposed memorandum of appeal and returns that the same are best left for consideration by the Court of Appeal – including whether the appeal would be rendered nugatory if stay orders are not granted and whether the appeal raises serious arguable grounds.

Fourth, the Court has examined the supporting affidavit and the applicant has not proposed cogent or any security, in its opinion, for prompt satisfaction of the judgment and decree if the proposed appeal is lost. Further the supporting affidavit has not stated and demonstrated the substantial loss the applicant would suffer if the stay of execution orders is granted. The decree not being a money decree the Court considers

that there is no established ground in the circumstances that has been urged in the supporting affidavit for the Court to grant stay of execution orders except urging that the applicant is dissatisfied with the judgment and the decree.

Fifth the Court has considered that in signing the application the same appears done for persons actually not before the Court or not seeking stay orders as the Registrar has already implemented the judgment and the decree. Such anomaly in the application serves as an impetus to disallowing the application.

In conclusion the application filed on 12.11.2019 is hereby dismissed with costs in favour of the appellants.

Signed, dated and delivered in court at **Nairobi** this **Thursday, 19th December, 2019**.

BYRAM ONGAYA

JUDGE