



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 14 OF 2011

KENYA GUARDS & ALLIED WORKERS UNION.....CLAIMANT

-VERSUS-

PATRIOTIC GUARDS LIMITED.....RESPONDENT

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

RULING

The judgment in the suit was delivered on 26.10.2012 for the claimant against the respondent for:

- a. A declaration that the respondent constructively terminated the grievants' employment and the termination was unfair.
- b. Pay to the grievants a sum of Kshs.1, 417, 804.20 plus interest at court rates from 1st August 2006 till full payment.
- c. Payment of the claimant's of costs of the cause.

The respondent in the suit has filed on 14.11.2019 an application by the notice of motion dated 14.11.2019 through Wachakana & Company Advocates. The application is brought under section 1A, 1B, and 3A of the Civil Procedure Act, Order 45 Rules 1(a) (b) Civil Procedure Rules. The prayers are for orders:

- a. (Spent).
- b. (Spent).
- c. That the Honourable Court be pleased to review its judgment dated 26.10.2012.
- d. (Spent).
- e. That the Honourable Court be pleased to grant injunctive orders against the respondent, its agents, auctioneers or any person acting for it from attaching, selling, advertising for sale, encroaching on the applicants properties and business or interfere with its business in any manner whatsoever.
- f. (Spent).
- g. That costs of the application be provided for.

The application is based on the supporting affidavit of Johnstone Munyiri and upon the following grounds:

- a. The judgment was delivered in the suit on 26.10.2012.
- b. The Court (Nduma J) in Judicial Review Application No. 4 of 2013 found in the ruling delivered on 25.04.2014 that the claimant was no longer a legal entity because the Union currently in existence was the Kenya National Private Security Workers Union.
- c. That the Registrar of Trade Unions has confirmed that the claimant is non-existent.

The Ruling by Nduma J sets out the findings by Nambuye J. in Judicial Review Application No.369 of 2010 delivered on 21.04.2011. At paragraph 7 (vi) is stated, **“that notwithstanding, on 26th July 2007, events took place independently of the proceedings in 210/2007. The events changed the name of Kenya Guards and Allied Workers Union (the Applicant herein) to Kenya National Private Security Union (The 1st Interested Party). The new entity was registered by the Respondent herein.”** At paragraph 9 of the Ruling Nduma J stated, **“From this finding, the lawful registered union is and remains Kenya National Private Security Workers Union, the 1st Interested Party herein. This change which was in place as at 26.07.2007 happened outside the proceedings in HCCC 210/2007 and therefore the question of contempt of Court by the respondent as alleged by the applicant does not arise at all.”**

The applicant invokes the findings by Nduma J and urges that the claimant union having been allegedly dissolved as at 26.07.2007 the judgment obtained herein on 26.10.2012 is invalid. The applicant’s further case is that the applicant’s shareholders or directors changed as at 01.02.2017.

In the further supporting affidavit of Johnston Munyiki filed on 30.10.2019, the letter by the Registrar of Trade Unions dated 08.10.2019 addressed to the applicant’s advocates on record is exhibited and it states, **“I wish to inform you that Kenya Guards and Allied Workers Union changed its name to Kenya National Private Security Workers Union. Consequently, there is no registered trade union, known as Kenya Guards and Allied Workers Union. The matter on change of name was laid to rest by the Court in Judicial Review No.4 of 2013 at Nairobi.”**

The claimant has opposed the application by filing on 16.10.2019 the replying affidavit of Peter Oduor Odima who states that he is the Assistant Secretary of the claimant. The grounds of opposition are urged as follows:

- a. The judgment was delivered way back on 26.10.2012 and the application for review is filed belatedly on 14.11.2019 (slightly over 7 years later). No explanation has been given for the inordinate delay.
- b. The only reason for the application is that the applicant’s directors were not in place as at the time of the judgment but the claimant’s case is that the applicant and its current directors are liable for actions of the applicant’s previous directors.
- c. The application is merely calculated to defeat justice.
- d. The decretal sum was for Kshs.1, 417,804.20 plus interest and the sum due as at filing of the application inclusive the interest is Kshs.3, 651, 106.02.
- e. The claimant changed its name in July 2007 and a certificate of registration was issued as per notification to COTU (K) and FKE dated 27.07.2007.
- f. The applicants have previously objected to the execution of the decree and by the ruling delivered on 11.01.2013, the objection was dismissed.
- g. If the application is allowed it will amount to denying the claimant and grievants the right to enjoy the fruit of the judgment of 26.10.2012 which has already been delayed by the applicant’s tactics to delay execution or comply with the judgment.

The Court has considered the parties’ respective positions and the submissions made for the parties. The Court makes findings as follows:

First, it is clear that the claimant changed its name sometimes by 26.07.2007. There is no evidence that the claimant was dissolved. Accordingly it is misleading for the applicant to urge a case that the claimant did not exist or that it was dissolved. Section 27 (8) of the Labour Relations Act, 2007 provides as follows **“(8) A change in the name of a trade union, employers’ organisation or federation does not –**

- a. affect any right or obligation of that trade union, employers’ organisation or federation;**
- b. render defective any legal proceedings by or against it and any proceeding instituted under the former name may be continued or commenced by or against it under the new name.”**

The Court finds that the claimant was not dissolved but merely changed its name and section 27 (8) of the Labour Relations Act, 2007 applies accordingly. The Court holds that a name of a person is an identifier and its change does not mean that the person ceases to exist.

Second, the applicant has not explained the over 7 years of delay in filing the application for review. The delay is found inordinate and inexcusable. The Court finds that the claimant and grievants are entitled to lament that the application is calculated to unfairly delay their enjoyment of their successful litigation.

Third, it is law that the change in the applicant’s directorship or shareholders could not in any manner affect the applicant’s legal capacity and liability under the judgment and the decree.

Sixth, the applicant has failed to invoke the Court’s rules on applications for review and although they are substantially similar to the Civil Procedure Rules as invoked, such failure operates as an impetus to dismissal of the application in the circumstances of the present application.

In conclusion, the application dated 14.11.2019 is found to lack in merits and is hereby dismissed with costs.

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

BYRAM ONGAYA

JUDGE