



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

APPEAL NO. 12 OF 2019

(Before Hon. Justice Mathews N. Nduma)

KEPHER LANGI OGUWI (suing on behalf of KENYA UNION OF

TECHNICAL AND VOCATIONAL EDUCATION TRAINERS.....APPELLANT

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

KENYA UNION OF POST-PRIMARY

EDUCATION TEACHERS (KUPPET).....INTERESTED PARTY

RULING

1. The Appellant, Kepher Langi Oguwi filed an appeal on behalf of Kenya Union of Technical and Vocational Education Trainers against the decision of Registrar of Trade Unions dated 14th May, 2019 refusing registration of the above union on the grounds that:-

(i) The Labour Board was misguided and arrived at an unreasonable and unconstitutional decision.

(ii) The Labour Board did not take into consideration that the Petition filed by KUPPET and the judgment dated 1/3/2019 were set aside by the same court in an order dated 19/3/2019.

(iii) The Board disregarded all the requirements attained by the Appellant.

2. Wherefore the court be pleased to order the Registrar of trade Unions to register the Kenya Union of Technical and Vocational Education Trainers (KUTVET) forthwith.

3. The Appellant filed written submissions on 13th June 2019 in support of the application to stay the decision of the Registrar of Trade Unions dated 14/5/19 pending the appeal which was filed on 29th May, 2019.

4. The advocates for the Respondent filed a reply to the Appeal dated 12/7/2019 and filed on 15/7/2019 in which it raised Preliminary Objection to the Appeal purely on the basis that the matters placed before this court are res judicata in that the Employment and Labour Relations Court sitting at Nairobi had already heard and determined the issue in dispute on 1st March 2019, in Petition No. 97 of 2018 and Petition No. 85 of 2018 in which Hon. Abuodha J. granted orders that a circular dated 27th July 2018 issued by the Teachers Service Commission transferring the TVET teachers to public service/TVET Authority is unconstitutional, null and void.

5. That the Appeal lacks merit and is an abuse of the court process.

6. That the Appellant being a party in the consolidated Nairobi ELRC Petition No. 97 of 2018 and Nairobi ELRC Petition No. 85 of 2018 did not appeal or vacate and or set aside or review the judgment of the Court against Respondent, the Interested Party or at all. That the judgment is consistent with the subsequent decision of the Registrar of Trade Unions.

7. That the Registrar of Trade Unions is bound by the judgment and/or decision of Employment and Labour Relations Court which still remains in place.
8. That the decision to reject the registration of the Appellant is fair and just.
9. There is no evidence that judgment of the court was set aside by the same court on 19th March, 2019.
10. The court should therefore not stay the decision of the Registrar of Trade Unions dated 14/5/2019 as prayed or at all.

Determination:

11. Section 30 of the Labour Relations Act No. 14 of 2011 provides;

“Any person aggrieved by a decision of the Registrar made under that Act may appeal to the industrial court appealing that decision within thirty days of the decision.”

12. The decision by the Registrar of Trade Unions dated 14/5/2019 was to refuse to register the Appellant/Applicant, Kenya Union of Technical and Vocational Educational Trainers.
13. The decision by the Registrar was communicated to the Appellant/Applicant on 17/5/2019 according to the papers filed before court by the Appellant/Applicant.
14. The only recourse the applicant has which he has already done is to appeal the decision of the Registrar of Trade Unions.
15. The decision not to register the Appellant/Applicant Union is negative in nature. It therefore means that there is nothing for this court to stay pending the hearing and determination of the pending appeal.
16. The Application for stay of the decision of the Registrar of Trade Unions is therefore misconceived since the same is in capable of prevention in fact or in law.
17. Accordingly the application lacks merit and is dismissed.
18. The parties to take directions on the determination of the Appeal.

Ruling Dated, Signed and delivered this 11th day of December, 2019

Mathews N. Nduma

Judge

Appearances

Kepher Langi Oguwi – Appellant/Applicant in person

Ayayo for interested party

A. G for the Respondent

Chrispo – Court Clerk