



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**APPEAL NO 21 OF 2016**

**UNION OF MANAGEMENT STAFF (KENYA) ..... APPELLANT**

**VERSUS**

**REGISTRAR OF TRADE UNIONS..... RESPONDENT**

***(Appeal from the decision of the Registrar of Trade Unions dated 25<sup>th</sup> April 2016 refusing to register Kenya Union of Management Staff (Kenya))***

**JUDGEMENT**

1. This is an appeal from the decision of the Registrar of Trade Unions dated 25<sup>th</sup> April 2016, refusing to register Union of Management Staff (Kenya). The grounds of appeal as contained in the Memorandum of Appeal filed in Court on 20<sup>th</sup> September 2016 are as follows:

- a. That the Appellant is a prospective trade union within the meaning of Section 14 of the Labour Relations Act;
- b. That unionisable employees have several registered trade unions representing their interests;
- c. That employers have their own associations and federations representing their interests;
- d. That management staff are the only category of employees without a union;
- e. That the lack of a trade union exposes management staff to bad labour practices.

2. The Appellant states that on 14<sup>th</sup> May 2014, it applied for a certificate for recruitment of members for the purpose of establishing a trade union. By her letter dated 3<sup>rd</sup> July 2014, the Registrar of Trade Unions issued the certificate allowing the Appellant to undertake lawful activities and to submit an application for registration within six months.

3. The Appellant embarked on recruitment of members, paid the requisite fees and submitted all the required documents. After gazettelement of the Appellant's application for registration, an objection was received from the Kenya County Government Workers Union, to which the Appellant duly responded.

4. The Appellant was however refused registration by notice from the Registrar dated 25<sup>th</sup> April 2016.

5. The Respondent's response is contained in her replying affidavit sworn on 20<sup>th</sup> March 2017 and a Reply to Memorandum of Appeal dated 15<sup>th</sup> August 2017. The Respondent states that upon receipt of the

Appellant's application for registration, she sought clarification on the area and membership of the proposed union. The promoters were issued with a certificate of recruitment on 3<sup>rd</sup> July 2014.

6. The Respondent further states that the Appellant's application was tabled before the National Labour Board on 7<sup>th</sup>/8<sup>th</sup> April 2016 and rejected on the ground that there was no clear indication of who the employers in the sector would be.

7. The Respondent states that the present appeal was filed out of time without leave of the Court. Additionally, the Appellant is not a body capable of suing or being sued in its own name and therefore lacks capacity to institute the appeal.

8. In her response to the appeal, the Respondent raises two (2) preliminary points:

a. First, that the appeal was filed out of time without leave of the Court; and

b. Second, that the named Appellant is a non-existent entity.

9. In his submissions before the Court, Mr. Ondiege termed these as mere technicalities. I do not agree. Section 30 of the Labour Relations Act sets a time limit of thirty (30) days within which a party may challenge a decision of the Registrar of Trade Unions. The Appellant did not bother to seek extension of time and the Court therefore had no opportunity to evaluate the reasons for the delay.

10. Regarding the Appellant's capacity to institute the appeal I have this to say; a certificate of recruitment issued under Section 12 of the Labour Relations Act does not confer legal capacity on a proposed trade union. I say so because this certificate is part of the process towards registration. It is neither a registration nor is it a guarantee that the proposed union will be registered.

11. At the time of filing this appeal, the Appellant's application for registration had been declined meaning that the Appellant was not a registered trade union capable of suing or being sued.

12. For the foregoing reasons, I find that the present appeal is fatally defective and proceed to strike it out with no order for costs.

13. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF JANUARY 2018**

**LINNET NDOLO**

**JUDGE**

**DELIVERED IN OPEN COURT AT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY 2018**

**MAUREEN ONYANGO**

**JUDGE**

Appearance:

Mr. Ondiege for the Appellant

Miss Oyugi for the Respondent