



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 324 OF 2016

(Before Hon. Justice Mathews N. Nduma)

NATIONAL UNION OF WATER & SEWERAGE EMPLOYEES..CLAIMANT

=VERSUS=

KENYA COUNTY GOVERNMENT WORKERS UNION..1ST RESPONDENT

REGISTRAR OF TRADE UNIONS.....2ND RESPONDENT

AND

KISUMU WATER & SEWERAGE COMPANY.....INTERESTED PARTY

J U D G M E N T

1. The suit commenced by a Statement of Claim dated 7th November, 2016 seeking the following prayers:-

- a) A declaration that the registration of Kenya County Government Workers Union Kisumu Water & Sewerage Company Branch was irregular, illegal and improper.
- b) An order directing the 2nd Respondent to cancel Certificate of Registration No. TU/B/26/4W dated 31st October 2016.
- c) A permanent injunction restraining the 1st Respondent whether by itself, its agents, servants or any person claiming through them from setting up operations or interfering with the operations of the Claimant's Kisumu Water & Sewerage Company Branch.
- d) Costs of this suit.

2. Simultaneous with the claim was filed on notice of motion on a certificate of urgency seeking interim orders pending the hearing and determination of the suit.

3. The parties had by consent collapsed the application and the main suit and made written submissions with respect to both the main claim and the application since they primarily seek same reliefs.

4. The application and claim are opposed vide replying affidavit by Roba Duba, General Secretary of the 2nd Respondent filed on 2nd February, 2016 and Memorandum of response filed on 16th March, 2017.

5. Furthermore, the 2nd Respondent filed grounds of opposition on 2nd December, 2016 to wit:-

- a) **THAT** the application is bad in law and lacks merit and amounts to an abuse of this Honourable Court. Process.
- b) **THAT** the 2nd Respondent has powers under the provisions of the Labour Relations to register branched upon application by the union.
- c) **THAT** the Claimant and the 1st Respondent are two independent trade unions each regulated by the law and their own individual

constitutions.

d) **THAT** the employees have a fundamental right to join a union of their choice.

e) **THAT** the application for establishment of the Kisumu branch was properly registered.

f) **THAT** further under the provisions of Rule 19 of the claimants constitution, no county branch shall be established if the number of members is below two hundred (200). The Claimant has admitted in paragraph 6 of the statement of claim that its Kisumu Branch has membership of 65 members, thus the branch is existing in contravention of the union constitution.

g) **THAT** the claimant is therefore seeking redress from court while its hands are not clean.

h) **THAT** the Claimants application and the claim are without merit, filed in bad faith and is an abuse of the court process and should be dismissed with costs.

Preliminary Objection

6. The 1st and 2nd Respondents have in their submissions raised a Preliminary objection to wit:-

That the Claimant is challenging the decision of the Registrar of Trade Unions, the 2nd Respondent to register the 1st Respondent - Kenya County Government Workers Union. That a decision of the Registrar to register a union may only be challenged by way of an Appeal under section 30 of the Labour Relations Act, 2007. To this extent, the claim is non-suited to challenge the decision of the Registrar and the court should dismiss it at the outset.

7. In the Industrial Court of Kenya, **Petition Number 1 of 2013, Brian Achieng Were & 2 others v Attorney General & 6 others [2014] eKLR**, Nduma J had this to say:-

“The determination of this matter largely hinges on the interpretation of the provisions of the Labour Relations Act.

It is the Court’s considered view that since the Application to register the union was in the main based on the provisions of this Act, the petitioners were bound to ventilate the matter in terms of the provisions of this Act and in particular ought to have lodged an appeal within 30 days from the date of the decision of the Registrar to refuse to register the proposed union.

This way, there will be certainty in the administration of justice concerning decisions of the Registrar of Trade Unions.

In arriving at this decision, the Court is alive to the provisions of Article 159(2)(d) which provides:

“Justice shall be administered without undue regard to procedural technicalities”

While seeking to promote and protect the principles and purpose of the Constitution.

The constitution is enforced through statutory provisions, old and new that are not inconsistent with its provisions.

If the courts were to disregard statutory provisions such as Section 30 of the Labour Relations Act, it would be in the process of promoting uncertainty in the application of the law and at the same time acting contrary to statutory law to which the Court should equally have due regard and only disregard it if it is contrary to the express provisions of the Constitution.”

8. The thinking by the court has not changed. Section 30 of the Labour Relations Act, provides:-

“Any person aggrieved by the decision of the Registrar under the Act may Appeal to the Industrial Court against the decision within 30 days of the decision.”

9. In the **Industrial Court of Kenya at Nairobi appeal No. 1’A’ of 2012, Hon. Justus Oloo Ageka & 6 others vs Registrar of Trade Unions & 2 others [2014] eKLR**, Judge Linnet Ndolo had this to say –

“19 The jurisdiction of the Industrial Court in matters of union registration is appellate in nature. Specifically, section 30 of the Labour Relations Act provides that any person aggrieved by a decision of the Registrar of Trade Unions may appeal against the decision to this court within thirty (30) days thereof.”

10. Following the decision cited herein, it is clear that this court may only be clothed with jurisdiction over a challenge of registration of a union by the Registrar by way of Appeal and not by way of an original suit brought vide a memorandum of claim coupled with a notice of motion application seeking interim relief.

11. This position was restated by Abuodha J in **E & LRC at Nairobi James Opiyo Oudo & 4 others v Registrar of Trade Union & 2 others 2017** which decision was upheld by the Court of Appeal in **Charles Salama & 9 others vs Registrar of Trade Unions and another.**

12. A court of law is clothed with jurisdiction by the constitution or statute and not by craft or tenuous interpretation. The Supreme Court in **S. K. Macharia vs Kenya Commercial Bank and 2 others** held –

“A court’s jurisdiction flows from either the constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

13. Once a court of law finds that it lacks jurisdiction, it must down its tools’ forthwith and do no more. In the owners of the Motor Vessel **Lilian ‘s’ v Caltex a. c. (Kenya) Limited [1989 KLR 1** (at P. 14) the Court of Appeal held –

“Without jurisdiction, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

14. Accordingly this court lacks jurisdiction to entertain an original suit over a decision of the Registrar of Trade Unions on Registration of Unions but has only appellate jurisdiction over such matters in terms of section 30 of Labour Relations Act, 2007.

15. The application and the claim are dismissed with costs.

Judgment Dated, Signed and delivered this 15th day of March, 2018

MATHEWS N. NDUMA

JUDGE

Appearances:-

Brian Otieno for 1st Respondent/Objector

Mr. Otieno Ragot & Co. for Claimant

Mr. Ouma Njoga & Co. for interested party

Attorney General’s Office

Chrispo: Court Clerk