



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. 61 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 31st May, 2018)

WESLEY TOMNO,

JAMILLA WAMWIRI

SALOME MWAURA,

MOSES C. O. LORRE,

GLADWELL CHERUIYOT,

AMOS KIPSUMBAL,

FREDRICK OMIAH,

DORIS KARIMI,

ANTHONY MAMATI,

YVONNE OCHIENG,

AGNES WAMBUA

ACTING AS THE INTERIM OFFICIALS & PROPOSERS OF THE

KENYA HEALTH PROFESSIONALS UNION (KHPU).....PETITIONERS

VERSUS

THE REGISTRAR OF TRADE UNIONS.....RESPONDENT

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS &

HOSPITAL WORKERS UNION (KUDHEIHA).....INTERESTED PARTY

RULING

1. The Application before Court is the Preliminary Objection filed by the Respondents herein on 26/1/2018 on the following grounds:-

1. The matter is res judicata as per Section 7 and 8 of the Civil Procedure Act, this Petition having been dismissed vide a ruling delivered on 29.7.2015.

2. The Petitioner's Application is statutory barred contrary to Section 30 of the Labour Relations Act.

3. The orders sought are against Public Policy and cannot be granted as the Application is an appeal brought in bad faith and disguised as an application to amend the Petition.

4. That the Application is grossly incompetent, incurably defective, vexatious and an abuse of the Court process and ought to be struck out in limine.

5. That the Court therefore lacks jurisdiction to entertain this Application and the same ought to be struck out with costs to the Respondent.

2. The Petitioners filed their Grounds of Opposition to the Preliminary Objection on 7/2/2018 and they oppose the Preliminary Objection stating that it is fatally defective and does not raise any legal matters for determination.

3. They also deny that it is res judicata as the Petition has never been heard or determined.

4. It is their submission that this Petition is also not statutory barred and that the Preliminary Objection numbered 3 and 4 are factual issues that cannot be determined as a preliminary issue.

5. They aver that this Court has jurisdiction to entertain this Petition under Article 162(2) of the Constitution.

6. The Applicant filed an affidavit deponed to by the Registrar Trade Union who has deponed that his Petition is spend by virtue of the ruling of Justice Wa Makau dated 29th July 2015 denying registration of the Petitioners' Intended Union (KHPU).

7. The Applicants therefore aver that the Petition is spend and is therefore *res judicata*.

8. In determining whether the Preliminary Objection has merit, I note that the Petition sought orders as follows:-

1.

2. That this Honourable Court be pleased to issue mandatory orders compelling the Registrar Trade Unions to register the Applicant/Petitioner - Kenya Health Professionals Union pursuant to their application and issue them with a Certificate of Registration in Form B as set out in the 2nd Schedule of the Labour Relations Act No. 14 of 2007.

9. By virtue of a ruling delivered by Judge Wa Makau on 29th July 2015 he declined the registration stating as follows:-

“The ILO Convection sets the bar, the Municipal Law of Kenya brings it to life. The Union that the Petitioners propose is one that would be superfluous or surplus to requirements. The health professionals who are proposed members of the Respondent are already catered for in the existing trade unions. If that were not so, each craft would have a union. There is therefore justification to refuse registration of a union that is intended for a sector that is adequately represented. The upshot of the foregoing is that the Application has no merit and is dismissed with costs to the Respondent”.

10. The Petitioners seek to file an Amended Petition where they seek orders that:-

“This Honourable Court be pleased to quash the decision of the Registrar of Trade Unions made on the 25th September 2014 and order the immediate and registration of the proposed union subject to an amendment of the Constitution to remove Clinical Officers from the proposed cadres to be represented by the proposed Union”.

11. In this Court's view Justice Wa Makau has already determined this Petition vide his ruling above (supra). An amendment to the Petition cannot cure what the ruling addressed.

12. In view of this finding, I do find that the Preliminary Objection has merit. I allow it and dismiss the Petitioner's application accordingly. In this Court's view, this matter is concluded and can only be cured through an appeal or a fresh suit.

Dated and delivered in open Court this 31st day of May, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Onyonyi for Claimant Respondent – Present

No appearance for Respondent/Applicant