



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
APPEAL NO 14 OF 2014

PETROS WANGANGI KALII

DAVID KIPTOO KURGAT

JOEL CHERUIYOT LIMO

ENOCK MUKHWANA WASIKE

CHARLES IRERI JOSEPH

JAMES ANYEMBE ACHOKA

CHRISANTOUS ONCHONG'A SIRIMANI

(APPLICANTS AND PROMOTERS OF THE PROPOSED

KENYA ELECTRICITY UTILITIES WORKERS UNION).....APPELLANTS

AND

REGISTRAR OF TRADE UNIONS.....RESPONDENT

RULING

1. By a motion dated 22nd November 2017, the Interested party herein sought review and setting aside of the judgement of this court made on 10th November, 2017. The application was premised on grounds among others that the interested party had discovered new and important matters and evidence which had not been brought to the attention of the court which clearly demonstrated that the registration of the appellant union was in direct conflict to the existence of the interested party union and would create confusion in the sector represented by the interested party. The applicant further stated that it had entered into a recognition agreement and negotiated CBA's with all parastatals and organizations that the appellants target to draw its membership from.

2. In his submissions in support of the application, Mr Onyonyi submitted that the interested party was in the process and eventually entered into recognition agreements and signed CBA with Kengen, Ketraco, REA and GDC. Counsel further submitted that failure to produce the new and compelling evidence was not an act of malice but was due to the fact that the same was not readily available to be produced in court as the parties were still negotiating on the particulars and were not aware that the same would actually materialize into executing of a recognition agreement and CBA.

3. The appellant opposed the motion and submitted among others that the application was incompetent because the applicant was a stranger to the appeal proceedings. According to Ms Gatherer for the appellants, the applicant having failed to prosecute its application to be enjoined as an interested party was a stranger to the proceedings.

4. Concerning discovery of new facts, counsel submitted that the documents annexed by the applicant were suspicious and of questionable nature and in any event fell below the threshold of new and important matter of evidence which was not within the applicant's knowledge at the time of hearing of the appeal.

5. The review jurisdiction of the court is provided for under rule 33 of the rules of the court. The grounds for review include discovery of

new and important matter or evidence which after the exercise of due diligence was not within the knowledge of that person at the time when the decree was passed or order made. The court can further review its order for any sufficient reason.

6. In its judgement delivered on 10th November, 2017 the court was persuaded then that the interested party did not have recognition agreement with GDC, REA, Kengen and Ketraco. The court therefore was of the view that unionisable employees in these organizations had not benefited from collective bargaining. The court noted then that the interested party had conceded that it was yet to enter into a recognition agreement with most organizations from which the appellant intended to have sphere of influence.

7. The interested party has stated that it could not present to the court the outcome of negotiations before the judgement could be delivered. It has now emerged that the interested party does now have recognition agreement and signed CBA with the organizations concerned. This new development has obviously impacted on the judgement of the court which was based mainly on the concession by the interested party that it neither had a recognition agreement nor a CBA with the state corporations concerned.

8. The court has further been informed that the appellants herein have on more than one occasion unsuccessfully attempted to register rival unions to the interested party. Registration of new trade unions ought to ensure a balance between fragmentation and proliferation of trade unions.

9. Since the appeal was allowed purely on the basis that the interested party had not yet entered into recognition agreement and negotiated CBA's for their members in the parastatals concerned, this scenario has since changed and to allow the appellant to venture into the same sphere of influence as the interested party would most likely create conflict and confusion in the sector. In the circumstances, sufficient cause has been demonstrated to warrant the review of the court's judgement.

10. The appellant termed as stranger the interested party herein. In its judgement of 10th November, 2017 the court made several references to the interested party herein and their vehement opposition to the registration of the appellant. It may be that the interested party never formally joined in the proceedings, their involvement in the appeal has been consistent and the court has granted them audience throughout.

11. Their interest in the matter is easily noticeable and no prejudice has been occasioned to the appellant by their informal inclusion. In fact, the interested party has furnished the court with vital information which the appellant did not disclose. That is the fact that the interested party has concluded CBA's with the parastatals concerned. The interested party has further brought to the notice of the court the fact that the promoters of the appellant were former officials of the interested party who were voted out of office.

12. Rule 18 of the court rules allows the court to summon on its own motion any person or expert for the purposes of examination of facts and full adjudication of the dispute.

In conclusion, the court allows the review application and sets aside its judgement of 10th November, 2017 and substitutes the same with an order that the appeal is hereby disallowed with no order as to costs.

14. It is so ordered.

Dated at Nairobi this 6th day of July, 2018

Abuodha J. N.

Judge

Delivered this 6th day of July 2018

Abuodha J. N.

Judge

In the presence of:-

..... for Claimant

.....for Respondent