



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
APPEAL NO. 18 OF 2017

IN THE MATTER OF APPEAL OF KENYA
AIRCRAFT MAINTENANCE PERSONNEL UNION

Represented by its promoters and applicants:-

1. PAUL MUNGAI MUIRURI
2. JOSEPH OTIENO OYUGA
3. EUTYCHUS NJOROGE KOIGI
4. VICTOR GATHIRU
5. TEDDY KAUNGU MUTUKO
6. AYOUB MOHAMMED.....APPELLANTS

VERSUS

THE REGISTRAR OF TRADE UNIONS.....RESPONDENT

JUDGMENT

Introduction

1. This is an appeal against the decision of the Registrar of the trade unions dated 30.10.2017 whereby she refused to register appellants proposed Trade Union called Kenya Aircraft Maintenance Personnel Union (KAMPU). The Appeal is premised on 12 grounds upon which the appellants pray for impugned decision to be set aside and the respondent be compelled to register the proposed new Trade Union and issue a certificate of Registration under the Labour Relations Act.

2. The Grounds of the appeal are:

(a) The Registrar of Trade Union erred in law and in fact in failing to find that the Constitution, 2010, the Labour Relations Act, 2007 and ILO Conventions 87 and 98 which guarantee every Kenyan the right to Freedom of Association which includes the right to form, belong to and participate in a trade union of one's choice, impelled the Registrar to Register the Kenya Aircraft Maintenance Personnel Union (KAMPU).

(b) The Registrar of Trade Unions erred in law and in fact in finding/accepting the finding of the National Labour Board that Kenya Aviation Workers Union [KAWU] and Aviation and Airport Services Workers Union [AASWU] sufficiently represent the interests of the Appellants.

(c) The Registrar of Trade Unions erred in law and in fact in failing to find that the neither KAWU nor AASWU have made any

provision for the protection and promotion of the interest of the Appellants.

- (d) The Registrar of Trade Unions erred in law and in fact in failing to consider that no objection to the registration of KAMPU was raised.
- (e) The Registrar of Trade Unions erred in law and in fact in failing to give the Appellants an opportunity to be heard on whether KAWU and AASWU sufficiently represent their interests, knowing that this decision would affect the Appellants' rights and fundamental freedoms.
- (f) The Registrar of Trade Unions erred in law and in fact in failing to consider that the Constitution espouses competitive trade unionism as opposed to sectors and trades.
- (g) The Registrar of Trade Unions erred in law and in fact in failing to consider the principle of freedom of choice where one can seek to join an association, organisation or union of one's choice.
- (h) The Registrar of Trade Unions erred in law and in fact in delegating the powers and decision on whether or not to register a trade union to the National Labour Board.
- (i) The Registrar of Trade Unions erred in law and in fact in failing to uphold Article 41 of the Constitution by which every Kenyan is guaranteed fair labour practices.
- (j) The Registrar of Trade Unions has registered more than one union in one industry. For example in the education sector where the following have been registered: - Kenya Union of Post Primary Education Teachers; Kenya Union of Pre-Primary Education Teachers; University Academic Staff Union; Kenya Private Schools' Teachers - which were all registered regardless of the existence of Kenya National Union of Teachers. Others include Railway Workers Union; Kenya Pilot Association, Kenya Aviation Workers Union, Aviation and Airport Services Workers Union and Kenya Union of Long Distance Truck Drivers' Union – which were all registered despite the existence of Transport and Allied Workers Union.
- (k) The Registrar of Trade Unions erred in law and in fact in failing to consider that there is an ongoing court case between KAWU and AASWU following the decision of Hon. Justice Nduma Nderi of 2nd December 2016 of deregister KAWU which led to publication of Gazette Notice Number 10372 by which KAWU was deregistered.
- (l) Failure by the Registrar of Trade Union to register KAMPU has effected over 200 aircraft maintenance personnel who are unable to exercise their Freedom of Association as they are not members of either KAWU or AASWU.

3. The appeal was not opposed despite the respondent having been served with the Court process. On 1.3.2018 the Court directed that the appeal be disposed of by written submissions but only the appellants filed. As at 15.5.2018, Mr. Motende learned state counsel who had all through appeared for the respondent had not filed any submissions and he sought additional 3 days to do so. To date he has not done so and as such the appeal is not contested on both procedure and substance.

Analysis and Determination

4. After careful consideration of the material before the Court, the 12 grounds of appeal can be collapsed into the following issues:

- (a) Whether the appeal has merits.
- (b) Whether the reliefs sought should issue.

Merits

5. The appellants have contended that their right to form and join a Trade Union and freedom of Association guaranteed under Article 41 and 36 of the Constitution have been denied by the impugned decision. However section 14(1) of the Labour Relations Act limits that right and freedom in the circumstances where, there exists another trade union which sufficiently represents the whole or substantial proportion of the interest in an industry or sector. Before the Registrar of Trade Union makes a determination of whether to register or not, notice is published to invite objections from any interested parties including existing unions. The Registrar also seeks the advise of National Labour Board (NLB) which has representation from Trade Unions. In this case the Registrar complied with the said procedural requirement and the NLB objected to the registration of the new union on ground that there was KAWU and AASWU in the sector

6. It has not been denied by the appellants that there exists KAWU and AASWU unions in the Aviation Sector. They indeed resigned from the same to form the new union which was rejected. It has also not been denied that the law requires that before deciding whether or not to register a new union, the Respondent must consult the National Labour Board as it happened in this case. They have further not demonstrated that the Respondent breached the law by not inviting them to a hearing before refusing to register the new union.

7. Under section 19 of the Act, the Registrar is required to satisfy herself that a trade union meets the requirements of the Act after consulting the National Labour Board. Section 20 of the Act, provides that if the Registrar is not satisfied that the trade union does not meet the requirements for Registration, her duty ends with form D set out in the second schedule to the Act which is a notice of refusal of registration and indicating reasons therefor. There is no requirement of the law to hear the applicants whose right to a hearing is only through appeal to this Court. To that extend I find and hold that the refusal to register the appellants' proposed new union was procedurally and substantively done within the law. Consequently, I return that though not opposed, the appeal is devoid of merits.

Reliefs

8. In view of the foregoing finding, that the impugned decision was lawfully reached, I decline the prayers sought.

Disposition

9. The appeal stands dismissed with no costs.

Dated, Signed and Delivered in Open Court at Nairobi this 12th day of October 2018

ONESMUS N. MAKAU

JUDGE