



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT NAIROBI**  
**APPEAL NO. 14 OF 2015**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 22<sup>nd</sup> February, 2017)**

**KENYA UNION OF SOFT STONE AND  
WOOD CARVING WORKERS .....APPLICANT**

**VERSUS**

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

**AND**

**KENYA AVIATION**

**WORKERS UNION .....PROPOSED INTERESTED PARTY**

**JUDGMENT**

1. The Appeal is from the decision of the Registrar of Trade Unions made on 12<sup>th</sup> October, 2015, pursuant to Section 30 of the Labour Relations Act.
2. The Appellants state that they made an Application to the Respondent on 27<sup>th</sup> October, 2014, requiring her to register the changes made to the Constitution of the Appellant pursuant to Clause 33 and 34 of the Appellant's registered Constitution and Section 27 of the Labour Relations Act, 2007.
3. That the Delegates of the Appellant met on 24<sup>th</sup> October, 2014, where they resolved to amend and change the name of the Constitution and that of the Union and further resolved to amend the constitution in terms of the copy submitted to the Respondent. To date the Respondent has not effected the said changes.
4. They contend that they submitted their application to the Respondent, who in turn caused it to be gazetted through Legal Notice No. 1661 of 2015 of 14<sup>th</sup> March, 2015. That the only objection received was from the firm of Okweh Achando & Company Advocates dated 30<sup>th</sup> March, 2015, which was outside the stipulated notice period.
5. The Respondent proceeded to reject the changes made by the Claimant on flimsy grounds which contravened their fundamental rights to join, form and leave a Trade union of their choice. The Appeal is therefore based on the following grounds:

**1. That Respondent erred in law and fact when she sat on her own appeal (The Registrar had already made inquiries vide her letter dated 3<sup>rd</sup> November, 2014, and 10<sup>th</sup> November, 2014) and having been satisfied pursuant to section 27(4) of the Labour Relations Act, 2007, issued a Gazette Notice, in Legal Notice No. 1661 of 14<sup>th</sup> March, 2015.**

**2. The Respondent erred in law and fact when she turned herself to an objector, while the rule only applies to members of the Trade Union only, pursuant to Section 27 (1) of the Labour Relations Act, 2007 and which no evidence of objections from the members of the Appellant has been shown.**

**3. The Respondent erred in law and fact when she failed to apply her mind to the Constitution of the Appellant, Constitution of Kenya, 2010, and the provisions of the Labour Relations Act, 2007. And in particular clauses 33 and 34 which give powers to the delegates to amend their Constitution, Article 41 of the Constitution of Kenya, 2010 which gives workers/employees fundamental rights to join, leave and form a Trade Union and Section 4 of the Labour Relations Act, 2007 that equally gives rights to workers.**

**4. The Respondent erred in law and fact when she failed to apply her mind to the provisions of the ILO conventions 87, 98 and 135 as read with Article 2(5) and (6) of the Constitution of Kenya 2010, when she purported to restrict the movement of workers and formation, and amalgamation, reorganization and structuring of Trade Unions.**

**5. The action of the Respondent therefore limiting rights of the workers/Employees working in the sectors where the Appellant is involved.**

6. The Appellant pray for:

**a) Declaration that the decision made by the Respondent on 12<sup>th</sup> October, 2015, was ultravires the powers of the Respondent as the same meant she sat on her own appeal.**

**b) An Order that the decision made on 12<sup>th</sup> October, 2015, is null and void and the application for the amendment of the constitution and change of name made on 24<sup>th</sup> October, 2014, is hereby allowed.**

**c) Costs be borne by the Respondent.**

7. The Respondent has filed a Response to the Appeal wherein they state they admit the steps taken towards registration and that the objection received from the Kenya Aviation Workers Union through their lawyer Okweh Achiando & Company Advocates was out of time.

8. They further admit that inquiries were made by the Respondent of the relationship between the Appellant's union and Cabin crew members.

9. They state that the rejection of the Appellant's application was carefully thought through and it did not infringe on anyone's right but sought to protect and defend the rights of other Unions. They aver that at no point did they file an objection in lieu of the Gazette Notice to the application by the Appellant and therefore put the Appellant to strict proof thereof.

10. It is the Respondent's contention that the Appellant seeks to recruit members already represented by the Aviation and Airport Services Workers Union (AASWU).

11. The Respondent further avers that she followed the law in rejecting the application as she is duty bound to ensure that her actions support a harmonious cooperation between employees, trade unions and employers.

12. The Appellant prays for the Appeal to be dismissed with costs.

13. In submissions the Appellant states that the Respondent was not justified in rejecting amendment of their constitution and change of its name. They state that they complied with the provisions of section 27 to the letter and as such the appeal ought to be allowed. Section 27 provides as follows:

**1) .."A trade union, employers' organisation or federation may resolve to:-**

**a) change or replace its constitution; or**

**b) change its name.**

**2) A registered trade union, employer's organisation or federation may apply to the Registrar to approve a change of name or an amendment to its constitution and rules by submitting to the Registrar:-**

**a) a notice in Form I or Form J as the case may be set out in the Second Schedule duly completed and signed by the secretary;**

**b) a copy of the resolution containing details of the change; and a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution and rules.**

**3) Notice of the change specified in subsection (2) shall be submitted to the Registrar within fourteen days of any resolution to change the name or constitution.**

**4) Upon receipt of the notice of change of name or constitution, the Registrar shall give a notice of at least twenty-one days in the Gazette and in three daily newspapers of national circulation inviting any objections to the proposed change of name or constitution by members of the trade union and where any such objection is raised, the Registrar shall investigate the complaint and the grounds relied upon and may:-**

**a) refer the matter to the Industrial Court;**

**b) refuse to accept the proposed amendments; or**

**c) make any orders that he may deem fit in the circumstances.**

**5) The Registrar may approve a change of name or to the constitution if the applicable requirements of registration of a trade union, employer's organisation or federation are met.**

**6) The Registrar shall issue a certificate of change of name or change of the constitution in Form K or Form L, as the case may be.**

**7) Any change of name or change to the constitution and rules of a registered trade union, organisation or federation shall take effect when the registrar approves the change under this section.**

**8) A change in the name of a trade union, employers' organisation or federation does not:**

**a) affect any right or obligation of that trade union, employers' organisation or federation;**

**b) defective any legal proceedings by or against it and any proceeding instituted under the former name may be continued or commenced by or against it under the new name.**

**9) Where the Registrar refuses to approve a change under this section, the Registrar shall give written notice of that decision and the reasons for the refusal.**

14. The Appellant further submits that Article 41 of the Constitution of Kenya 2010 provided for the right of every worker to form, join or participate in the activities and programmes of a trade union. That the members of AASWU are at liberty to join the Appellant once its constitution is amended.

15. The Appellant state that the Respondent in its letter dated 3<sup>rd</sup> November, 2014, alleges that:

***“...trade unions are industry based and are expected to conform to a specific industry so that they adequately represent their members industry. Representation must have a constitutional relevance and the ability to focus on a target industry.”***

16. This reason the Appellants state does not have any basis in law. That there are a myriad of trade unions that are not sector specific and that the Appellant is not seeking to recruit members to a trade union but to amend its constitution. They pray for the Appeal to be allowed as drawn.

17. The Respondent on the other hand submits that due process was followed in the Application to register the change of names and amendments to the constitution.

18. They state that the purpose of the Advertisement and Gazettement is to accord members of the public as well as any interested party an opportunity to give their reservations. The Objection received in the instant case they submit that though received out of time the Respondent considered it as it was duty bound to do justice to all the parties. They rely on the case of **Nairobi Civil Application No. 173 of 2010, Abdirahman Abdi alias Abdirahman Muhumed Abdi vs. Safi Petroleum Products Ltd & 6 Others** where the Court of Appeal stated as follows on the effect of Article 159 of the Constitution on the oxygen principle:-

***“Article 159 (2) (d) of the constitution makes is abundantly clear that the Court has to do justice between the parties without undue regard to technicalities of procedure. That is not however to say that procedural improprieties are to be ignored altogether. The Court has to weigh the prejudice that is likely to be suffered by the innocent party and weigh it against the prejudice to be suffered by the offending party if the Court strikes out its document. The Court in that regard exercises judicial discretion.”***

19. They further rely on the case of **Nairobi Civil Application Number 298 of 1986 between the Republic Vs. the Registrar of Trade Unions and Banking Insurance Union**, where the Court ruled that:

***“The body with power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case.”***

20. The Respondent further submits that as a public officer she is duty bound to carry out duties of this office within legal parameters given by the law. That she did not wholly rely on the objection by Kenya Aviation Workers Union but went further and investigated on her own through the various correspondence letters with the Appellant.

21. It is the Respondent’s contention that it was within their mandate of registration and regulation of trade unions in rejecting amendments to the Appellant’s constitution. They state that as per the Appellant’s existing constitution membership includes all employees engaged in soft stone making, wood carvings, Kikoi making, Basket making, Jewelry making, beads making, wood manufacturers, mat making, stiches, glass making, art making, pottery, plastics and handcrafts.

22. In their application of change of Name from Kenya Union of Soft stone and wood carving workers to Kenya Carvers and Cabin Crew Union. The Appellant sought to include cabin crew members as part of their union and when the Respondent sought to know the relationship between the two the Appellant

stated that the Cabin crew worked at the Airport where the Appellant drew its membership.

23. The Respondent submits that they refused to approve application on the grounds that the intended change of name and expansion of membership was a mischievous way of recruiting new members in a new sector without going through the normal procedure of applying for representation.

24. The Respondent states that registration of the proposed amendments would not promote a harmonious co-existence among Trade Unions by ensuring that no activities are organized by any group or union in respect to a particular category of workers if another union is already in place representing those activities.

25. That the Respondent acted within her mandate and they pray for the Appeal to be dismissed with costs.

26. Having considered the submissions of both parties, the issues for determination are as follows:

**1. Whether the decision by the Respondent herein infringed on the rights of the Appellants and to what extent.**

**2. What remedies to grant in the circumstances.**

27. In answering issue No. 1 above, this Court is guided by the provision of the law. Section 27 of the Labour Relations Act 2007 states that:

1) “..”**A trade union, employers’ organisation or federation may resolve to:-**

**c) change or replace its constitution; or**

**d) change its name.**

**2) A registered trade union, employer’s organisation or federation may apply to the Registrar to approve a change of name or an amendment to its constitution and rules by submitting to the Registrar:-**

**c) a notice in Form I or Form J as the case may be set out in the Second Schedule duly completed and signed by the secretary;**

**d) a copy of the resolution containing details of the change; and a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution and rules.**

**3) Notice of the change specified in subsection (2) shall be submitted to the Registrar within fourteen days of any resolution to change the name or constitution.**

**4) Upon receipt of the notice of change of name or constitution, the Registrar shall give a notice of at least twenty-one days in the Gazette and in three daily newspapers of national circulation inviting any objections to the proposed change of name or constitution by members of the trade union and where any such objection is raised, the Registrar shall investigate the complaint and the grounds relied upon and may:-**

**d) refer the matter to the Industrial Court;**

**e) refuse to accept the proposed amendments; or**

**f) make any orders that he may deem fit in the circumstances.**

**5) The Registrar may approve a change of name or to the constitution if the applicable requirements of registration of a trade union, employer's organisation or federation are met.**

**6) The Registrar shall issue a certificate of change of name or change of the constitution in Form K or Form L, as the case may be.**

**7) Any change of name or change to the constitution and rules of a registered trade union, organisation or federation shall take effect when the registrar approves the change under this section.**

**8) A change in the name of a trade union, employers' organisation or federation does not:**

**c) affect any right or obligation of that trade union, employers' organisation or federation;**

**d) render defective any legal proceedings by or against it and any proceeding instituted under the former name may be continued or commenced by or against it under the new name.**

**9) Where the Registrar refuses to approve a change under this section, the Registrar shall give written notice of that decision and the reasons for the refusal.**

28. In seeking to change their name and their constitution, the Appellants wrote to the Respondent on 27.10.2014. They also attached form 1, J and Q and Minutes of their resolution authorizing these changes.

29. On receipt of their letter, the Respondent wrote back on 3.11.2014 stating as follows:

***"Reference is made to your letter dated 27<sup>th</sup> October 2014 over the above reference matter.***

***It is clear from the documents annexed that the change of name and amendment of the Union constitution seeks to incorporate cabin crew members. According to the constitution you seek to amend, membership is open to all employees engaged in the soft making stones, wood curving, kikoï making, basket making, jewellery, beads making, wood manufactures, mat making, stitches, glass making, art making, pottery, plastics and handcrafts. Under the proposed constitution, membership is open to employees engaged as softstone, wood carvers and cabin crew.***

***You will notice that these are completely different industries and there is no nexus between wood carving and soft stone making with cabin crew. Cabin crew relates to aviation-----".***

30. Under Section 27(a) of the Labour Relations Act 2007 where the Registrar refuses to approve a change under this Section, he shall give written notice of that discussion and the reasons for the refusal and the Registrar did given her reasons in the above letter.

31. Thereafter there was communication back and forth but the Appellant were just seeking to justify the changes envisaged.

32. Under Section 27(5) of Labour Relations Act, the Registrar may approve a change of name or the constitution if the applicable requirements of registration of a trade union, employer organization or federation are met.

33. The requirements for registration of a union are found under Section 18 of Labour Relations Act under Section 18(4) of Labour Relations Act:

34. Under Section 18(4) of Labour Relations Act:

**1) “If the proposed name of a trade union, employers’ organisation or federation is the same or sufficiently similar to that of an existing organisation so as to mislead or cause confusion, the Registrar shall:-**

**a) request the applicant for registration to alter the name of the trade union or employers’ organisation or federation; or**

**b) not register the trade union, employers organisation or federation until a suitable alteration has been made.**

35. The Registrar may therefore refuse registration if the name is similar to an existing name.

36. Under Section 14(1) (d) – the registration of a trade union will also be allowed if:

**“No other trade union already registered is:-**

**(i) in the case of a trade union of employers or employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration”.**

37. The Registrar may however proceed to register a trade union under Section 14(2) of Labour Relations Act as stated:-

**“(2) Notwithstanding the provisions of subsection (1)(d), the Registrar may register a trade union consisting of persons working in more than one sector, if the Registrar is satisfied that the constitution contains suitable provisions to protect and promote the respective sectoral interests of the employees”.**

38. In this case the Registrar pointed out that the Constitution of the Appellants did not meet the interests of “Cabin Crew” as their purpose was solely different.

39. It is true that the Applicants have a right to join and participate in joining a trade union and even change their constitution as envisaged under Article 41 of the Constitutions 2010. However this must be done within the confines of the law.

40. It is my finding that the Respondent exercised her discretion properly in refusing to allow the Appellants application and she didn’t flout the rights of the Appellants.

41. The Appellants can only proceed within the confines of the law to succeed. It is therefore my finding that the Appeal does not succeed and I dismiss it accordingly with costs to the Respondent.

Read in open Court this 22<sup>nd</sup> day of February, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Mokua for Appellants - Present

No appearance for Respondent - Present