



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**APPEAL 9 OF 2015**

**JAMES OPIYO OUDO, GEORGE KARANJA,**

**FAITH MORAA, GEORGE ODAGO**

**AND BILDAD O. OGELLO (SUING ON THEIR OWN BEHALF AND AS THE OFFICIALS OF  
KENYA GUARDS**

**AND ALLIED WORKERS UNION) .....APPELLANT**

**VERSUS**

**THE REGISTRAR OF TRADE UNIONS .....1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION....1<sup>ST</sup> INTERESTED PARTY**

**CENTRAL ORGANISATION OF TRADE UNIONS .....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. By ex-parte chamber summons filed on 24<sup>th</sup> April, 2015 the applicant seeks orders in the main that the court grants leave to the applicant to file an appeal out of time challenging the decision of the respondent dated 11<sup>th</sup> May 2011 and 26<sup>th</sup> July 2007 purporting to change the name of the applicant from Kenya Guard and Allied Workers Union to Kenya National Private Security Workers Union and all subsequent decisions that have been made by the respondent to validate and uphold the said decision.

2. The application was based on the grounds that:

i. That on the 26<sup>th</sup> July, 2007, the respondent purported to change the name of the applicant from Kenya Guards and Allied Workers Union to Kenya National Private Security Workers Union.

ii. That subsequently by was of a series of decisions culminating in the extract dated 31<sup>st</sup> May, 2011 the respondent purposed to recognize and register KENYA NATIONAL PRIVATE SECURITY WORKERS UNION, the 1<sup>st</sup> Interested party herein, as the legitimate union representing the interest of employees within the private security sector and the further illegally recognized the officials listed therein as the legitimate representatives of the said employees.

iii. That the decisions to change the name of the applicant was in breach of the applicant's

constitution because it was not sanctioned by the applicants National Executive Council and the union which allegedly merged with the applicants to form the 1<sup>st</sup> interested party was not itself a registered trade union.

iv. That the applicants intends to appeal against the said decision out of time and has therefore filed this application to seek the leave of this honorable court.

3. The application was further supported by the affidavit of one George Odago who described himself as the National Treasurer of the applicant. He deponed in the main that:

i. That this court on the 17<sup>th</sup> February, 2004 confirmed that indeed the applicant was the legitimate representative of all employees in the private security sector.

ii. That upon registration, the respondent has issued several extracts from its register confirming the status of the applicant as a registered trade union and further issuing the list and positions of the various official of the respondent.

iii. That however on the 31<sup>st</sup> May, 2011, the respondent for the first time issued on extract indicating that the applicant had changed its name to Kenya National Private Security Workers Union and also issued a list of completely new set of officials.

iv. That upon inquiry, the applicants were informed that the applicant had on the 20<sup>th</sup> July, 2007 merged with a unregistered union known as Union of Diplomatic International Private and Allied Security Officers under the supervision of the 2<sup>nd</sup> Interested party and changed its name to Kenya National Private Security Workers Union.

v. That immediately, upon being informed of the said development, the applicant through its National Chairman Johnson Oyomno, lodged a complaint with the respondent by way of the letters dated 20<sup>th</sup> August, 2007, in which they informed the respondent that the purported change was illegal because it had not been sanctioned by the applicants NEC.

vi. That in response to the said letter, the respondent wrote to the officials of the 1<sup>st</sup> interested party informing them that he had cancelled the notice of change of name and the parties reverted back to status quo ante.

vii. That thereafter there have been several suits challenging the legitimacy of the officials of the 1<sup>st</sup> interested party being:

a. Judicial Review Number 369 of 2011 (also JR No 4 of 2013)

b. HCCC Number 210 of 2007

c. Industrial Cause Number 1227 of 2014

viii. That it is instructive to note that none of the said proceedings have effectively and finally dealt with the issue on how the applicant's name was changed and the subsequent deregistration of the applicant.

ix. That thereafter the respondent continued operating as Union until the 31<sup>st</sup> May, 2011 when the respondent again issued another extract effectively reversing its earlier decision and reinstating the 1<sup>st</sup> interested party as the duly registered trade union.

x. That it is the applicant's case that the purported change of name which effectively deregistered it was illegal and that the operations of the 1<sup>st</sup> interested party is illegal and should be declared as

such as the applicant is the only legitimate union which should represent the interest of workers in the private security sector.

4. In the written submissions in support of the application, the applicant submitted that they had endeavoured to show that the respondent's decisions were illegally made since by then no court had decided that the 1<sup>st</sup> interested party was the union representing workers in the protective security industry. The applicant further submitted that the application before the court was brought under section 30 of the Labour Relations Act.

5. According to the applicant, whereas section 12(5) of the Employment Act and Labour Relations Court Act were silent on the time within which an appeal should be presented, the provisions of section 30 of the Labour Relations Act direct that such an appeal may be filed within thirty days of the decision being made. Further, the plain reading of section 30 of the Act gives leeway to the court since the word 'may' instead of "shall" has been used in the section.

6. Whereas the application sought to have been ex-parte, the respondent and the interested parties made submissions in opposition to the application. The submissions by the 1<sup>st</sup> and 2<sup>nd</sup> interested party seemed to have focused mainly on the merit or otherwise on the intended appeal. The sum total of the submissions were that the applicant was abusing the court process since there were earlier decisions of the court touching on the same matter and involving the same parties.

7. An application for extension of time to do any act out of time prescribed must be authorized by the enabling statute. Where the statute permits such extension, the decision on whether to grant or refuse the extension is a matter of discretion of the court to be exercised based on the merit of each application. Paramount in application of such nature is credible and excusable explanation by the applicant why the action was not taken within the time prescribed by the statute.

8. Section 30 of the Labour Relations Act as conceded by the applicant prescribes that appeals from the decisions of the Registrar be made within 30 days of the decision. The section makes no provision concerning extension of time. The use of the word "may" in the section refers to the election to appeal or not by the aggrieved party and not the time set by the section. That is to say, a party aggrieved by the decision of the Registrar has the liberty to appeal or not but such appeal should be filed within thirty days. Any other interpretation would render meaningless the time set by section 30. Assuming the court had power to extend the period as observed earlier in this ruling, such extension has to be granted on merit.

9. I have taken time to consider carefully the present application, the grounds upon which it was brought and the affidavit in support and did not find sufficient and excusable reason why it took the applicant, as the 1<sup>st</sup> interested party reckons, forty seven months to lodge an appeal against the Registrar's decision. The applicant seemed to have been more preoccupied with the merit of the intended appeal forgetting to sufficiently explain to the court why they did not file the appeal on time.

10. Where a party seeks a discretionary power of a court such party must do so diligently since such power is equitable and equity aids the vigilant not the indolent. The application is therefore found to be inordinately late and the court declines to exercise its discretion in favour of the applicant with the consequence that the application is hereby dismissed with costs.

11. It is so ordered.

**Dated at Nairobi this 17<sup>th</sup> day of February, 2017**

**Abuodha J. N.**

**Judge**

**Delivered this 17<sup>th</sup> day of February, 2017**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**