



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.7 OF 2017

KENYA ELECTRICAL TRADES & ALLIED WORKERS

UNION (KETAWU) MT. KENYA EAST BRANCH.....CLAIMANT

VERSUS

THE GENERAL SECRETARY KENYA ELECTRICAL

TRADES & ALLIED WORKERS UNION (KETAWU).....1ST RESPONDENT

AND

KENGEN LIMITED.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 25th May, 2017)

RULING

The application is filed for the 1st respondent on 08.05.2017 through Onyony & Company Advocates. The application by the notice of motion dated 08.05.2017 is under Articles 50 and 75 (1) (a) of the Constitution of Kenya 2010, section 3(1) and 12 of the Employment and Labour Relations Court Act, Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2016, and all enabling provisions of the law. The application is supported with the affidavit of Ernest Nadome filed on 08.05.2017 and prayed for orders:

- a) That this honourable court be pleased to certify the instant application as extremely urgent and heard ex-parte in the first instance and service of the same upon the defendant be dispensed with.
- b) That the honourable Justice Byram Ongaya recuses himself from hearing the claim and or any matter in this cause.
- c) That the file be referred to the Principal Judge of the Employment and Labour Relations Court for reallocation to another court in any station.
- d) That costs of this application be in the cause.
- e) That, any other and further orders of this honourable court do issue as it may deem necessary and expedient in the interest of justice.

The applicant's case is that the applicant has challenged the authority and capacity of one David Mogire

Nyabuti to hold office or to institute legal proceedings on behalf of the claimant. While the suit was pending before the court, by the letter dated 10.03.2017, the Deputy Registrar of the court at Nyeri wrote to the said David Mogire Nyabuti inviting him to attend a workshop of the Court. The invitation letter stated that the said David Mogire Nyabuti was being invited as an important stakeholder of the court to attend a sensitization workshop for the Central and Eastern Region on the new procedural rules of the court and the court's service charter.

It is submitted and urged for the applicant that the said invitation amounted to recognition and validation of David Mogire Nyabuti's status as an official of the trade union at the Mt. Kenya Branch and further predisposes the officers of the court to the real likelihood of bias in favour of the said David Mogire Nyabuti. It was submitted that such bias would defeat the applicant's right to a fair hearing as conferred under Article 50 of the Constitution.

The claimant opposed the application by filing on 12.05.2017 the replying affidavit of the said David Mogire Nyabuti. The said David admits that he received the invitation from the Deputy Registrar and did not attend the sensitisation workshop as invited. It is further stated that the Deputy Registrar was not aware that he was one of the litigants in the case and there was no likelihood of bias in his favour.

The court has considered the submissions made for the parties and the material on record and makes findings as follows:

a) There is no reason to doubt that the invitation made to the said David Mogire Nyabuti was made administratively by the Deputy Registrar for purposes of a sensitisation workshop on the rules of the court and the service charter. The invitation is obviously made to stakeholders as litigants or representatives of litigants. The court returns that such interaction between the court and the litigants or its stakeholders towards ethical, efficient and effective judicial service delivery is not inconsistent with Article 50 on due process and independence of the judiciary unless the applicant establishes the particulars of contravention of the tests of the Article in any one particular case. In the present application it has not been shown that the Deputy Registrar of the court set out to confer the said David Mogire Nyabuti recognition of a status that was in dispute in the present case. Nowhere is it stated in the letter that the said David Mogire Nyabuti was being invited to the workshop because he was an official of the union at the branch level and the submission that the invitation conferred to him a status in dispute in the suit will collapse.

b) The court has considered the submission that by reason of the invitation, the court would be perceived as biased. First, the presiding judge is not mentioned as involved in the invitation. The judge is clearly clothed and insulated from activities that may take place at the court registry or by court officials. To visit the presiding judge with disablement to hear and determine a suit or case on account of activities of court officials or registry staff or other judicial officers would be most unreasonable and not objective as it would unreasonably ground the wheels of justice towards ethical, effective, and efficient judicial service delivery. Indeed, actions in the administrative wing of the judiciary are amenable to judicial review and it cannot be said that a judge or all judicial officers would be incompetent to hear and determine such disputes where one of the parties is a staff or agency of the judiciary or organs associated with the judiciary. For an application of disablement of a judge to succeed, the applicant must show the clear extent of disabling involvement of the judge which would justify the judge to be disqualified to entertain, hear and determine the case that may be at hand. In the present case, the court returns that the extent of such disabling particulars has not been established and the application will fail as there is no established reason disqualifying the judge from entertaining, hearing and determining the present suit.

While making this ruling, the court has carefully considered the emergent and positive development in our judicial service delivery whereby litigants and other stakeholders are consulted or participate towards better service delivery such as through court users' committees and events, open days, exhibitions and other activities. Such positive initiatives should not be allowed to be taken of unfair advantage by litigants through unfounded allegations of bias which is not established or demonstrated against the judiciary. In the opinion of the court, entertaining such unfounded allegations would amount to discouraging the

emergent and positive or proper involvement of the people towards an ethical, effective and efficient judicial service delivery. Further, the court returns that the allegations of conflict of interest as submitted for the applicant were absolutely remote as there were no established private interests of the Deputy Registrar in issuing the invitation letter in issue and which then conflicted the public interest – the court has looked for but has not found a private interest that conflicted a public interest in the circumstances of the present case.

In conclusion, the application dated 08.05.2017 and filed on the same date is hereby dismissed with costs and parties are now invited to take directions on the next steps in the suit.

Signed, dated and delivered in court at Nyeri this Thursday, 25th May, 2017.

BYRAM ONGAYA

JUDGE