



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.52 OF 2016

**KENYA UNION OF SUPERMARKETS AND ALLIED
WORKERS.....CLAIMANT**

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.....INTERESTED
PARTY**

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

RULING

The court delivered a ruling in the suit on 09.12.2016 by striking out the suit as per the preliminary objection filed on 18.11.2016. The suit was struck out on account that the claimant did not exist and therefore could not file the suit as the claimant had not been registered as a trade union and was therefore not a person in law capable of suing as envisaged in section 21 of the Labour Relations Act, 2007. Further, the court found that the suit was incompetent because it was not an appeal as envisaged under section 30 of the Act as read with paragraph 8(1) (3) and (4) of the Employment and Labour Relations Court (Procedure) Rules.

The claimant filed a notice of motion on 01.03.2017 praying for setting aside the ruling delivered on 09.12.2016; for leave to appeal against the decision of the registrar of trade unions dated 11.03.2016 out of the limitation period; and for the court to grant the applicants leave to file the memorandum of appeal against the registrar's decision with the names of the promoters. The application was made under section 3 and 3A of the Civil Procedure Act, Cap.21.

The interested party filed on 26.04.2017 a notice of preliminary objection praying that the notice of motion of 01.03.2017 be struck out with costs upon the following grounds:

- a. That the application is inconsistent with the provisions of section 21 of the Labour Relations Act, 2007 in that the purported applicant has no right to sue and to be sued.
- b. That the honourable court is *functus officio* having made a ruling striking out the suit on 06.11.2016.

c. That there is no suit pending in the honourable court upon which the current application can be anchored on.

d. That the application is contemptuous of the honourable court's ruling delivered on 06.12.2016.

The court has considered the submissions filed for the parties on the preliminary objection filed on 26.04.2017 and on the application dated 01.03.2017.

By the ruling delivered on 17.11.2016, the court found that the claimant and therefore the applicant in the application dated 01.03.2017 was not a person in law and could therefore not sue or be sued. As submitted for the respondent, nothing has changed and the applicant does not exist as a person in law and the preliminary objection must succeed on that ground alone.

Accordingly, the court returns that the application dated 01.03.2017 is liable to dismissal and the preliminary objection dated 25.04.2017 is upheld.

Orders will issue accordingly.

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

BYRAM ONGAYA

JUDGE