



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**APPEAL NO. 11 OF 2014**

- 1. JOPHINUS MUSUNDI**
- 2. SAMMY B. CHERESEK**
- 3. LAWRENCE N. KINYUA**
- 4. ARPHAXAD KEMBOI**
- 5. LILIAN O. OSUANGA**
- 6. LYDIA N. NGARI**
- 7. JOSEPH K. WADEREVA.....APPELLANTS**

**VERSUS**

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

**AND**

**THE KENYA NATIONAL UNION OF NURSES.....INTERESTED PARTY**

Appellants in person

M/s Kinyua for respondent

M/s Ashubwe for interested party

**JUDGMENT**

1. The appellant filed an appeal on 10<sup>th</sup> October 2016, seeking the following orders:
  - a. An order quashing the “extract” dated 10<sup>th</sup> September 2014 issued by the Registrar of Trade Unions.
  - b. An order of this Honourable Court citing the Registrar of Trade Unions and all those named in the extract dated 10<sup>th</sup> September 2014 for court contempt.

c. An order that the costs of this appeal be borne by the respondent and the interested party on the extract dated 10<sup>th</sup> September 2014.

d. Any other or further and better relief that this Honourable Court may deem fit to be granted.

2. The respondent filed a replying affidavit sworn by Elizabeth N. Gicheha on 9<sup>th</sup> February 2015 in response to the appeal.

### **Facts of the Case**

3. The appeal arises from the decision by the respondent to effect changes in the register of trade unions, pursuant to an application made by the interested parties. The disputed changes were proposed after election conducted by the interested parties' National Governing Council (NGC) during a meeting held on 29<sup>th</sup> August 2014. The respondent considered this application and duly effected changes in the officials of the interested party which were thereafter registered on 10<sup>th</sup> September, 2014.

4. Aggrieved by the respondent's decision, the appellants applied to the court via a notice of motion application dated 11<sup>th</sup> December, 2014 to have this decision set aside. In their application, the appellants allege that the elections were conducted in breach of the union's constitution and the relevant provisions of the Labour Relations Act. They also allege that the said elections were conducted in breach of a court order dated 28<sup>th</sup> August 2014 issued by this Honourable Court.

5. The respondent states that she duly considered the application by the interested parties to effect the changes in the names of the interested party's officials and that the same was accompanied by all the requisite documents. The respondent therefore submits that she acted in accordance to the law.

6. The issues for determination are as follows;

a. Whether the respondent breached any law in registering the extract dated 10<sup>th</sup> September 2014.

b. Whether the respondent is in contempt of the order of the court dated 28<sup>th</sup> August 2014.

c. Whether costs to follow the outcome.

### **Issue a, b and c**

7. It is not in dispute that the interested party filed a notice of change (Form Q) with the respondent pursuant to appointment of new officials made in a National Governing Council meeting held on the 29<sup>th</sup> August 2014.

8. The respondent registered the change on 10<sup>th</sup> September 2014.

9. At the time, the respondent registered the change, there is no evidence before court that the respondent had been served or was aware of the order of the court made on 28<sup>th</sup> of August 2014 stopping the meeting of 29<sup>th</sup> August 2014 directed to the interested party.

10. The respondent was not a party in Cause No. 1447 of 2014 and no order was issued directed to the respondent.

11. The removal of the appellants from the register is a matter for determination in Cause No. 1447 of 2014 against the interested party to whom the order of the court was directed.

12. The respondent performed his duties pursuant to Section 35 of the Labour Relations Act, which reads;

**“35 (2) notice of any change of officials or of the title of any officials shall be submitted to the Registrar in Form Q set out in the second schedule, within fourteen days after the change together with prescribed fee and the Registrar shall register the change, subject to subsection (4) and subsection (5)”**

13. In the present case, the interested party presented the notice of change of officials in Form Q. The Registrar was satisfied as to the validity of the appointment and the propriety of the proposed correction and was not at the time aware of any dispute.

14. The court is satisfied that the respondent acted in accordance with the law and did not act in excess of the enabling provisions or in contempt of a court order that had been lawfully served on her or come to her knowledge.

15. The appeal lacks merit and is dismissed.

16. Costs to follow the outcome.

**Dated and Delivered at Nairobi this 19<sup>th</sup> day of May 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**