



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**  
**CAUSE NO.1512 OF 2016**

**KENYA AVIATION WORKERS UNION .....APPLICANT**

**VERSUS**

**TRADE WINDS AVIATION SERVICE ..... RESPONDENT**

**RULING**

1. The ruling herein is with regard to Notice of Preliminary Objections filed by the respondent, Trade Winds Aviation Services Limited on 21<sup>st</sup> March, 2017 and dated 20<sup>th</sup> March, 2017.

2. The objections are that;

*The Registrar of Trade Unions having formerly gazetted the deregistration of the Claimant [applicant] and the Court of Appeal in the Ruling delivered on 3<sup>rd</sup> February, 2017 having not set aside the order de-gazetting the deregistration of the claimant and or directed reinstatement of the Applicant there is no legally subsisting entity known as Kenya Aviation Workers Union capable of instituting the application herein.*

*That for the reasons set out in one (1) above the court has no jurisdiction to entertain the claimant's application as the Applicant is not a legal entity and I is tantamount to the court sitting on its own appeal.*

3. Both parties filed written submission on the objections made by the Respondent and also made oral submissions in court.

4. The Respondent submits that the Applicant has made application dated 14<sup>th</sup> March, 2017 seeking for orders that the ruling of the court delivered on 27<sup>th</sup> January, 2017 be reviewed, set aside and or vacated in the interests of justice; that the applicant's ELRC Cause No.1512 of 2016 consolidated with Cause No.8, 577, 1224 of 2016 be heard on priority basis; that in the alternative the suits be set down for hearing on priority basis; and that the costs of the application be provided for.

5. The application is supported by the affidavit of Moss K Ndiema.

6. In reply the Respondent filed the objections herein.

7. The Respondent submits that the Registrar of Trade Unions gazetted the order deregistering the Applicant prior to the ruling of the Court of Appeal and it is the basis of this deregistration that this court dismissed the suit and the other suits that were consolidated with it. Gazettement is a legal process and the order issued by the Appellate Court 'staying the execution of the judgement of the Employment and

Labour Relations Court delivered on 2<sup>nd</sup> December, 2016 in JR No.1 of 2014 pending the hearing and determination of the intended application’.

8. At the time the Appellate Court made the order, the Registrar of Trade Union had already effected the order issued in Judicial Review No.1 of 2014 and as such the order of the Appellate Court has been overtaken by events. The Appellate Court order does not reverse the gazettelement of the deregistration of the Applicant and the only way to address the same is to go back to the Appellate Court to seek variation of the order.

9. The Respondent also submits that the Applicant is not a legal entity at the time of filing this application and the court is *factus officio* and must down its tools until the Court of Appeal directs otherwise.

10. In reply the Applicant submits that all issues set out by the Respondent in the notice of objections were canvassed before the Appellate Court in **Kenya Aviation Workers Union versus Registrar of Trade Unions & Aviation & Airport Services Workers union, Civil Application No.274 of 2016** and where the court stayed execution of the judgement and further held that the degazettelement of the Applicant is merely a process of execution which is not final until and unless the applicant’s doubted right of appeal has been exhausted. The Applicant was thus found to have satisfied the twin principles in an application for stay of execution pending appeal and its motion of 12<sup>th</sup> December, 2016 was allowed with an order for stay of execution of judgement pending the hearing and determination of the appeal.

11. The Applicant submits that there is a legal entity and capacity to file application herein by the applicant. The degazettelement as raised in the objections filed was reversed and quashed. In **Co-operative Bank Limited versus BIFU, Civil Application No. 93 of 2014** a stay of execution against the judgement was granted and the Appellate Court ordered that the court that had earlier ordered reinstatement of an employee even though like in the instant case the employer had in compliance of the court decree reinstated the employee and sent him on compulsory leave. The Court of Appeal has powers to reverse any order already executed upon granting stay of any order as was done in the cited case.

12. The order of stay of execution is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a judgement. The delay of performance presupposes the existence of a situation to stay the positive order as held in **Mugenyi & Co Advocates versus National Insurance Corporation (Civil Appeal No.13 of 1984), Uganda Court of Appeal**.

13. The Supreme Court in **Petition Application No.3 of 2017 – Aviation and Airport Services Workers Union versus Registrar of Trade Union, Kenya Aviation Workers Union** held that the Applicant and second Respondent to continue carrying out their respective services as trade union and which include receiving dues from the employers of their members pending hearing and determination of the Notice of Motion dated 23<sup>rd</sup> February, 2017.

14. In the interests of justice and taking into account the wider public interest the attention that this matter has generated, the objections filed should be dismissed.

15. It is common cause that there is judgement delivered on 2<sup>nd</sup> December, 2016 in JR No.1 of 2013.

16. It is also agreed that on 27<sup>th</sup> January, 2017 the court delivered ruling herein with regard to objections filed by the Respondent on the *locus standi* of the Applicant following judgement of 2<sup>nd</sup> December, 2016 and that the Registrar of Trade Unions Should be directed to deregister the Kenya Aviation Workers Union.

17. The applicant, Kenya Aviation Workers Union filed application before the Court of Appeal with regard to the judgement in JR No.1 of 2013 which judgement ordered for the deregistration of the Applicant union.

18. The Court of Appeal on 3<sup>rd</sup> February, 2017 delivered ruling directing that there be stay of execution

of the judgement in JR No.1 of 2013 pending the hearing and determination of the intended appeal.

19. In my humble view, with that order of the Court of Appeal, further activity in this cause, application and consolidated causes and applications herein in **ELRC Cause No.1512 of 2016 consolidated with Cause No.8, 577, 1224 of 2016** would go contrary to the Court of Appeal order and negate the essence of the same.

20. The stay of execution of judgement granted before the Court of Appeal should in essence take the parties back to matters standing as of 2<sup>nd</sup> December, 2016. Such is to enable the Applicant, to ventilate their case before the Court of Appeal.

21. The application by the Applicant dated 14<sup>th</sup> March, 2017 seeking a review of the ruling of the court on 27<sup>th</sup> January, 2017 also go with the orders of the Court of Appeal on 3<sup>rd</sup> February, 2017 which allowed the stay of execution of judgement in JR. No. 1 of 2013 the genesis of the application and objections made by the Respondent and filed on 7<sup>th</sup> December, 2016.

22. To move with any application and make any orders after the Court of Appeal has allowed the Applicant a Stay of execution of judgement in JR. No.1 of 2013 in its ruling of 3<sup>rd</sup> February, 2017 would be to ignore material facts in this cause. The Applicant has to be allowed to ventilate their case before the Court of Appeal. The Applicant cannot therefore also file application as they have herein seeking for a review and variation of the orders or 27<sup>th</sup> January, 2017 as when the Court of Appeal ordered for a Stay of execution of judgement in JR No.1 of 2013, all matters following in execution of the judgement fell under the same orders.

23. The Applicant shall move the proceedings before the Court of Appeal as directed by that court before taking any further action herein. Where the intended Appeal is addressed in accordance with the Rules of the Court of Appeal parties can move this court as appropriate. To move a step further in proceedings herein would only mar the matters further and conflate issues in disregard of the orders issued by the Court of Appeal on 3<sup>rd</sup> February, 2017. Once the Court of Appeal deals with the intended appeal or the matters now stated to be before the Supreme Court are concluded, the parties herein shall be at liberty to abide as directed.

**Accordingly, objections by the Respondent are declined at this instance save that that parties shall abide the Court of Appeal Ruling of 3<sup>rd</sup> February, 2017 where judgement herein in JR.1 of 2013 in terms of execution, is stayed.**

Delivered in open court at Nairobi this 29<sup>th</sup> day of June, 2017.

**M. MBARU**

**JUDGE**

In the presence of:

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