



**Atik v Registrar of Trade Unions & 4 others (Cause 2107 of 2016)
[2017] KEELRC 779 (KLR) (25 August 2017) (Ruling)**

Philemon Otieno Atik v Registrar of Trade Unions & 4 others [2017] eKLR

Neutral citation: [2017] KEELRC 779 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

CAUSE 2107 OF 2016

MN NDUMA, J

AUGUST 25, 2017

BETWEEN

PHILEMON OTIENO ATIK CLAIMANT

AND

REGISTRAR OF TRADE UNIONS 1ST RESPONDENT

LABOUR COMMISSIONER 2ND RESPONDENT

JUDICIAL SERVICE COMMISSION 3RD RESPONDENT

ELIJAH OTIENO AWACH 4TH RESPONDENT

LAW SOCIETY OF KENYA 5TH RESPONDENT

RULING

1. The notice of motion dated 12th October 2016 seeks the following orders:
2. That the Honourable court be pleased to vacate and/or set aside the extract issued by the Registrar of trade union showing the individuals named in the extract dated 26th September 2016, as the officials of National union of Water and Sewerage employment pending the hearing and determination of this suit.
3. That the Honourable court be pleased to reinstate the status quo as per ruling and order of Hon. Justice Hellen Wasilwa dated 18th September 2012 pending the hearing and determination of this application.
4. That the Honourable court be pleased to issue an injunction stopping the 4th respondent together with all other persons named in the extract dated 26th September 2016, their servants, employees, agents and for any other persons acting on that instruction from representing themselves as officials of the National Union of Water and Sewerage employees and from carrying out any duty or function



whatsoever for or on behalf of the union in the capacity of being official pending the hearing and determination of this suit.

5. That the Honourable court be pleased to interpret the following court rulings and orders being:
 - a) Cause No. 513(N) 2009 Order of Hon. Justice Isaac E. K. Mukunga dated, 16th June 2010.
 - b) IC Application No. 114 of 2010, ruling and order of Judge J. N. Khaminwa dated 9th June 2010.
 - c) Cause No. 513(N) of 2009 ruling and order dated 18th September 2012 by Hon. Justice Hellen Wasilwa.
 - d) Cause No. 755 of 2013 ruling and order dated 14th June 2013 by Hon. D. K. N. Marete.
 - e) In the Court of Appeal at Nairobi Civil Application No. Nai 243 of 2012 (UR.174/2012) order of the court. By appellant Judges Coram Kihara Kariuki (PCA) Ouko & M'inoti, J.J.A. dated 2nd February 2015.
 - f) Cause No. 513(N) of 2009 by Hon. Justice Mathews Nderi Nduma dated 17th April 2015.
6. That the Honourable court be pleased to institute contempt proceedings against 1st respondent and he be held in contempt of court and liable to imprisonment for a period not exceeding six months.
7. That the Honourable court be pleased to compel the 1st respondent to call for fresh election being a repeat for National Union of Water and Sewerage Employees dated 17th September 2016 and the notice to be issued by General Secretary dated 17th September 2016 and the notice to be issued by the General Secretary Mary Ndunge Mutuku as the rightful general secretary of the union.
8. In the certificate, the claimant/applicant prayed that this matter be heard by any other Judge except Hon. Justice Nderi Nduma and Hon. Justice Abuodha.
9. The issue of recusal was however not pursued.
10. The court has considered the application and the replying affidavits of Elija Otieno Ouoch, the 4th respondent and the submissions filed by parties and has come to the inescapable conclusion that all the issues set out for determination were fully canvassed in the application dated 12th November 2015 and filed on 13th November 2015 in respect of which this court delivered a ruling on 10th June 2016.
11. In the Ruling, the court determined that all the issues before court which were raised in Cause No. 513N of 2009 were determined by consent order dated 30th April 2013.
12. In the said Ruling the court observed and dismissed the application filed on 13th November 2015, that the same was frivolous, vexatious and an abuse of the court process.
13. This is yet another attempt by the applicant to raise the same issues in respect of which the court found that it was *functus officio* the matter being *resjudicata*.
14. The applicant sought to circumvent the finding of the court, by certifying that this application be heard by another Judge of the court, instead of filing an appeal to the Court of Appeal.
15. The court finds yet again, this to be a blatant attempt by the applicant to abuse the court process.
16. No new issues worth of consideration have been raised in this matter and the same is *resjudicata* therefore.
17. The application is therefore dismissed with costs to be borne by the claimant/applicant.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF AUGUST 2017.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE

