



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL NO 1 'A' OF 2012

HON. JUSTUS ALOO OGEKA

OUMA JUMA

SEBASTIAN NGORWE

RICHARD ONGORO

MARK AMIMO

MONICA KENDI

NANCY JERUTO

(as Interim Officials of Kenya National Union of Cooperatives Staff).....APPELLANTS

VS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.....1ST INTERESTED PARTY

BANKING INSURANCE AND FINANCE UNION (K).....2ND INTERESTED PARTY

RULING

1. By the Judgment of this Court delivered on 22nd January 2016, I allowed the Appellants' appeal against the decision of the Registrar of Trade Unions refusing registration of **Kenya National Union of Cooperatives Staff**.
2. Being dissatisfied with my decision, the **1st Interested Party** filed a Notice of Appeal in this Court on 25th January 2016. The following day on 26th January 2016, the 2nd Interested Party filed an application under certificate of urgency seeking stay of the Judgment.
3. Coincidentally I was the Duty Judge when the application came up for *ex parte* hearing on 27th January 2016 and I granted interim orders. As it turned out by this time, the Registrar had already issued a certificate of registration as directed by this Court in its Judgment of 22nd January 2016. The Registrar

therefore issued a letter suspending the activities of the newly registered union pending further orders.

4. The application, which is supported by the affidavit of the 2nd Interested Party's Secretary General, **Benson M. Kavuvi** is based on the following grounds:

- a. That on 22nd January 2016, this Court delivered judgment in favour of the Appellants and ordered the registration of their union pursuant to the provisions of the Labour Relations Act, 2007;
- b. That the 1st Interested Party is aggrieved by the judgment and decree of the Court and has preferred an appeal to the Court of Appeal;
- c. That the 1st Interested Party represents the whole or a substantial proportion of the interests upon which the Appellants seek registration;
- d. That the 1st Interested Party's appeal has overwhelming chances of success and unless as stay of execution is ordered, it shall suffer substantial loss and damage;
- e. That the Appellants will not suffer substantial loss if the orders sought are granted.

5. In the supporting affidavit sworn by Benson M. Kavuvi, he depones that the intended appeal raises substantial points of law meriting consideration by the Court of Appeal. The Respondent and the 2nd Interested Party did not oppose the application.

6. In a replying affidavit sworn by Hon. Justus Aloo Ogeka for the Appellants it is deponed that on 25th January 2016, the Registrar of Trade Unions registered the Kenya National Union of Cooperatives Staff by entering it into the Register of Trade Unions and issuing Certificate of Registration No. TU/175 to the Deponent in his capacity as Secretary General of the Union.

7. Ogeka states that the orders sought to be stayed had been fully implemented when the 1st Interested Party moved the Court on 27th January 2016. He adds that this Court is now *functus officio* since its final orders have been fully complied with and the Court therefore lacks jurisdiction to grant the orders sought.

8. Order 42 Rule 6(2) of the Civil Procedure Rules sets out the following conditions for granting of an order for stay of execution:

- a. That the applicant has shown that they will suffer substantial loss if the order sought is not granted;
- b. That the application has been made without unreasonable delay;
- c. That the applicant has given adequate security for the due performance of such order as may be binding on them.

9. The application before the Court was filed on 26th January 2016, soon after delivery of the Judgment of this Court on 22nd January 2016 and Counsel for the 1st Interested Party told the Court that his client is willing to abide by any orders for security as may be directed by the Court. A draft Memorandum of Appeal attached to the application raises arguable points as defined by the Court of Appeal in **Syner-Med Pharmaceuticals Ltd v Glaxo Group Limited [2010] eKLR**, meaning that the intended appeal is not frivolous.

10. The more fundamental question is whether there is anything to stay since the Registrar of Trade Unions has already complied with the orders of this Court by registering the Trade Union. It was submitted on behalf of the Appellants that this Court is *functus officio* since its orders have been fully implemented.

11. The 1st Interested Party appears to have anticipated the unfolding of events since it has in its

application, an alternative prayer seeking suspension of the certificate of registration. I do not think I have the power to suspend the certificate. I however have power to order that the *status quo* be maintained pending further orders by the Court of Appeal.

12. For the avoidance of doubt, the *status quo* is as directed by the Registrar of Trade Unions in her letter dated 28th January 2016 that the activities of the Kenya National Union of Cooperatives Staff are suspended until further orders of the Court.

13. The costs of this application will be costs in the appeal.

14. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF FEBRUARY 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Miyare for Appellants

Mr. Nyabena for the 1st Interested Party