



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**MISCELLANEOUS CIVIL APPLICATION NO 81 OF 2016**

**REPUBLIC.....APPLICANT**

**VERSUS**

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

**EX PARTE**

**CHARLES OGUTU**

**STANELY KIPTOO MOOTIAN KOVA**

**ABRAHAM KOVA**

**RULING**

1. By a Notice of Motion dated 11<sup>th</sup> July 2016 and filed in Court on even date the *Ex Parte* Applicants seek the following orders:

a) An order of certiorari to remove to this Court for the purpose of being quashed the decision contained in the Respondent's letter dated 31<sup>st</sup> May 2016 wherein the Respondent informed the Applicants that she would not proceed to allow the Applicants to register a trade union known as Kenya Union of Cane and Allied Workers;

b) An order of mandamus directing the Respondent to register a trade union known as Kenya Union of Cane and Allied Workers.

2. The application which is supported by the affidavit of Charles Ogutu is based on the following grounds:

a) That the Respondent has rejected an application by the Applicants for registration of a trade union which decision is unfounded and *ultra vires*;

b) That the decision of the Respondent to reject the Applicants' application is misguided and based on extraneous reasons unknown in law;

c) That the Respondent's action has resulted in the Applicants together with other employees of Transmara Sugar Company Limited numbering in excess of 500 to be without legal protection of a

trade union as enshrined in Article 41(1) and 2(c) of the Constitution and Section 4(1)(a),(b) and (c) of the Labour Relations Act;

d) That the situation stated above is not conducive to the existence of good labour relations within Transmara Sugar Company Limited and the sugar sector at large.

3. In a replying affidavit sworn by the Registrar of Trade Unions, Elizabeth Gicheha on 1<sup>st</sup> August 2016, it is deponed that the Applicants lodged an application for a certificate of recruitment on 25<sup>th</sup> April 2016.

4. By letter dated 28<sup>th</sup> April 2016, the Respondent sought to know the envisaged scope of representation by the proposed union. On 31<sup>st</sup> May 2016, the Respondent wrote to the Applicants notifying them that their application had been declined on the ground that the intended scope of representation was already covered by the Kenya Union of Sugar Plantations and Allied Workers.

5. The Registrar further depones that under Section 14 of the Labour Relations Act, she is barred from registering a trade union where there already exists another trade union representing the interests of the employees intended for recruitment by the proposed union.

6. Gicheha adds that according to the Constitution of Kenya Union of Sugar Plantations and Allied Workers, membership is drawn from all employees engaged in the sugar sector or allied industries. Arising from this, the registered union represents all employees in the sugar sector regardless of specific sugar companies.

7. Gicheha takes the view that enjoyment of freedom of association as enshrined in the Constitution of Kenya under the Bill of Rights is limited to the extent that the enjoyment shall not be prejudicial to other parties' rights.

8. She acknowledges that Section 12 of the Labour Relations Act gives the conditions under which a certificate of recruitment may be granted being; that the name of the proposed trade union is not the same or sufficiently similar to an existing one or that the application is not defective. However, this provision should be read together with other provisions, not in isolation.

9. According to the Registrar, the intention of the Legislature in enacting the Labour Relations Act is that a proposed trade union would engage in recruitment only in those sectors not covered by an existing union. It would therefore be legally wrong to issue a certificate of recruitment leading to registration of a trade union where another union already exists.

10. It would also be legally wrong to issue a certificate to employees of every sugar company as this would lead to a proliferation of trade unions in the same sector.

11. At the beginning of the hearing of this application, the Court inquired from Counsel for the Applicants why he had chosen to approach the Court by way of judicial review rather than filing a substantive appeal as provided under Section 30 of the Labour Relations Act. Counsel informed the Court that on 1<sup>st</sup> July 2016, he sought and obtained leave from **Nduma J.**

12. I have however looked at the prayers sought by the Applicants in this application and find that they are final in nature and cannot be granted pursuant to a Notice of Motion. In my view these prayers cannot be considered without making inquiry into the substantive question as to whether the sector which the proposed union is intended to represent is already covered by the Kenya Union of Sugar Plantations and Allied Workers or any other union. More importantly, the existing unions have the right to make representations on this question.

13. For this reason alone, I decline to allow the Applicant's application and direct them to file a substantive appeal for consideration in the normal manner. For the avoidance of doubt, I rule that the issues raised by the Applicants remain live and are indefeasible by the principle of *res judicata*. I further

rule that since the Applicants are already before the Court, limitation of time is non-issue.

14. Each party will bear their own costs.

15. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER 2016**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Wabuyabo for the Applicants

Mr. Kioko for the Respondent