



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

PETITION NO. 27 OF 2013

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE INDUSTRIAL COURT AC

AND

IN THE MATTER OF THE LABOUR RELATIONS ACT

AND

IN THE MATTER OF UNIONISABLE EMPLOYEES OF KENYA AIRWAYS

AND

IN THE MATTEER OF GAZETTE NOTICE NO. 6135 DATED 2ND NOVEMBER 2012

BETWEEN

THE UNIONISABLE EMPLOYEES OF KENYA AIRWAYS

Being represented by STANLEY KIBET,

SULEIMAN AZIZ, ANGELA NJENGA..... PETITIONERS

VERSUS

AVIATION AND AIRPORT SERVICES

WORKERS UNION (K) RESPONDENT

AND

KENYA AVIATION WORKERS UNION 1ST INTERESTED PARTY

KENYA AIRWAYS LIMITED 2ND INTERESTED PARTY

RULING

1. This court made a ruling on 15th August 2016, setting aside orders made *ex parte* by Maureen J. on 5th December 2014 which orders had the effect of terminating the suit by an interested party *ex parte* in the absence of the *dominus litis*, the petitioner and the respondent.
2. The court directed that the petition be concluded on a priority basis.
3. The applicant/interested party has sought to appeal the ruling and brought this application for stay of the proceedings herein pending the intended appeal.
4. This is a clear attempt to have the applicant delay the hearing of the petition in which it is only an interested party and a beneficiary of an order which the court has found to have been totally unmerited and obtained through what the court considers fraudulent non-disclosure of material facts to Maureen Onyango J.
5. The court does not consider that the applicant/interested party has an arguable appeal in this matter for the simple fact that a 3rd party cannot be granted leave *ex parte* to ride on a suit filed by others and in the same vain obtain *ex parte* orders which removes the *dominus litis* from the seat of justice. This is what happened in this case.
6. He who comes to equity must have clean hands. The court refuses to exercise its discretion in favour of the applicant/interested party.
7. The application lacks merit and is dismissed with costs. The parties to obtain directions on the finalization of the petition on the date of this ruling.

Dated and delivered at Nairobi this 25th day of November 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE