



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 52 OF 2016**

**KENYA UNION OF SUPERMARKETS AND ALLIED WORKERS..... CLAIMANT**

**VERSUS**

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

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.....INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Friday 9<sup>th</sup> December, 2016)

**RULING**

The named and purported claimant filed the statement of claim on 17.03.2016 purportedly in person. The statement was signed by Stephen Bundi Mbijiwe as Interim Secretary General. It was prayed that the named claimant be registered as a trade union per the Constitution of Kenya and the Labour Relations Act, 2007; and for costs of the suit.

The claimant's case was that the respondent's refusal to register the claimant as a trade union was against Article 41(2) (a) (b) and (c) of the Constitution and sections 4(1) (a) (b) and (c) , and, 12 (3) (a) and (b) of the Labour Relations Act, 2007.

The interested party filed the application by a notice of motion on 18.11.2016 through Nyabena Nyakundi & Company Advocates. The application invoked section 3A of the Civil Procedure Act, Cap.21; section 18(a) of the Employment and Labour Relations Court Act; section 8(1) (3) and (4) of the Employment and Labour Relations Court (Procedure) Rules; and all other enabling provisions of law. The interested party prayed for orders that:

- a. All pleadings and documents filed herein by the claimant and in particular the claimant's memorandum dated 16.03.2016 be struck out.
- b. In the result, the claimant's memorandum dated 16.03.2016 and filed in court on 17.03.2016 be struck out.
- c. The costs of the application be awarded to the interested party against the claimant.

The interested party's case was that the claimant filed a memorandum of claim instead of an appeal as envisaged in paragraph 8(1) (3) and (4) of the Employment and Labour Relations Court (Procedure) Rules as read with section 30 of the Labour Relations Act, 2007 which states that any person aggrieved by a decision of the Registrar made under the Act may appeal to the Employment and Labour Relations Court against such decision within 30 days of the decision. The registrar having declined to issue a provisional certificate under section 12 of that part of the Act, the interested party's case was that the proper action was to appeal per the rules and per the provisions of the said section 30 of the Act. The court agrees with that submission and the registrar's decision being conveyed by the letter dated 11.03.2016, as of now, the time for filing the appeal has obviously lapsed.

The interested party's further case per the preliminary objection filed on 18.11.2016 is that the claimant does not exist and therefore could not file the suit. Under section 30 of the Labour Relations Act, it is the

person who is aggrieved by a decision of the Registrar made under the Act who may appeal to the Employment and Labour Relations Court against such decision within 30 days of the decision. As submitted, the court finds that under section 21 of the Labour Relations Act, 2007, it is upon the registration that a trade union becomes a body corporate with perpetual succession and common seal with capacity to sue, be sued and enter into contracts. The named claimant was not so registered and therefore it is not a person in law and the court returns that there is no proper claimant in the present suit.

In view of the court's findings and as per the prayers in the notice of preliminary objection and the application, the court returns that the memorandum of claim is liable to being struck out. As the claimant does not exist, there will be no orders on costs.

In conclusion, the preliminary objection and the application are hereby determined and the memorandum of claim is hereby struck out with no orders on costs.

**Signed, dated and delivered in court at Nyeri this Friday, 9th December, 2016.**

**BYRAM ONGAYA**

**JUDGE**