



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 1372 OF 2013**  
**KENYA SHOE & LEATHER WORKERS UNION .....CLAIMANT**  
**VERSUS**  
**CROWN INDUSTRIES LIMITED.....RESPONDENT**

Mr. Mituga for the Respondent/Applicant

Mr. Julius Maina for Claimant/Respondent

**RULING**

Application dated 24<sup>th</sup> August, 2014 seeks for a stay of execution of the Court Orders and Ruling of Hon. Marete J. delivered on 4<sup>th</sup> March, 2014 pending the hearing and determination of the Intended Appeal.

That in the alternative, the court do review and/or set aside the Orders of 4<sup>th</sup> March 2014, except as it relates to dismissing the Claimant's application dated 11<sup>th</sup> September, 2013 and give a hearing date for the Claimant's application dated 26<sup>th</sup> August, 2013.

The Application is based on the following grounds set out on the face of the Application;

- i. That the court, has, through a *bona fide* mistake in its Ruling and Orders of 4<sup>th</sup> March, 2014, given the Claimant rights of a recognized trade union on the basis of an application that is pending for hearing.
- ii. That on the basis of the court order of 4<sup>th</sup> March, 2014, the Claimant Union has sought involvement in the latter's industrial relations activities which is threatening to disrupt the production activities.
- iii. That unless further proceedings in this matter and the Court Orders of 4<sup>th</sup> March, 2014 are stayed, the Claimant Union will insist on the rights of a recognized union which will cause irreparable harm to the Respondent.

iv. That the grant of the Claimant's Application before it is heard is in breach of its right to be accorded a fair hearing.

The Application is further buttressed by Supporting Affidavit of Chetan Shangrajka, the Managing Director of the Respondent company.

He deposes that on 31<sup>st</sup> July, 2013, Claimant filed Cause No. 1205 of 2013 against the Respondent in which it sought *inter alia*, Recognition Under Section 54 of the Labour Relations Act.

Respondent filed its Response contesting the quest for recognition on the grounds that the Claimant was not the relevant union.

Before the cause could be heard and determined, the Claimant filed this matter (Cause No. 1372 of 2013) on 27<sup>th</sup> August, 2013 simultaneously with an Application dated 26<sup>th</sup> August, 2013 pursuant to which the court in its ruling on 27<sup>th</sup> August, 2013, ordered a consolidation of the two matters.

That whilst the Claimant's Application dated 26<sup>th</sup> August, 2013 was still pending, it filed an application for contempt dated 11<sup>th</sup> September, 2013 against the Respondent's Director and the Respondent filed an application dated 12<sup>th</sup> September, 2013 seeking to set aside the *ex parte* orders given on 27<sup>th</sup> August, 2013 and issued on 28<sup>th</sup> August, 2013.

The contempt application and the Respondent's setting aside application were heard simultaneously and in the Court Ruling of 4<sup>th</sup> March, 2014, Hon. Marete J. dismissed the Claimant's Application and allowed the prayers of the Claimant's other application dated 26<sup>th</sup> August, 2013, that had not been heard *inter partes* and was therefore not before the Honourable Judge for determination.

The Applicant believes this was a *bona fide* error on the part of the Judge, which error led to a gross miscarriage of justice in that the substantive cause for recognition was determined without hearing the Respondent.

That the Respondent has noted an Appeal against the Ruling of 4<sup>th</sup> March, 2014 and in the alternative implore the court to set aside its ruling and allocate a hearing date in the recognition dispute.

In its Replying Affidavit sworn by Mr. Julius Ndombi Maina, the General Secretary of the union on 31<sup>st</sup> March, 2014, the Claimant/Respondent denies that the court made any mistake as alleged or at all in its ruling of 4<sup>th</sup> March, 2014.

However, the Claimant does not make any averments regarding failure by the court to hear the substantive application for recognition before issuing the orders directed to the Respondent to grant the union recognition.

The Applicant on 24<sup>th</sup> March, 2014 abandoned prayer 4 seeking for the review and/or setting aside of the Ruling of the Court delivered on 4<sup>th</sup> March, 2014 and sought to pursue stay of execution pending the hearing and determination of the pending Appeal.

The court is satisfied that the Applicant has an arguable Appeal and the same would be rendered nugatory if an order for stay of execution pending Appeal is not granted.

The Application dated 24<sup>th</sup> March, 2014 is granted accordingly pending the hearing and determination of the Appeal.

**Dated and Delivered at Nairobi this 13<sup>th</sup> day of February, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**