



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CIVIL APPEAL NUMBER 5 OF 2014

BETWEEN

- 1. NICKSON KUNYU MBURA**
- 2. JOHN FESTUS NYALE**
- 3. LEONARD LUVAI LUMADEDE**
- 4. JESSIE WASHO MWATSUMA**
- 5. MWANAIDI ISSIA MBELA**
- 6. FERNADES ATSENGA**
- 7. JOYCE CHESANG' APPELLANTS**

VERSUS

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

AMALGAMATED UNION OF KENYA METAL

WORKERS UNION INTERESTED PARTY

Rika J

Court Assistant: Benjamin Kombe

Mr. Leonard Luvai Lumadede for the Appellants

Ms. Kiti Litigation Counsel instructed by the Attorney-General for the Respondent

Mr. Makale, Industrial Relations Officer, for the Interested Party

JUDGMENT

[Rule 27(b) of the Industrial Court (Procedure) Rules 2010]

1. The Appellants are Promoters of Kenya Basic Metal Workers Union. They applied for a Certificate from the Respondent on 21st February 2014, under Section 12(1) of the Labour Relations Act 2007. This Certificate, under Section 12(4) (a), is issued by the Registrar of Trade Unions to Promoters of a Trade Union, to enable them undertake lawful activities, in order to establish a Trade Union or Employers' Organisation.
2. The Registrar of Trade Unions wrote to the Appellants on 6th March 2014, advising the Promoters that there already exists another Union, the Amalgamated Union of Kenya Metal Workers, which also caters for Workers sought to be represented by the Appellants' proposed Trade Union.
3. The Appellants were directed by the Respondent to explain how the proposed Trade Union would differ from the Amalgamated Union.
4. The Appellants answered the Respondent in a letter dated 20th March 2014.
5. The Respondent wrote to the Appellants on 24th March 2014, advising that the area sought to be represented by the Appellants' Trade Union, was already sufficiently represented by two other Trade Unions including the Interested Party.
6. The Registrar declined registration under Section 14(1) of the Labour Relations Act 2007, explaining the request for registration would lead to duplication of representation, fragmentation and proliferation of Trade Unions
7. This prompted the Appellants to lodge this Appeal on 24th April 2014. They seek the following Orders:-
 - (a) The Court finds the Appellants complied with Section 12 of the Labour Relations Act.
 - (b) The (Respondent) unconstitutionally and unlawfully refused to issue the Appellants with a Certificate to establish the proposed Trade Union.
 - (c) The Honourable Court to quash the Respondent's refusal to issue the Certificate for establishing the proposed Trade Union.
 - (d) The Honourable Court to order the Respondent to process the Application for Registration of Kenya Basic Metal Workers Union.
 - (e) Costs be paid by the Respondent.

8. The Appeal was heard in the presence of all the Parties, on 11th December 2014. They basically submitted on Section 14 of the Labour Relations Act on registration of Trade Unions. The Interested Party also took up Section 30 of the Labour Relations Act, arguing that the Appeal is defective, as it was filed outside the 30 days stipulated under Section 30.

The Court Finds:

9. The Appeal was filed within time. The Appellants explained, in the Affidavit of the 3rd Appellant Leonard Luvai Lumadede sworn on 4th July 2014 in reply to the Interested Party's Memorandum of Interest, that they only received the Respondent's decision of 24th March 2014, on 6th April 2014. This was not disputed by the Respondent. Besides, even without this explanation, the Court is satisfied that 30 days, counting from 24th March 2014, would lapse after 24th April 2014 when the Appeal was lodged, considering the Easter Holiday. The Interested Party's objection under Section 30 of the Labour Relations Act has no merit and is rejected.

10. The Appellants had **not** sought to be registered as a Trade Union on 21st February 2014. They only asked for a Certificate under Section 12(1) of the Labour Relations Act. This is not the same as the

Certificate of Registration issued pursuant to Section 19(1) (a) of the Labour Relations Act 2007.

11. The Certificate issued under Section 12(1), is subject to different considerations from that made under Section 19(1) (a).

12. Section 12(2) requires the application for a Certificate under Section 12(1), to be:-

- a) Signed by 2 persons who are promoting the establishment of the Trade Union or Employers' Organisation;
- b) Specify the name of the proposed Trade Union or Employers' Organisation; and,
- c) Contain any other prescribed information.

13. Section 12(3) states that the Registrar shall issue a Certificate within 30 days of receiving an application unless -

- a) The application is defective; or
- b) The name of the proposed Trade Union or Employers' Organisation is the same as that of an existing Trade Union or Employers' Organisation or is sufficiently similar so as to mislead or cause confusion.

14. There is no other consideration on the part of the Registrar of Trade unions in issue of certificate under Section 12(1), beyond these considerations contained in Section 12(3).

15. Application for registration of the Trade Union is made to the Registrar, within 6 months of the Promoters receiving the Certificate under Section 12. It is only in considering the application for registration, that the Registrar can advise the Promoters under Section 14(1) of the Act, that registration cannot be granted because of the reasons outlined under Section 14(1). These include the existence of other Trade Unions sufficiently representative of the area sought to be represented by the proposed Trade Union.

16. The Registrar of Trade Unions cannot import the requirements for registering a Trade Union under Section 14(1) into Section 12, which is on the establishment of a Trade Union or Employers' Organisation.

17. The Certificate issued under Section 12(1) aims at ensuring Promoters undertake lawful activities and do not for instance go into recruitment of Employees, for purposes of establishing a Trade Union, in a vacuum. Whether, upon establishing the Trade Union or Employers' Organisation they should become a registered Trade Union later, on satisfying the demands of the law on registration, is answered after the application for registration is made pursuant to Section 14(1).

18. The Appellants correctly feel the Registrar prejudiced them by applying the legal standards for registration, to their application for establishment of their Trade Union. The result was that they were denied the benefit of engaging in lawful activities such as would strengthen their pursuit of registration.

19. The decision of the Registrar dated 24th March 2014 did not say the Appellant's application of 21st February 2014 was defective. The name of the proposed Trade Union was not stated in the Registrar's decision to be the same to that of an existing Trade union, or sufficiently similar as to mislead or cause confusion. These are the areas the Registrar is confined to under Section 12(3) of the Labour Relations Act, in considering if the Certificate under Section 12(1) should issue. Section 14(1) could only be considered upon receipt of an application for registration.

20. As a matter of house-keeping, it has come to the attention of the Court that this Appeal was registered as Number 1 of 2014 by error. There is already another Appeal Number 1 of 2014 registered at the

Industrial Court. In consultation with the Registry, the Court orders that the present Appeal shall be recorded as Appeal Number 5 of 2014. Parties are directed to rectify their records accordingly. The mix-up is regretted.

21. In sum, the Court ORDERS:-

(a) The Appeal filed by the Appellants is allowed in the following terms -

(i) The Registrar of Trade Unions, the Respondent herein shall forthwith, issue the Appellants with a Certificate under Section 12(1) of the Labour Relations Act.

(ii) The Appellants shall apply to the Registrar for registration within 6 months of receiving such Certificate.

(iii) The Registrar shall consider the application for registration in accordance with the Law once such application is made.

(iv) This Appeal shall be recorded as Appeal Number 5 of 2014, instead of Appeal Number 1 of 2014.

(v) The Court Registry and Parties are directed to rectify their records accordingly.

(vi) No order on the costs.

Dated and delivered at Mombasa this 6th day of March 2015.

James Rika

Judge