



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

APPEAL NO 1 OF 2007

NICKY NJUGUNA

STEPHEN M KYALO

STEPHEN M KARANI

PAUL GICHURU MARUA APPELLANTS

VERSUS

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

CENTRAL ORGANIZATION OF TRADE UNIONS (KENYA)..INTERESTED PARTY

RULING

1. The applicants filed application dated 28th July 2014 through Notice of Motion brought under the provisions of Article 24, 41, 165(5)(h) and 162(2)(a) of the constitution, section 12(2) of the Industrial Court Act and section 12 of the Labour Relations Act and seeking for orders that;

The Registrar of Trade Unions (respondent) be ordered to issue the applicants with a certificate to promote establishment of the KENYA POLICE UNION in accordance to section 12 of the Labour Relations Act No. 14 of 2007

That failure of the Respondent to issue the applicants with the said Certificate, the registrar of the Industrial Court do issue the applicants with the same

2. The application is supported by the affidavit of Nicky Njuguna and on the grounds that the applicants applied under certificate of urgency for a certificate to promote the establishment of the Kenya Police Union at the Trade Unions Registry according to section 12 of the Labour Relations Act on 15th October 2013. The Respondent has refused and or neglected to issue the certificate or show because why the same cannot be issued despite numerous reminders and demands. There will be great prejudice if the application is not allowed as the applicants will continue being denied their constitutional right in Article 41 and unless the Court intervenes, the Respondent will not issue a certificate under section 12 of the Labour Relations Act.

3. In the affidavit of Nicky Njuguna, he avers that as one of the applicants herein, he made an application to the Respondent for the issue of a certificate to promote the establishment of the Kenya

Police Union according to section 12 of the Labour Relations Act on 15th October 2013 but this was not granted. A reminder was done on 15th January 2014 to show cause why the application was not granted hence the current application to court. This matter has come up in Court for mention on how to enforce the Ruling and Order made on 14th June 2013 against the Respondent on 5th May 2014 and the Court directed to the applicants to enforce the said ruling and Order by making an application for such enforcement before the relevant forum. The application herein is made in pursuance to these directions which the Court has the powers to grant.

4. The deponent also avers that the registration of the Kenya police Union has been sought for the last 13 years, it is an issue of national importance and will benefit all members of the Kenya Police Service for them to enjoy their constitutional right to form and participate in the activities of Trade Unions as enshrined in articles 24 and 41 of the Constitution.

5. The Respondent filed their Grounds of Opposition to the application noting that the application is bad in law since the powers under section 12 of the Labour Relations Act are exercised administratively by the Respondent and any challenge can only be by way of Judicial Review order of mandamus. The applicants are seeking to substitute the role of the Respondent by looking at the merits of their application under section 12 of the Labour Relations Act and the Court cannot grant the orders sought as the duty to issue the sought certificate is upon the respondent. the ruling of the Court on 14th June 2013 is subject of Nairobi Civil Appeal No 251 of 2014 before the Court of Appeal and the law is yet to be amended to allow for the members of the National Police Service to join and participate in the activities of a Trade Union hence the certificate sought by the applicants cannot issue. Parliament is not a party herein and not under the control and direction of the respondent. The registration of the Union sought is contrary to the law as it is still prohibited by **section 47(3) (g) of the National Police Service Act** which section has not been declared unconstitutional.

6. In submissions, the applicants stated that the Court has made orders declaring the law that that barred the applicants to form a Union was unconstitutional and a stay was granted for 4 months to have the various actors to enforce/implement the decision. The Respondent on their part refused to issue a certificate under section 12 of the Labour Relations Act. All relevant government arms were served but when parliament was amending the national Police Service Act, also failed to amend the relevant section according to the Court orders. The subject of amendment is section 47(3)(g) as there was an error in noting the same to be section 47(3)(e).

7. In submissions, the Respondent stated that section 47(3) (g) of the National Police Service Act is still in force and not part of the sections the appellant challenged. The error made in citing section 47(3)(e) went into the judgement and there is no application to correct the error and certificate sought under section 12 of the Labour Relations Act cannot thus issue as the law against such a formation is still valid. Such refusal of registration by the Respondent is administrative and should be addressed by way of judicial review and not as herein.

8. The essence of section 12 of the Labour Relations Act is clear. The law sets out the steps an applicant seeking for registration of the Trade Union must follow and or adhere to. In that regard the Registrar of Trade Unions is mandated in law to take such administrative steps as necessary in addressing each application lodged in that office and within 30 days issue a certificate as appropriate or give a notice of rejection. Where a notice of rejection is issued, an aggrieved applicant

28 (5) A Trade union, employers' organisation or federation may appeal against a decision of the Registrar to the National Labour Court.

9. The National Labour Court here defined as;

“National Labour Court” means the National Labour Court established under the Labour Institutions Act;

10. Being the Court envisaged under the Labour Institutions Act as the Industrial Court now the

Employment and Labour Relations Court under Article 162 of the Constitution, This is the Court to address any appeals against any decisions of the Registrar of Trade Unions in the exercise of the administrative role of registration of Trade Unions or rejection thereto. Such an appeal under the Rules of the Court lies before this Court as the Appellants did on 5th March 2007 when they filed their Memorandum of Appeal against the Respondent herein. The submission by the Respondent that this should have been by way of Judicial Review seeking for orders of *mandamus* is not the case as any aggrieved party by any decision of the Registrar of Trade Unions in the exercise of the administrative roles given under the Labour Relations Act, is an appeal before this court as held by this court in **Appeal No. 7 of 2011, Kenya Export, Floriculture, Horticulture & Allied Workers union (KEFHAU) represented by its promoters versus The Registrar of Trade Unions & Kenya Plantation and Agricultural Workers Union.**

11. The procedure here is quite different from decisions made administratively by other government agencies that require judicial review as the actors under Article 41 of the Constitution are fundamentally different from other parties seeking to enforce other fundamental rights and freedoms under the Constitution. The setting of such separate and different procedures by the social partners in labour relations in Kenya is deliberate as under such difference, parties are able to enjoy disputes resolution expeditiously based on the Court objectives under section 3 of the Industrial Court Act being;

3. (1) the principal objective of this Act is to enable the Court to facilitate efficient, effective, just and expeditious resolution of disputes governed by this Act

12. By the Appellants moving the Court thus on 5th March 2007 with their Memorandum of Appeal, that effectively challenged the decision or lack of a decision of the Registrar of Trade Union in the exercise of the powers granted under section 12 of the Labour Relations Act. The ruling of the Court on 14th June 2014 was with regard to the refusal by the respondent/Registrar of Trade Unions to register the Kenya Police Union. to now move the Court as herein through application dated 28th July 2014 seeking the issuance of a certificate to promote the proposed Union of Kenya Police is to revisit the appeal already lodged, which appeal is already on record. The refusal to register, refusal to issue a certificate of registration or promotion cannot be dealt piecemeal in different applications and litigation outlined the appeal already filed. To do so would be to defeat the essence of the Memorandum of Appeal on record herein.

13. Equally where the Court has already addressed itself on the issues in the appeal, the enforcement of the Court orders in a matter where the Registrar of Trade Unions has refused or ignored to comply is not as applied herein. Execution of Court orders is regulated in law. Such a procedure is not as applied herein. Even where there is an appeal against the Court orders issued on 14th June 2014 and there is no stay of proceedings or execution before this Court or at the Court of Appeal, to move the Court as the Appellants have done in their application herein is to lose the principle of enforcing the ruling and the Court orders.

4. The upshot of it is the application by the Appellants must fail. There is no basis or merit in the orders sought under the provisions of section 12 of the Labour Relations Act the same having been addressed in the Memorandum of Appeal dated 5th March 2007.

Application dated 28th July 2014 is hereby dismissed. Each party shall bear their own costs.

Delivered in open Court , dated and signed in Nairobi on this 10th day of June 2015.

M. MBARU

JUDGE

In the presence of

Lilian Njenga: Court Assistant

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