



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**APPEAL NO 1'A' OF 2012**

**JUSTUS ALOO OGEKA & 6 OTHERS (AS INTERIM OFFICIALS OF KENYA NATIONAL UNION OF COOPERATIVE AFF).....APPELLANTS**

**VS**

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

**RULING**

1. On 5th July 2011, the Appellants lodged an application with the Registrar of Trade Unions seeking registration of a proposed union by the name *Kenya National Union of Cooperative Staff*. The Registrar subsequently published a notice vide Gazette Notice No 1566 of 2012, notifying select Trade Unions of the application for registration of the proposed Union. The Kenya Union of Commercial Food and Allied Workers submitted its objections to the registration of the proposed Union on 24th February 2012, to which the Appellants responded on 12th March 2012.
2. On 27th November 2012, the Registrar of Trade Unions wrote to the Appellants notifying them that the National Labour Board had declined registration of the proposed Union. The Appellants subsequently filed an appeal on 20th December 2012 challenging the decision of the National Labour Board. The appeal remains pending before this Court.
3. In the meantime, the Registrar of Trade Unions issued a notice on 6th September 2013 vide Gazette Notice No 12746 of 2013 notifying all Trade Unions, Federations of Trade Unions and Employers Organisations or Federations of an application for registration by another union by the name of *Union of Savings and Credit Cooperative Societies Workers*. The Kenya Union of Commercial Food and Allied Workers (KUCFAW) which had objected to the registration of the *Kenya National Union of Cooperative Staff* was among the unions required to respond to the application by the *Union of Savings and Credit Cooperative Societies Workers*. KUCFAW together with the Banking Insurance and Finance Union submitted their respective objections to the registration of the new Union.
4. According to the Appellants, the cooperative sector, which is intended for representation by the *Union of Savings and Credit Cooperative Societies Workers* is the same one intended for representation by the *Kenya National Union of Cooperative Staff* whose registration is the subject of an appeal pending before this Court.
5. The Appellants further contend that registration of the *Union of Savings and Credit Cooperative Societies Workers* would amount to discrimination against them since they had applied for registration first. Further, if the Appellant's appeal for registration was to succeed after registration of the *Union of Savings and Credit Cooperative Societies Workers*, industrial chaos would result as the two unions would effectively be seeking to represent the same sector.

6. It is for this reason that the Appellants came to Court on 3rd October 2013 under certificate of urgency seeking orders that all proceedings commenced by the Registrar of Trade Unions vide Gazette Notice No 12746 of 6th September 2013 towards registration of the *Union of Savings and Credit Cooperative Societies Workers* be stayed pending determination of the Appellants' appeal.

7. Upon hearing Mr. Miyare, Counsel for the Appellants (*ex parte*) I granted a temporary stay order and directed service upon the Registrar of Trade Unions. When the application came up for *inter partes* hearing on 19th December 2013, there was neither a reply nor appearance for the Registrar of Trade Unions, in spite of due service. I therefore proceeded to hear Counsel for the Appellants in the absence of the Registrar.

8. What is sought by the Appellants at this stage is an order for stay of proceedings towards registration of the *Union of Savings and Credit Cooperative Societies Workers* pending determination of their appeal against the decision of the National Labour Board declining registration of the *Kenya National Union of Cooperative Staff*.

9. The conditions on which the Court may grant an order for stay pending appeal were restated in the case of ***Reliance Bank Limited Vs Noriake Investments Limited [2002] 1EA 227 (CAK) Case No. 937 of 2002*** as follows:

**a) That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal.**

**b) That if an order for stay or injunction as the case may be, is not granted, the appeal or the intended appeal, were it to eventually succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.**

10. As held by the Court of Appeal in the case of ***Syner-Med Pharmaceuticals Ltd Vs Glaxo Group Limited [2010] eKLR*** in determining whether an Appellant has an arguable appeal, the Court is not required to determine whether or not the Appellant's case, once fully ventilated, will succeed. What the Court is called upon to do at the interlocutory stage is to determine whether the Appellant raises a *prima facie* case, meriting the Court's time and attention. Applying this standard, I have formed the opinion that the Appellants' appeal raises substantive points of law and fact meriting inquiry by the Court.

11. The Appellants have claimed bad faith on the part of the Registrar of Trade Unions. However, since the Registrar failed to reply to the Appellants' application, the Court did not have the opportunity to hear him on why he chose to initiate the registration process of the *Union of Savings and Credit Cooperative Societies Workers* which would operate in the same sector as the *Kenya National Union of Cooperative Staff* whose registration had been declined on the basis of objections by the Kenya Union of Commercial Food and Allied Workers. Instructively, KUCFAW has objected to the registration of the new Union as well.

13. Overall, I find that it is interest of justice to grant the Appellants' prayer for stay of the registration proceedings on account of the *Union of Savings and Credit Cooperative Societies Workers* pending determination of the Appellants' appeal. I direct the Registrar of Trade Unions to file a reply to the appeal within the next 21 days from the date of this ruling. I further direct that the appeal be served upon the Kenya Union of Commercial Food and Allied Workers and the

Banking Insurance and Finance Union who are required to file their respective replies within 21 days from the date of this ruling.

I make no order for costs.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20TH DAY OF JANUARY 2014**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....*Appellants*

.....*Respondent*