



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 4 OF 2013

KENYA GUARDS AND ALLIED WORKERS UNION CLAIMANT

VERSUS

THE REGISTRAR OF TRADE UNIONS RESPONDENT

AND

KENYA NATIONAL PRIVATE SECURITY

WORKERS UNION 1ST INTERESTED PARTY

SAMSON WANJARA MATETE..... 2ND INTERESTED PARTY

ISAAC WILLIAT MACHONGO 3RD INTERESTED PARTY

RULING

1. The Application for consideration is dated 10th October 2011 and was filed on 11th October 2011.

2. The Notice of Motion seeks the following order;

(a) The Honourable Court be pleased to settle the terms of its orders (Hon. Lady Justice R. Nambuye, given on 21st April 2011).

3. The grounds for the Application are as follows *inter-alia*;

“2 The said orders and directions have been confused by the parties leading to improper extraction of the Court orders.

3 compliance with the orders of the honourable Court has been frustrated since the ruling was delivered as parties do not understand the boundaries of the orders.

5 The Respondent is utilizing the confusion to the prejudice of the Applicant Union. The Registrar has failed to restore the Applicant Union to the Register of Trade Unions as ordered.”

4. The matter was transferred to the Industrial Court pursuant to a notice of motion by the 1st Interested party dated 8th August 2013.

The Application to have the 2nd interested party joined to the suit dated 12th July 2013 is opposed by the 1st Interested party vide a notice of opposition dated 13th November 2013 and filed on 14th November 2013.

The main reason being that the Court is *functus officio*.

5. The Court has carefully gone through the record and in particular, has considered the various replying affidavits and the submissions by the Applicant, the Respondent and the Interested parties.

6. The nub of the matter is to give clarity to the Ruling of Hon. R. N. Nambuye J. in Judicial Review No. 369 of 2010 delivered on 21st day of April 2011.

7. I have carefully considered the Ruling of the honourable Judge and I am convinced that it does not at all lack in clarity.

In particular I note the following;

- i. it sets out the history of the dispute in great detail;
 - ii. the Court noted at page 9, paragraph 8 there has been filings of consents and counter consents and applications and counter applications which processes turned file number HCCC No. 210/2007 into a battle field for supremacy of either group;
 - iii. that despite the ruling of the Judge of 18/9/2007 in HCCC 210/2007, she was called upon to interpret the same ruling which led to the interpretation ruling of 24/9/2010;
 - iv. this is yet another attempt to have a different Court interpret the ruling of Nambuye J. in a matter that has been the subject of several rulings;
 - v. The Court reiterated its rulings of 18/9/2009 and 24/9/2010 to the effect that the proceedings in HCCC No. 210/2007 became spent on 24/3/2007, when the elections which was the sole relief sought from the Court were held;
 - vi. that notwithstanding, on 26th July 2007, events took place independently of the proceedings in 210/2007. The events changed the name of Kenya Guards and Allied Workers Union (the Applicant herein) to Kenya National Private Security Union. (The 1st Interested party). The new entity was registered by the Respondent herein;
 - vii. the subsequent consent in 210/2007 that purported to revert back from Kenya National Private Security Workers Union to the Kenya Guards and Allied Workers Union was mischievously done as was stated in the ruling of 18th September 2009. This turned dead proceedings into a battle field.
8. The most material finding for the purpose of this Application is found on page 18 paragraph 10 of the ruling of Nambuye J. as follows:

“10 The effect of this Court’s ruling of 18/9/2009, and as reiterated by the ruling of 24/9/2010 is that the parties were taken to their position as at 26/7/2007 when the name changed from Kenya Guards and Allied Workers Union to Kenya National Private Security Workers Union which change took place outside the proceedings in HCCC 210/2007.”

This is as clear as daylight and this further attempt to seek this Court to give more clarity to this finding is a further abuse of the process of this Court.

9. From this finding, the lawfully registered Union is and remains **Kenya National Private Security Workers Union**, the 1st Interested party herein. This change which was in place as at 26/7/2007 happened outside the proceedings in HCCC 210/2007 and therefore the question of contempt of Court by the Respondent as alleged by the Applicant does not arise at all.

This is exactly what the Court meant in paragraph 21 at page 19 as follows:

“The position in number 10 above, means that there should be no benefits to be enjoyed by either party in so far as those benefits are to be drawn from transactions which took place in HCCC 210/2007 after 24/3/2007.”

The Hon. Nambuye J. could not have put it in more clearer language than that.

This analysis informed order 3 on page 19 to the effect;

“by reason of what has been stated in number 1 and 2 above, the parties herein namely Kenya Guards and Allied Workers Union on the one hand and Kenya National Private Security Workers Union are restored back to the position they were as at 26/7/2007.”

10. Accordingly, the Union in place is the Kenya National Private Security Workers Union (Interested party) and not the Applicant Kenya Guards and Allied Workers Union.

11. Hon. Nambuye J. did not stop there but noted;

“it is clear that parties have abused the due process of the Court under the guise of pursuing legal rights. This conduct calls for a stern warning that any of the said two parties who will purport to litigate on issues arising from the proceedings emanating in HCCC 210/2007 after 24/3/2007 will be doing nothing but treating the Court to which the said proceedings will be directed with contempt.”

12. The Court reiterates the sentiment by the Hon. Judge and declares this Application and similar others intended to re-open this matter further as vexatious litigation which should no longer be entertained by the Industrial Court or any other court.

13. The Application is therefore dismissed with costs as the same was unwarranted in the first place.

Parties are again warned to desist from re-opening this matter or else they risk punitive measures for contempt of Court.

Dated and Delivered at Nairobi this 25th day of April, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE