



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
APPEAL NO 1 'A' OF 2012

HON. JUSTUS ALOO AGEKA

OUMA JUMA

SEBASTIAN NGORWE

RICHARD ONGORO

MARK AMIMO

MONICA KENDI

NANCY JERUTO

(as Interim Officials of Kenya National Union of Cooperatives Staff).....APPELLANTS

VS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS...1ST INTERESTED PARTY

BANKING INSURANCE AND FINANCE UNION (K).....2ND INTERESTED PARTY

RULING

Introduction

1. On 20th January 2014, I granted the Appellants' application for stay of the registration proceedings on account of the Union of Savings and Credit Cooperative Societies Workers pending determination of the Appellants' appeal against the decision of the National Labour Board as communicated by the Registrar of Trade Unions, declining the Appellants' application for registration.

2. In my ruling, I directed that the 1st and 2nd Interested Parties be served with the Appellants' appeal and

the 1st and 2nd Interested Parties were thereby required to file their respective responses to the Appellants' appeal within 21 days from the date of the ruling.

The 2nd Interested Party's Application

3. The 2nd Interested Party subsequently filed an application dated 18th February 2014 seeking the following information from the Appellants:

- a. Further details of the 7 interim officials, 28 officials and 58 members of the proposed trade union;
- b. The names, postal, physical and e-mail addresses as well as the nature of occupation of the Appellants' employers;
- c. The pay roll numbers and names in employment of the Appellants;
- d. Copy of certificate from the Registrar of Trade Unions authorising establishment of a trade union under Section 12 of the Labour Relations Act;
- e. Copy of Form A, being an application for registration of a trade union under Section 18 of the Labour Relations Act.

4. The 2nd Interested Party's application is based on the following grounds:

- a. That the information sought will allow determination that the interim officials and members belong to the occupations which the proposed union intends to cover;
- b. That the information sought is necessary to enable the 2nd Interested Party to adequately respond to the appeal;
- c. That the memorandum and record of appeal as filed lacks the details sought.

5. In the submissions filed on behalf of the 2nd Interested Party on 31st March 2014, it is submitted that under Article 41(2)(c) of the Constitution, 2010 the capacity to form, join or participate in the activities of a trade union is bestowed on workers only and it is therefore necessary to inquire into the Appellants' status in this regard.

6. Further, under Section 14(1)(g) of the Labour Relations Act, the decision to register a trade union must be made at a meeting attended by at least 50 members qualified to join a trade union in the specific sector. Additionally, Section 31 of the Act requires that save for the General Secretary, officials of a trade union must be engaged or employed in the sector for which the trade union is registered.

The Appellants' Reply

7. In a replying affidavit sworn by Hon. Justus Aloo Ogeka on 3rd March 2014, it is deponed that the documents and information sought by the 2nd Interested Party were furnished to the Registrar of Trade Unions and the National Labour Board to their satisfaction.

8. Ogeka further depones that the National Labour Board declined the Appellants' application for registration on the ground that the Kenya Union of Commercial Food and Allied Workers was sufficiently representative of the whole or a substantial proportion of the interests in respect of which the Appellants sought registration.

9. It is the Appellants' case that the particulars sought by the 2nd Interested Party are not relevant or necessary for the determination of their appeal. Indeed, the issues raised in the present application ought

to have been raised by the Registrar of Trade Unions or the National Labour Board.

10. Ogeka goes on to depone that upon the Appellants complying with all the requirements of the application for registration, they were directed by the Registrar of Trade Unions to make payment for the application in accordance with the law.

11. The Registrar then published notices in the Kenya Gazette and in the Star Newspaper inviting objections to the registration. In both notices, the 2nd Interested Party was specifically notified but did not make any objections. As a member of the National Labour Board, Counsel for the 2nd Interested Party who is also its General Secretary did not raise any of the issues raised in the present application.

12. In the submissions filed on behalf of the Appellants on 28th March 2014, it is submitted that of all the trade unions notified of the Appellants' application for registration of the proposed trade union, only the 1st Interested Party raised an objection on the ground that it covered employees in the cooperative sector intended to be covered by the proposed union.

13. On 27th November 2012, the Registrar of Trade Unions notified the Appellants that the National Labour Board had declined registration of the proposed union on the ground that there are already trade unions sufficiently representative of the interest in respect of which the registration of the proposed union was sought. The Appellants appealed this decision on 20th December 2012.

14. The Appellants further submit that the documents sought by the application by the 2nd Interested Party were furnished to the Registrar of Trade Unions and the National Labour Board to their satisfaction. The National Labour Board subsequently declined the Appellants' application for registration on the ground that the Kenya Union of Commercial Food and Allied Workers was sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the Appellants sought registration.

15. Significantly, amendment to Rule No 5 of the Constitution of the Kenya Union of Commercial Food and Allied Workers allowing the Union to make forays into the cooperative sector, upon which the Appellants' application for registration was declined, had been quashed by the High Court in ***Miscellaneous Application No. 534 of 2002: Republic Vs Registrar of Trade Unions and Another ex parte Banking Insurance & Finance Union (BIFU) Kenya.***

16. Moreover, the particulars sought by the 2nd Interested Party are not relevant or necessary for determination of the Appellants' appeal and the objective for which they are sought has not been clearly declared.

Determination

17. The issue for determination in this application is whether the 2nd Interested Party has made out a case for the Appellants to be compelled to supply the particulars sought in the application dated 18th February 2014. Granted that Article 35 (1) of the Constitution, 2010 guarantees the right to information, the information sought must be required for the exercise or protection of a right or fundamental freedom.

18. The direction in my ruling dated 20th January 2014, that the 1st and 2nd Respondents be served with the Appellants' appeal was informed by the fact that the two Unions had been specifically notified of the Appellants' application for registration by the Registrar of Trade Unions on the basis of a potential overlap in sector representation.

19. The jurisdiction of the Industrial Court in matters of union registration is appellate in nature. Specifically, Section 30 of the Labour Relations Act provides that any person aggrieved by a decision of the Registrar of Trade Unions may appeal against the decision to this Court within thirty days thereof.

20. In exercising its jurisdiction in this regard, the Court is expected to evaluate the decision taken by the Registrar of Trade Unions. In the instant case, the Appellants' application for registration was declined on the ground that there is a registered trade union, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the Appellants sought registration. That in my view, is what is before the Court by way of an appeal by the Appellants.

21. On the other hand, the particulars sought by the 2nd Interested Party in the current application go to details of inquiry that were either made or ought to have been made before the Registrar of Trade Unions and the National Labour Board. Indeed, nothing in the decision to decline the Appellants' application for registration suggests that the Appellants failed to submit any information required for consideration of their application for registration.

22. There is also no indication that the Appellants failed to comply with any formal requirements for registration. To my mind, the only reason why their application failed was because there exists a registered representative trade union in the sector they seek to represent.

23. I therefore agree with the Appellants that the particulars sought in the application by the 2nd Interested Party are irrelevant to the Appellants' appeal. The application is therefore dismissed with costs to the Appellants. The Respondent as well as the 1st and 2nd Interested Parties are directed to file their respective responses to the Appellants' appeal within the next 14 days from the date of delivery of this ruling.

Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JUNE 2014

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF JUNE 2014

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Miyare for the Appellants

Mr. Kubai for the 2nd Interested Party