



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
JUDICIAL REVIEW NO. 1 OF 2014
(FORMERLY NAIROBI H. C. JUDICIAL REVIEW NO. 439 OF 2013)
AVIATION AND AIRPORT SERVICES
WORKERS UNION (KENYA) CLAIMANT
VERSUS
REGISTRAR OF TRADE UNIONS RESPONDENT
KENYA AVIATION WORKERS UNION ... 1ST INTERESTED PARTY
STEPHEN M. NDERITU
AND 15 OTHERS 2ND INTERESTED PARTY

Mrs Guserwa for the Applicant

Mr. Ojwang for the Respondent

Mr Ochando for the 1st Interested Party

Mr. Oduor for the 2nd Interested Party

RULING

1. The Registrar of Trade Unions registered Kenya Aviation Workers Union the 1st interested party on 20th November 2013 and issued a certificate of registration on 3rd May, 2013.
2. On 16th December 2013, the Applicant, Aviation and Airport Services Workers Union (Kenya), lodged Misc. Application No. 439 of 2013 at the High Court seeking leave to apply for orders of certiorari to bring into the Court the decision of the Registrar of Trade Unions dated 20th November, 2013 registering a new union in the Aviation Industry / Sector by the name of Kenya Aviation Workers Union (KAWU).
3. Leave was granted on 11th December 2013 by Hon. Korir J. and the **JR Application No. 439 of 2013** was filed at the High Court on 19th December 2013.

4. The matter was subsequently transferred to the Industrial Court following the noting of preliminary objection on points of law at the High Court on 11th February, 2014 to the effect that;

- i. the Court lacked jurisdiction to entertain the application in terms of **Labour Relations Act Cap 234** of the **Laws of Kenya** and;
- ii. the application was incompetent, fatally defective, misconceived, bad in law and a nullity and therefore an abuse of the process of the Court.

5. The same points of law have been raised before the Industrial Court on the basis that, the Applicants ought to have noted an appeal against the decision of the Registrar of Trade Unions in terms of **Section 30** of the **Labour Relations Act, 2007** which reads:

“any person aggrieved by a decision of the Registrar under this Act may appeal to the Industrial Court against that decision within thirty days of the decision.”

6. The Court notes that the Applicant approached the High Court within the 30 days period within which it could have lodged the Appeal at the Industrial Court.

7. The Court further notes that a Judicial Review Application is not the appropriate manner of attacking the decision of the Registrar. However following the decision of the Court of Appeal in **Civil Appeal No. 6 of 2012 Prof. Daniel N. Mugendi – Vs – Kenyatta University and 3 others** wherein **Nambuye, Mwera and Kiage, JJA** stated:

“..... and in order to do justice, in the event where the High Court, the Industrial Court or the Environment and Land Court come across a matter that ought to be litigated in any of the other Courts, it should be prudent to have the matter transferred to that Court for hearing and determination. These three Courts with similar / equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time the citizenry is well-acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”

8. To enhance uniformity in Labour Relations, and quick dispensation of justice, the Court while acknowledging the impropriety of using Judicial Review Application in Labour Relations matters, where we have specific provisions in the Labour Relations Act for that purpose, declines the invitation to dismiss the Application all together but instead directs the Applicant to amend its papers before Court to comply with **Section 30** of the **Labour Relations Act** within 14 days from the date of this Ruling. The Respondent and Interested parties are granted corresponding leave from date of service.

The matter to thereafter take its normal course

Dated and Delivered at Nairobi this 11th day of June 2014

MATHEWS N. NDUMA

PRINCIPAL JUDGE