



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 21 OF 2014(AS CONSOLIDATED WITH

PETITION NO. 18 OF 2014.)

(Before D.K.N. Marete)

OKIYA OMTATAH OKOITI.....1ST PETITIONER

NYAKINA WYCLIFFE GISESE2ND PETITIONER

Versus

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF LABOUR.....2ND RESPONDENT

RULING

This court is called upon to interpret its orders of 17th April, 2014 relating to a restraint on the Respondents and their agents or assigns from degazetting the Gazette Notice No. 12355 of 2009 pending hearing and determination of this application. The order was made on Industrial Court Petition No. 18 of 2014 (formerly H.C. Petition No. 166 of 2014).

This issue arose at the proceedings of court on 3rd June, 2014 and therefore this ruling of court. It must be admitted and is also on record that on the said 17th April, 2014, this court made other orders and directions on the subject but these are not contested, or at all.

It is simple. On 17th April, 2014, the court made conservatory orders relating to degazettment of Gazette Notice No. 12355 of 20th November, 2009 installing one, William Kibet Lang'at as the Registrar of Trade Unions pending hearing and determination of this application/petition. No more and no less.

The order was granted as follows;-

- 1. That an interim conservatory order be and is hereby issued against the Respondents, their agents, assigns or any other person claiming through them to restrain them from degazetting the Gazette Notice No. 12355 of 20th November, 2009 pending the hearing and determination of this application.*

The petitioners now submit that this order of court meant and was intended to operate such that the gazetted officer, Mr. Lang'at retains and remains the office of Registrar of Trade Unions pending hearing and determination of this application, petition or suit. I disagree.

This is an application dated 25th April, 2014 and seeks prayers as follows;-

1. **THAT** the interim conservatory order issued by this Honourable Court against the Respondents, their agents, assigns or any person claiming through them to restrain them from degazetting the Gazette Notice No. 12355 of 20th November, 2009 pending the hearing and determination of the Notice of Motion Application dated 8th April, 2014 and issued on the 17th day of April 2004 be discharged: and,
2. **THAT** the costs of and occasioned by this application be provided for.

The court upon hearing the petitioners granted conservatory orders as prayed and this remains the position to date. I associate and agree with counsel for the respondents, Mr. Odhiambo who under extremely difficult circumstances submitted that parties are bound by their pleadings. The court pursued the pleadings and submissions of the petitioners in granting these orders. The petitioners were satisfied and did not ask for anything more. This is it.

This is a matter of enormous public importance. It touches on the practice and implementation of the Constitution of Kenya, 2010 insofar as issues on basic human rights, public administration and governance are concerned. It is a big test on governance and its emerging trends in Kenya now and in the future.

I therefore would not like to be seen as a stumbler to liberties, personal, public or otherwise. The best bet in the circumstance is to leave the matter and scene as open as possible. I therefore order that leave be and is hereby granted to all parties, always to apply.

Delivered, dated and signed the 10th day of June, 2014.

D.K. Njagi Marete

JUDGE

Appearances:

1. Mr. Nyakina, Petitioner in person.
2. Mr. Okiya Omtata, Petitioner in person.
3. Mr. Okwe Achiado for the 3rd Petitioner.
4. Mr. Odhiambo for the Respondents.