



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

KENYA UNION OF COMMERCIAL FOOD

AND ALLIED WORKERS.....1ST INTERESTED PARTY

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

RULING

Introduction

1. On 26th June 2014, I dismissed the 2nd Interested Party's 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.
2. The reason for my decision in that application was that the information sought by the 2nd Interested Party was irrelevant in as far as the Appellants' appeal pending before this Court is concerned. Being dissatisfied with my ruling, the 2nd Interested Party filed a Notice of Appeal on 17th July 2014.

Application for Stay Pending Appeal

3. Further to the Notice of Appeal, the 2nd Interested Party filed a Notice of Motion on 1st October 2014 seeking to stay the hearing and determination of the Appellants' appeal pending before this Court.
4. The application which is supported by the affidavit of Isaiah Kubai is based on the following grounds:
- a. That the Applicant has an arguable appeal;
 - b. That unless the application for stay is granted, the Applicant's appeal in the Court of Appeal will be rendered nugatory;
 - c. That the Applicant stands to suffer irreparable harm with the prospect of having to close its business should the order made on 27th June 2014 be enforced which would result in all its employees being laid off.

The Appellants' Reply

5. In a replying affidavit sworn by Justus Aloo Ogeka on 9th October 2014 it is deponed that the application by the 2nd Interested Party is intended to delay the hearing and determination of the Appellants' appeal pending before this Court.
6. Ogeka further depones that the 2nd Interested Party has not shown any grounds of appeal nor has it demonstrated that its intended appeal in the Court of Appeal will be rendered nugatory if the stay being sought is not granted. According to the Appellants, the 2nd Interested Party will not be prejudiced in any way if the stay is not granted.

Determination

7. The issue for determination in this application is whether the 2nd Interested Party has made out a case for stay of proceedings in the appeal pending before this Court. For good order, I need to restate that what is pending before this Court is an appeal from the decision of the Registrar of Trade Unions to decline the Appellants' application for registration as a trade union. The decision by the Registrar of Trade Unions was based on the ground that the sector in which the Appellants sought registration was well covered by other trade unions.
8. The conditions upon which an application for stay pending appeal may be granted are well settled as follows:

- a) That the appeal or intended appeal is an arguable one not frivolous;
- b) That if an order for stay is not granted, the appeal would be rendered nugatory.

(see ***Reliance Bank Limited Vs Noriake Investments Limited [2002] 1EA 227 (CAK)227 Case No. 937 of 2002***)

9. Under Section 17(2) of the Industrial Court Act, 2011 and Rule 27(4) of the Industrial Court (Procedure) Rules, 2010 appeals from this Court lie to the Court of Appeal only on matters of law. It follows therefore that for an application for stay pending appeal to succeed in this Court the Applicant must demonstrate a clear point of law upon which they seek to proceed to the Court of Appeal.

10. It is not enough for a party to say that they are dissatisfied with a decision of the Court.

11. To this extent I agree with the holding by my brother **Rika J** in ***George Wesonga Ojwang' Vs Kenya National Union of Teachers (KNUT) [2014] eKLR*** that in applications for stay the applicants must demonstrate that there are *recondite* matters of law raised by the intended appeal.

12. The 2nd Interested Party's application does not raise any point of law upon which they intend to appeal and on this ground alone I find the application to be without merit and proceed to dismiss it with costs to the Appellants.

Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2014

LINNET NDOLO

JUDGE

Appearance:

Mr. Miyare for the Appellants

Ms. Guserwa for the 2nd Interested Party