



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 513(N) of 2009

**NATIONAL UNION OF WATER AND SEWERAGE
EMPLOYEES.....CLAIMANT/APPLICANT**

VS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

JAMES MUTHEE NDIRANGU

SIMON MAINA WANJIKU

PAUL KIPROTICH KOECH

ELIJAH OTIENO AWACH.....INTERESTED PARTIES

RULING

The application before court is the one dated 16th July 2012. The application was filed by the applicants herein National Union of Water and Sewerage Employees represented by Michael Owuor and Co, Advocates against the Respondents herein The Registrar of Trade Unions and the Interested Parties, James Muthee Ndirangu, Simon Maina Wanjiku, Paul Kiprotich Koech and Elijah Otieno Awach. The 2nd and fourth Interested Parties are represented by Ochieng Omolo. The application was brought under section 12(3) (I), (viii) and sections 15 of the Industrial Court Act 2011, The Labour Relations Act 2007 and the inherent powers and all other enabling provisions of the law.

The application was at the first instance heard by Rika J on 18th July 2012 who made orders that the Applicants serve upon the Respondents and the Interested Parties with the application forthwith and the Respondents and the said Interested Parties should in turn file their replying affidavits and grounds of opposition within seven (7) days of service. The application was then scheduled to be heard on 2nd August 2012. When the matter came up for the inter parties hearing on 2nd August 2012 before this honourable court, the Respondent represented by Mr. Langat was present in court and he sought for an adjournment in order to file his reply. The adjournment request was granted and the matter set for hearing on the 9th August 2012.

On the 9th of August 2012, when the matter came up for hearing, the Applicants and the 2nd and 4th Interested Parties were present. Mr. Langat for the Respondent was however absent. He had also not filed his reply as ordered on 2nd August 2012. The 1st and the 3rd Interested Parties were also absent. The court proceeded to hear this application the absence of the Respondents and other interested parties

notwithstanding.

The applicant seeks orders before this court staying orders of the court dated 5th July 2012 and an order dated 10th July 2012. The applicant also seeks an injunction to restrain all the interested parties herein from dealing with Nairobi City Water and Sewerage Co and any other Companies from dealing with National Bank of Kenya Ltd, Harambee Avenue, Nairobi A/C No, 0102060636400 Union/Claimant bank account until finalisation of this application. Also sought is an order prohibiting the interested Parties from masquerading as the genuine officials of the Applicant Union. The applicant also seeks costs of this application.

The application is premised upon grounds of opposition which appear on the face of this application. The applicants aver that by a report dated 16th March 2010 from the Registrar of Trade Unions, the Respondent herein, it was reported that the delegates were unanimous that the only way to determine the actual officials of the union was through an election. A report from the District Labour officer Industrial Area Nairobi dated 24th April 2009 and 9th April 2010 affirmed this position. Those fresh free and fair elections were subsequently held on 9th April 2011 at the Multi Media University College Mbagathi as reported by the Registrar of Trade Unions in his report dated 30th April 2010. An extract by the Registrar of Trade Unions dated 16th June 2012, showed the elected officials as at 9th April 2010. Minutes of the Special General Conference on 9th April 2010 at the Multi Media University College were also attached as confirmation of this position. The Applicants contend that the officials of the union are the ones existing as per the extract to date shown in Form Q filed as Exhibit 1.

As this position subsisted, an application dated 16th Feb 2012 was filed before this court by the 2nd Interested Party herein, one Simon Maina Wanjiku, The application was to the effect that one Daniel Rakoro who had been on record for the applicants herein as an advocate had misrepresented himself as such an advocate and the prayers were that proceedings filed and signed by him should be struck out. This application was heard and a ruling made on the 4th July 2012 striking out all pleadings filed by Mr Daniel Rakoro of Rakoro and Company Advocates. The applicants now contend that the application was filed on 16th February 2012 yet the matter was *Resjudicata*. That the interested Party never served Onkoba and Company Advocates who were on record and they obtained orders which have brought the operations of the applicant to a standstill.

The applicants further contend that the fourth Interested party should not be given audience as he did not file a Notice to Appear in Person.

Counsel for the 2nd Interested Party here Mr. Omolo in reply told court that he is properly on record and that he filed his notice of appointment on 14th March 2012. That he further served all advocates on record and on the Registrar of Trade Unions. He states that he served Mr. Rakoro and Mr. Nyabena on 10th May 2012, and the Registrar on the 9th May 2012. Counsel submitted that they opposed the application and he contended that the application should be struck out as it is not properly grounded in law. That at the time of filing this Application, the officials of the Union had changed and that the deponent described as Mary Ndunge was not an official of the Union. Counsel further submitted that since the proceedings were declared a nullity, there were no proceedings upon which a Notice of Change of Advocates would have been based upon.

This court has considered the submissions of both parties. I notice from the proceedings that the applicants counsel Onkoba and Company Advocates filed their notice of change of advocates on the 23rd November 2011 taking over from the firm of Rakoro and Company Advocates. As the court proceeded with this application, the court noted as follows;-

'Further, Mr. Daniel Rakoro, was aware this matter was coming up for hearing in court. He was served by the 2nd interested party. There is an affidavit of service on record which he acknowledged receipt of the hearing notice in protest. ... The court finds that Mr. Daniel Rakoro avoided or failed to attend court after repeated opportunities were given to him. The proceedings were conducted in his absence...'

Obviously, the counsel on record as the time of service was not Rakoro and Company Advocates as he stated that he received the hearing notice in protest and asked the 2nd Interested Party to serve the advocate on record. The 2nd Interested party did not proceed to go and serve the advocates now on record. The Judge had proceeded on an erroneous assumption that counsel for the Applicants had indeed been served and ignored to come to court.

I find that indeed the counsel on record Onkoba and Company Advocates were not served and therefore an injustice was occasioned to the Applicants where an application was heard in their absence. They were not accorded an opportunity to present their case That alone is a good reason to set aside the orders granted by the court on 5th July 2012. In the circumstances and without going to the merit of the application, I set aside the order given by the court dated the 15th July 2012. The status quo before that date is reverted to. I will not give any orders as to costs.

Dated, signed and delivered this 18th day of September 2012.

**HELLEN WASILWA
JUDGE**