



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Cause 862 of 2011

ROBBY MWITI MAINA..... 1ST CLAIMANT

ANDREW KITHEGA MUCHEKE..... 2ND CLAIMANT

VERSUS

KENYA NATIONAL UNION OF TEACHERS..... 1ST.RESPONDENT

THE REGISTRAR OF TRADE UNIONS..... 2ND RESPONDENT

JUDGEMENT

The claimant filed this suit on 6.6.2011 seeking the following orders.

- (a) That the elections held on 13.3.2011 were unprocedural, irregular and not in accordance with the 1st Respondent's constitution and the same be nullified.
- (b) Injunction to restrain the respondents from making changes to the entries of the Official Registrar of elected officials of the 1st Respondent with regard to Tharaka Branch as a result of the elections held on 13.3.2011.
- (c) That the 1st Respondent Union do hold and conduct proper, valid, fresh and properly supervised elections for the 1st Respondent's Tharaka Branch.

- (d) An injunction do issue to restrain the Respondent from conducting national elections unless and until the elections of the Tharaka Branch of the 1st Respondent are properly held so as to allow the Tharaka Branch representation and participation in the National elections or as directed by their court.
- (e) Costs to suit this suit.
- (f) Any other better relief that this court may deem fit to grant.

The ground for the relief sought is that the Tharaka Branch elections were fraught with irregularities and procedural defects including undetermined quorum, excess votes than lawful number, vote by non-members or unqualified persons, forgery of payslips, voting more than once, lack of voting materials like ballot boxes, poor ink to identify voters after balloting, lack of proper voter register, absent voters were indicated as having voted and voters had multiple ballots papers. The claimant who vied for the seat of chairman and treasurer lost by 2 and 7 votes respectively.

The 1st Respondent in the defence has denied that the elections were fraught with irregularities and contended that the elections were done in accordance with the 1st Respondent's Constitution. That the claimants signed a deeds of commitment confirming that the elections were done in accordance with the KNUT constitution. That the fact that the victories were of slender margin did not render the elections irregular. That the new elected officials are already registered with the 2nd Respondent and as such the orders sought were baseless and the suit should be dismissed with costs.

After protracted interlocutory applications, the parties recorded consent order to allow the claimant to continue holding office until the determination of this case. The parties also referred the dispute for conciliation to the Provincial Labour Officer (P.L.O).

The Provincial Labour Officer heard the dispute and arrived at a report which was signed by all the parties herein. Thereafter the parties agreed not to call any witnesses but instead file written submissions upon which the court would make a final verdict on the dispute.

I have perused the pleadings and the report by the Provincial Labour Officer and the submission by the two sides. The issues for determination are:-

- (a) Whether or not the elections under review were fraught with irregularities and in breach of the 1st Respondent's Constitution and the Law?
- (b) If the answer to (a) is affirmative what remedies are available to the claimants?

Regarding the first issue, it is not in dispute that the parties in this case attended conciliation meeting before the Labour Officer, Mrs. P.R Kariuki, that have deliberations they all signed the conciliator's report on 29.3.2012. That the said report was filed in court on 2.4.2012. That none of the parties challenged the said report either on its form or contents.

I have carefully perused the report and it is obvious that the parties agreed on the fact that 1001 votes were cast yet the paid up members were only 970. That out of the 970, 16 members never voted. Obviously from foregoing more votes than expected were cast either through double voting or by strangers. The report shows that the parties agreed that there was fraud in the voting exercise.

I will not waste much energy on this matter. It is obvious there were irregularities in the voting exercise. Consequently I declare the elections held on 13.3.2011 to be unprocedural, irregular, not in accordance with the 1st Respondent's Constitution and therefore null and void.

That the 1st Respondent is hereby directed to hold and conduct fresh and proper elections for her Tharaka Branch within 90 days of this judgement.

I will not grant prayer (b) and (d) of the claim because they are overtaken by events. I will, however grant prayer (f) to the effect that the officials of the Tharaka Branch of the 1st Respondent who were in office before the irregular elections of 13.3.2011 are reinstated until the results of fresh elections are declared.

The claimants will have the costs of this suit.

Ordered accordingly.

DATED and DELIVERED at NAIROBI this 26th day of October, 2012.

Onesmus N. Makau
JUDGE