



1. **REPUBLIC OF KENYA**
2. 1. **KIAMBU BRANCH OF KENYA UNION**

OF POST- PRIMARY TEACHERS. 1ST APPLICANT/PLAINTIFF

2. **NAIROBI BRANCH OF KENYA UNION**

OF POST PRIMARY TEACHERS.....2ND APPLICANT/PLAINTIFF

VERSUS

1. **KENYA UNION OF POST-**

PRIMARY TEACHER.1ST RESPONDENT/DEFENDANT

2. **TEACHERS SERVICE COMMISSION...2ND RESPONDENT/DEFENDANT**

R U L I N G

The application before the court is a Chamber Summons dated 14th July, 2009. It is filed by M/s Nyabena Nyakundi & Company Advocates and seek leave to come on record as advocates for the Plaintiffs in the place of M/s G N Wakahiu & Company Advocates.

The application would be a straight forward one, almost amounting to a formality. However, that is not so in this case. The reason for that is that the advocates on record, the said G N Wakahiu & Company, have refused to be displaced by the applicants on the ground that their instructions have not been withdrawn by the Plaintiff who the applicants, M/s Nyabena Nyakundi Advocates, claim to have been instructed by.

This confusion appears to arise from the following facts – that the Plaintiffs and Defendants apparently, are officials of two groups of Kiambu branch of the Kenya Union of Post-Primary Teachers. As a result of a dispute between them concerning the issue as to which groups is the properly elected officials of the Union, an Industrial dispute was filed at the Industrial Court of Kenya as Cause Number 132 of 2008. The Court in its ruling of the dispute nullified the previous elections and ordered a fresh election of the office bearers.

On 22nd April, 2009 there was a Union election as ordered by the Industrial Court and one Peter Mwaura Kamau and his group of teachers won, electing him as the Kiambu Branch Secretary; Stephen Ndungu Nganga, the Chairman; and Lillian Njeri Ngatho, the Treasurer. Their assistants and the rest of the Committee Members, were apparently also elected and these winning officials were registered as such officials by the Registrar of Trade Unions on 29th May, 2009. It was admitted by both sides that the said registration by the Registrar of Trade Union has never for any good reason, been altered.

One of the first steps apparently taken by the said newly elected officials is to change their advocates. They instructed M/s Nyabena Nyakundi & Company Advocates to take up the Kiambu Union Branch's legal representation in this suit in place of M/s G N Wakahiu & Company Advocates thus withdrawing

the latter's instructions to act. It is apparently to effect this change in accordance with the requirement of O. 3 rule 9(a) of the Civil Procedure Rules, this application was filed.

Serious allegations touching on the ethical conduct of G. N. Wakahiu & Company are raised in affidavits on record. However, in the court's view this application may not be the appropriate forum to go into the alleged ethical issues. The issue to be decided here is whether or not the applicant firm of advocates should be allowed to come on record in the circumstances of this case.

I have carefully considered the application. On the face of things there is an order of the Industrial Court, which ordered that fresh Union elections be held within 30 days. Elections were held and officials were elected and duly registered with the Registrar of Trade Unions. The registration has not been changed and if it has, the result is yet to be recorded. This means that one Peter Mwaura Kamau and his ground of officials, are until this moment, the officials of the Kiambu Branch of the Kenya Union of Post Primary Teachers. In my opinion, they will and do call the shots until any change is brought on record.

It is in the said circumstances that the said registered officials or their committee has instructed the applicant M/s Nyabena Nyakundi & Company Advocates to act in this case for the Kiambu Union Branch. This court will therefore have no good reason to refuse Nyabena Nyakundi & Company from coming on record in place of G. N. Wakahiu & Co. Advocates.

One Wicks Mwethi Njenga filed a replying affidavit to this application. He claimed to be the present rightful Secretary of Kiambu Branch of Kenya Union of Post Primary Teachers. He claimed that the elections ordered by the Industrial Court and held on 22nd April 2009 were wrongful or were not properly conducted. If that were so, then he should challenge the registration of the officials with the Registrar of Trade Unions and bring about a deregistration. Until that is done, the registered official the remain officials and have and will have power to act as such.

It is also argued that an order of this court dated 29th June, 2009, filed a consent order which purported to compromise the order of the Industrial Court under Cause No. 132 of 2009. If that is so, the party or parties filing the compromising orders should file contempt proceedings so that a full inquiry may be made by this court as to how and who indeed obtained the compromising orders and whether or not they had legal authority to file the applications or compromise the same by "**consent order**".

But as concerning the application before the court, only prayer (2) is granted. The other prayers are held as incompetent in so far as they were sought through Nyabena Nyakundi & Company who at the time of filing this application was not duly authorized advocate to act for the Kiambu Union Branch. Orders accordingly.

Dated and delivered at Nairobi this 29th day of July, 2009.

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D A ONYANCHA

JUDGE