

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 594 of 2007

KENYA HOTELS AND ALLIED WORKERS UNION.....PLAINTIFF

VERSUS

DAVID KIBOMA.....1ST DEFENDANT

JAPHETH N M. KWENGA.....2ND DEFENDANT

THE REGISTRAR OF TRADE UNIONS.....3RD DEFENDANT

JOHN WANYAMA.....4TH DEFENDANT

STANLEY KINYEKI.....5TH DEFENDANT

R U L I N G

The facts which gave rise to this litigation as gathered from the affidavit evidence may briefly be stated. The plaintiff is a Trade Union registered under the Trade Unions Act whose Secretary General is JOANES OKOTH the deponent of the affidavit in support of this application. On 27th July 2007 the said JOANES OKOTH received a letter dated 25th July 2007 signed by Japheth M. Kwenga, the 2nd Defendant herein in which he requisitioned him to call for a special conference within 7 days of the date of the letter. The said letter was accompanied with a list of names and signatures of persons who were said to be members of the plaintiff. On perusing the said list he discovered that it contained forged signatures and some of the names therein did not belong to members of the plaintiff. He declined to call the special meeting. Despite his refusal to call the meeting, the same was called and went ahead as scheduled on 2nd August 2007 at South Nyanza Rock Hotel. He wrote back on 3rd August 2007 declaring the alleged meeting null and void. He instructed his lawyers to file an application for injunction but the same was overtaken by events. He subsequently learned that the 4th and 5th Defendants had lodged fictitious minutes and a notice of change of officers at the offices of the 3rd Defendant but the 3rd Defendant has not notified the plaintiff of the steps it had taken.

From the above affidavit evidence it is clear that the meeting scheduled for 2nd August 2007 took place and changes were effected in respect of the officials of the plaintiff which the applicant terms as illegal. Notice of Change of names or titles of the officers was lodged with the Registrar of Trade Unions, the 3rd Defendant who has not communicated to whether or not the said changes had been effected. In this application the plaintiff is seeking an order of injunction to restrain the defendants by themselves, their agents, associates servants and/or employees from implementing or effectuating the purported results, resolution or minutes of special conference for the Kenya Hotels and Allied Workers Union allegedly on 22nd August 2007 at Rock Hotel South Nyanza. But at the same time the applicant concedes that the resolution of that conference of 22nd August 2007 were lodged with the Registrar of Trade Unions but does not know whether or not the alleged changes were effected. All that the applicant ought to have done is to carry out a search to ascertain if the changes of the officials of the union had been effected and if so then an order for injunction cannot issue as the court will not issue an order to

injunct what has already taken place. That could be an order in futility. The only avenue open to the applicant is to apply to have the names of the new officials struck out from the register.

For the above stated reasons the plaintiff's application must fail and the same is dismissed with no order as to costs.

Dated and delivered at Nairobi this 16th day of May 2008.

J. L. A. OSIEMO

JUDGE