



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**Civil Case 101 of 2008**

**ELIAKIM APUNDA SIJENJE..... PLAINTIFF**

**VERSUS**

**KENYA NATIONAL UNION OF TEACHERS ..... 1<sup>st</sup>  
DEFENDANT**

**THOMAS ANETE OLILI – CHAIRMAN**

**KISUMU BRANCH –KNUT..... 2<sup>nd</sup> DEFENDANT**

**EDWARD OLANDO ..... 3<sup>rd</sup> DEFENDANT**

**RULING**

The plaintiff is the Executive Secretary of the Kenya National Union of Teachers (KNUT) Kisumu District Branch while the first defendant is a trade union duly registered under the Trade Union Act (Cap 233 Laws of Kenya).

The second and third defendants are the Chairman and Assistant Executive Secretary respectively of the Kenya National Union of Teachers Kisumu Branch.

By a plaint filed on the 28<sup>th</sup> October 2008, the plaintiff prays for judgment against the defendants for an order quashing and/or setting aside and/or nullifying the decision dismissing him from office made on the 20<sup>th</sup> September 2008 in an alleged special general meeting.

The plaintiff also prays for an order of permanent injunction restraining the defendants, their agents/servants, their employees and/or representatives and/or anybody acting on their behalf from interfering with his duties as the Executive Secretary.

At the time of filing the suit, the plaintiff also took out a Chamber Summons seeking leave to sue the defendants and temporary injunction orders to issue against the defendants.

The application was brought under certificate of urgency and was argued ex-parte.

The court certified the application urgent but declined to grant temporary injunctive orders against the defendants. The application was thereafter fixed for hearing on the 13<sup>th</sup> November 2008, on which date the first defendant raised a preliminary objection to the application and indeed the entire suit.

The objection is premised on the provisions of the labour Institution Act Number 12 of 2007 among other things. In arguing the objection, Mr. Okongo for the first defendant concentrated on the provisions of the said labour Institution Act and those of the Labour Relations Act No. 14 of 2007.

Mr. Okongo argued that under Section 12(1) and (5) of the Labour Institutions Act and Section 34(4) of the Labour Relations Act, the jurisdiction to try the present dispute lies with the Industrial Court and not this court.

The plaintiff through Mr. Odeny respondent saying that the objection ought not be considered because the defendants have not yet filed a statement of defence. This was however counted by the first defendant when it indicated that it entered appearance on 10<sup>th</sup> November 2008 and still had the time to file defence.

Be that as it may, Mr. Odeny argued that the Labour Institutions Act does not apply to the plaintiff as the Executive Secretary of the Kisumu Branch of KNUT as he is not answerable to the union's head office and his, is an electable position whereas the Act applies to employers and employees only.

Mr. Odeny further argued that the Labour relations Act is also not applicable herein as the present dispute does not relate to an election but to the manner in which the plaintiff was removed from office.

In any event Mr. Odeny argued, this court under Section 60 of the Constitution has the jurisdiction to deal with the matter.

The issue arising for determination is whether or not this court has the jurisdiction to deal with the matter.

Indeed, Section 60 of the Constitution grant this court unlimited original jurisdiction in Civil and criminal matters and such other jurisdiction and powers as may be conferred on it by the constitution or any other law.

The Industrial Court is established under Part III of the labour Institutions Act.

Section 11(1) of the said Act provides that:-

“There is established on Industrial Court with all the powers and rights set out in this Act or any other law, for the furtherance, securing and maintenance of good industrial or labour relations and employment conditions in Kenya:.

The objective of the Industrial court is therefore to further secure and maintain good industrial or labour relations and employment condition.

Section 12(1) of the labour Institution Act provides that:-

“The Industrial Court shall have exclusive jurisdiction to hear determine and grant any appropriate relief in respect of any application claim or complaint or infringement of any of the provisions of this Act or any other legislation which extends jurisdiction to the Industrial Court or in respect of any matter which may arise at common law between an employer and employee in the course of employment between an employee or employer's organization and a trade union or between a trade union, an employer's organization, a federation and a member thereof”.

Section 12 (2) provides that:-

“An application claim or complaint may be lodged with the Industrial court by or against an employee an employer a trade union an employer's organization a federation, the commissioner for labour or the

Minster”.

The foregoing provisions do grant jurisdiction to the Industrial court to deal with disputes involving ‘inter alia’ a trade union and its members.

The present dispute involves the plaintiff as an official and member of the first defendant trade union. Therefore, in keeping with the objective of the Industrial Court specified under Section 11(1) of the labour Institution Act, the dispute ought to be heard and determined by the Industrial Court whose decision or order have the same force and effect as a judgment of the High Court (See Section 12 (6) of the labour Institution Act).

Further, any party to any proceeding before the Industrial Court may appeal to the Court of Appeal against a final judgment award or order of the Industrial Court (See Section 27(1) Labour Institution Act).

With regard to the Labour Relations Act part Iv of the same provides for officials and members of Trade Unions and Employers’ Organization.

Section 34 (1) provides that:-

“The election of officials of a trade union, employer’s organization or federation shall be conducted in accordance with their registered constitutions”.

Section 34(4) provides that:-

“Disputes arising from or connected directly or indirectly to elections held under this section may be referred to the Industrial Court”.

The averments contained in the plaint indicate that the present dispute is centered on an intention by the first defendant and indeed the second and third defendants as officials of the first defendant’s local branch to have the plaintiff replaced as the Executive Secretary of the local branch. It would appear that plaintiff is aggrieved by the procedure applied in fulfilling the intention rather than the substance of the intention.

It would also appear from the documents annexed to the plaintiff’s Chamber Summons filed herein on 28<sup>th</sup> October 2008 the genesis of the whole dispute was an alleged aborted general elections held on the 2<sup>nd</sup> August 2008.

Under the aforementioned provisions of the labour Relations Act this is a dispute which may be referred to the Industrial Court for disposal.

However, by virtue of Section 60 of the Constitution of Kenya this court may exercise jurisdiction in disputes such as the present one. The reason is simple, this court is a creature of the Constitution while the Industrial Court is a creature of statute and therefore of a subordinate status notwithstanding the provisions of Section 12 (6) and Section 27(1) of the labour Institutions Act.

Nonetheless, it must not escape our minds that although the high Court has unlimited original civil jurisdiction under Section 60 of the Constitution of Kenya, such must be exercised in conformity with the Constitution and subject thereto, all other written laws etc (See Section 3 of the Judicature Act).

The pleadings so far filed herein show that the dispute would be suitable for adjudication by the Industrial Court. Parties who associate or are in a brotherhood for a common cause and are fortunate enough to have mechanisms for resolving disputes between themselves should always be encouraged to refer their disputes to the appropriate tribunals such as the Industrial Court rather than further congest the already congested High Court diary.

Towards that end it is hereby ordered that this matter be referred to the Industrial court for hearing and final disposal. Each party to bear own costs.

**Dated, signed and delivered at Kisumu this 21<sup>st</sup> day of November 2008**

**J. R. KARANJA**

**JUDGE**

JRK/ao