



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)**

**MISC APPLI 1151 OF 2007**

**TERVIL OKOKO & TWO OTHERS.....APPLICANTS**

**Versus**

**THE KENYA UNION OF JOURNALISTS.....RESPONDENT**

**RULING**

This is an Application by way of Chamber Summons brought by Tervil Okoko, Bob Wekesa, George K. Orina seeking leave to bring Judicial Review proceedings against the Kenya Union of Journalists (hereafter referred to as KUJ) and the Registrar of Trade Unions, the Respondents herein. The Applicants seek the following orders:

2. That the Applicants be granted leave to apply for an order of certiorari to bring into this court for purposes of quashing and to quash the decision of the Registrar of Trade Unions dated 5<sup>th</sup> October 2007 registering persons purportedly elected as National Office bearers of KUJ as per the extract from the Registrar of Trade Unions on 11<sup>th</sup> October 2007;

3. That the Applicants be granted leave to apply for an order of mandamus to compel the Registrar of Trade Unions to carry out his duty under S. 38 of the Trade Unions Act Cap 233 Laws of Kenya

iously as by law required;

5. That the leave so granted do operate as stay of operation

And/or implementation of the decision of the Registrar of

Trade Unions dated 5<sup>th</sup> October 2007 registering the said

persons as National Office bears and thereby maintain the

status quo pertaining prior to the said registration pending

the determination of the Judicial Review Application to be

filed;

6. Costs of this Application to be provided for.

The Chamber Summons is supported by the Statutory Statement and the Verifying Affidavit of Tervil Okoko both dated 17<sup>th</sup> October 2007.

The Application was opposed by the Affected Party, Eric Orina the Secretary General of the Union (KUJ). Tervil Okoko deponed that he was swearing the Affidavit on behalf of the other Applicants. That he was elected to the post of National Chairman of the Union with other officials, to hold office for 5 years ending June 2006 and that he holds the post to date. That there has been a leadership dispute between 2 groups, one led by Ezekiel Mutua, the former Secretary General now Director of Information and Public Communications Ministry of Information and another group led by Eric Orina. His group which was Ezekiel Mutua's filed a suit HCC 258/05 in which J. Kubo ruled extending orders of the court in another case HCMisc 876/05 to 7<sup>th</sup> May 2006. An annual conference was scheduled for 7<sup>th</sup> May 2006 but it did not take place due to confusion and disagreement and the elections were fixed for 21<sup>st</sup> June 2006. That the Orina group moved to have themselves registered as the office bears purporting to have held elections on 7<sup>th</sup> May 2006 and filed returns with the Registrar and the changes were duly registered on 9<sup>th</sup> May 2006. The Applicants' group filed Misc Application 245/06 which was heard and judgment rendered on 23<sup>rd</sup> March 2007 where Justice Emukule quashed the order of the Senior Labour Officer of 7<sup>th</sup> May 2006 and that of the Registrar of Trade Unions. In the judgment, the court gave the Applicants 90 days to organize transparent and accountable elections for the various organs of the KUJ in strict adherence with their constitution. However, due to unavoidable circumstances the Applicants were not able to comply with the court's order in that they had to prepare a collective Bargaining Agreement between their members and the media house which was concluded on 2<sup>nd</sup> May 2007. Secondly the Medial Bill published on 1<sup>st</sup> May 2007 throw their industry in confusion and the officials had to participate in meetings pertaining thereto and on 31<sup>st</sup> May 2007 a special general meeting was called and it was agreed that vacant positions be filled as per the constitution and they filed a notice of change on 25<sup>th</sup> June 2007 as per resolutions but the Registrar declined to register them on grounds that they were submitted late and they were allowed to hold another meeting within 9<sup>th</sup> August 2007 but by 31<sup>st</sup> July 2007 the Registrar informed them that he received a form N on 2<sup>nd</sup> July 2007 following a special conference at New Stanley Hotel convened as a result of the member's requisition of 2<sup>nd</sup> May 2007. Despite their protests on 1<sup>st</sup> October 2007 Eric Orina wrote to Ezekiel Mutua that he was the new Secretary General. On 10<sup>th</sup> October 2007 while awaiting to organize elections within 90 days as per the letter of 3<sup>rd</sup> October 2007 he learnt that Eric Orina was the registered Secretary General and on perusing the file on 11<sup>th</sup> October 2007, they confirmed that position and that is why they preferred this Application.

Mr. Nyandieka, Counsel for the Applicants submitted that the decision of the Registrar to register the group led by Eric Orina is a illegality, unlawful as it was contrary to the order of 23<sup>rd</sup> March 2007 by Justice Emukule that transparent elections be held within 90 days. That no elections were held due to the preparation of the CBA and involvement in the media Bill negotiations. That the 90 days allowed ended on 23<sup>rd</sup> June 2007 and yet requisition was made on May 2007 before time lapsed.

Counsel further submitted that a special conference would only be held if requested by the Secretary General and under S. 123, only fully paid up members could requisition which was not the position. That S. 123 of the Act was flouted in that there were no nominations 2 weeks prior to the elections as required.

That the Registrar should have carried out enquiries under S.38 of the Trade Disputes Act in consultation with the Unions Constitution and if he had done so he would not have registered the Respondent. Counsel urged the court to stay the registration to stop perpetration of an illegality.

In opposing the Application Orina deponed that the 1<sup>st</sup> Applicant is not the Chairman of the Union and that the court order of 23<sup>rd</sup> March 2007 ordered the Office bears to organize transparent and accountable elections within 90 days from 23<sup>rd</sup> March 2007 but they did nothing and no special general meeting was held on 31<sup>st</sup> May 2007 and the Registrar was right in declining to register the charges. That the members

of the Union requested for a special general conference since the Secretary General had failed to convene elections as ordered by the court. That the team now in office was elected on 2<sup>nd</sup> July 2007 in accordance with the Unions Constitution and names were forwarded to the Registrar for registration. That the Registrar invited the Applicants for any objections, they were filed, considered and the Registrar went ahead to register. According to the Respondents if the orders sought were granted the general membership of the union would be prejudiced.

At this stage, all that the Applicants need to demonstrate is that they have an arguable case that might succeed on being heard, without the necessity of considering the case in detail. It is apparent that there is a leadership wrangle in KUJ which has been subsisting since the year 2006 and the parties have been before the courts since then. Justice Emukule had ordered that elections be conducted within 90 days as from 23<sup>rd</sup> March 2007.

The applicants admit that they did not comply with the court's order for reasons that they were engaged in preparation of the CBA and later in the resolution of the Media Bill Controversies. They admit that they never sought extension of the court order. The question is whether the reasons given for non compliance with the court's order are valid. The other question for consideration at the hearing is whether the Respondents complied with the KUJ constitution and the Trade Disputes Act respecting requisitioning of a special general meeting before they came into office and whether there was indeed such special general meeting following which the Registrar of Trade Unions could register the Respondents as the officials. Prima facie, I am satisfied that an arguable case has been disclosed. The Respondents are the registered officials since 2<sup>nd</sup> July 2007 as evidenced by the notice of change of that date which is marked EO1. Whereas the Applicants contend that the Registrar erred in so registering the Respondents are of different view.

The office bearers having been changed since 2<sup>nd</sup> July 2007, this court will not grant an order of stay at this stage as that is bound to bring confusion in the leadership and the running of the KUJ. I decline to grant prayer that leave operates as stay.

I therefore

- (1) grant leave to bring Judicial Review in terms of prayers 3 and 4 of the Chamber summons dated 25<sup>th</sup> October 2007.
- (2) Prayer 2 is also granted exempting the applicants from serving notice on the Registrar.
- (3) The Notice of Motion be filed and served within 10 days of today's date, in default of compliance, with above order leave so granted do lapse automatically,
- (4) Once the Notice of Motion is served, the matter be brought up for mention for directions,
- (5) Costs be in the cause.

Dated and delivered this 7<sup>th</sup> day of December 2007.

R.P.V. WENDOH

JUDGE

Read in the presence of:

Mr. Nyandieka for Applicant

Mrs. Ngugi for the Affected Party

Daniel: Court Clerk