

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

Civil Suit 261 of 2006

GEORGE P.O. ARONDOH
.....PLAINTIFF

VERSUS

KENYA LOCAL GOVERNMENT WORKERS UNION1ST
DEFENDANT

BONIFACE M. MUNYAO2ND
DEFENDANT

EDWARD PETER NYERERE3RD
DEFENDANT

REASONS FOR RULING

DATED the 21st March 2006.

At the conclusion of arguments on the Chamber Summons application dated and filed on the 17th March 2006, I dismissed the Application on the 21st March 2006 and now give my reasons for doing so.

George P.O. Arondoh, the Plaintiff, instituted suit against the three Defendants seeking a permanent injunction to restrain them from excluding him from participating in the Branch elections as well as a declaration that the Plaintiff is eligible to vie for any position in the First Defendant Union. With the filing of the Plaintiff on the 17th March 2006, the Plaintiff took out the said Application under Order 39 of the Civil Procedure Rules (but without specifying the rules pursuant to which the Plaintiff was moving the court) seeking a temporary injunction to restrain the Defendants from excluding him from participating in the said elections presumably, as this is not stated, until the hearing and determination of the suit. The Application is supported by the Plaintiff's own affidavit sworn on the 17th March 2006 and in opposition thereto, the Defendants filed their Grounds of Opposition on the 21st March 2006 together with the Replying Affidavit of the Second Defendant made on the 21st March 2006.

In his submissions, Mr. Wilfred Nyamu, learned counsel for the Plaintiff, contended that the Registrar of Trade Unions having by letter dated the 12th January 2006 confirmed the subsisting registration of the Plaintiff as Chairman of the Nairobi Branch of the First Defendant, and the Defendants having in any event failed to comply with Section 38(2) of the Trade Unions Act [Cap.233] with regard to the alleged suspension of the Plaintiff from office, the Plaintiff is entitled to the temporary relief sought. Learned counsel further argued that the Defendants' intended action was illegal as no Special General Meeting of the Branch had been convened to adjudicate on the alleged suspension of the Plaintiff as required by Rule 27(n) of the Constitution and Rules of the First Defendant and in any event, the Defendants were clearly in breach of the rules of natural justice in not giving the Plaintiff an opportunity to be heard on the complaints against him.

In reply, Mr. Katunga Mbuvi, learned counsel for the Defendants, argued that the Plaintiff dated the 17th

March 2006 should be struck out for failure to comply with the mandatory provisions of Order 7 rule 1 (1) (e) of the Civil Procedure Rules and in consequence, the Plaintiff's Application must also be struck out. Learned counsel also submitted that the Plaintiff was lawfully suspended from office in accordance with Rule 27(n) of the Constitution and Rules of the First Defendant and was duly notified accordingly by letter dated the 4th April 2003 but as the complaints against the Plaintiff are still under Police investigation, a Special General Meeting of the members to determine the Plaintiff's fate could not be convened until after such investigations were complete. Counsel argued that the Plaintiff having failed to disclose these facts to the court, he was not entitled to the equitable remedy of an injunction as in any event, the Plaintiff had failed to establish a *prima facie* case.

Having considered the Application in light of the submissions of both learned counsel, I found that the Application must fail for a number of reasons. First, and following a meeting of the Nairobi Branch Executive Committee held on the 21st March 2003 at which it was unanimously resolved that the Plaintiff be suspended from office, the Plaintiff was by letter dated the 4th April 2003 notified of the decision and invited to respond to the accusations sent therewith within 14 days whereupon the Plaintiff was to be given an opportunity of appearing before the Committee to exonerate himself. It would appear that the Plaintiff chose to ignore this letter. There is no evidence of his having complied with the terms thereof or of his having challenged the suspension either under and in accordance with the Constitution and Rules of the First Defendant or through the courts. The Plaintiff has not offered any explanation whatsoever as to why he did not take any steps since April 2003 to challenge the suspension he contends is illegal and choose, instead, to come to court just under three years later and barely five days before the elections scheduled for the 22nd March 2006. Secondly, and having all along been very well aware of his suspension and of the circumstances and reasons therefor since April 2003, the Plaintiff was duty bound to disclose these material facts to the court. The principles of this duty of candour, enunciated in the well known case of **Reg. -v- Kensington Income Tax Commissioners, ex parte Princess Edmond de Polignac** (1971) 1 KB 486, were reiterated and followed by the Court of Appeal in **The Owners of the Motor Vessel "Lilian S" -v- Caltex Oil (Kenya) Ltd.** (Civil Appeal No. 50 of 1989) (unreported) per the reasons for judgment of Kwach, JA, at pages 71 to 75 thereof. In his said Supporting Affidavit dated the 17th March 2006, the Plaintiff failed to disclose, and in fact concealed, facts which it was material for the court to know in dealing with his Application as made. The Plaintiff cannot, therefore, succeed in obtaining the equitable remedy sought. Thirdly, the Plaintiff has failed to show that he has all along served as the Chairman of the Nairobi Branch of the First Defendant as deponed to in paragraphs 2, 3 and 7 of his Supporting Affidavit – the Extract from the Register of Trade Unions annexed thereto is as at the 16th April 2002 (long before the Plaintiff was suspended) and the Registrar of Trade Unions, in his subsequent letter dated the 1st March 2006, has "**withdrawn**" his earlier letter of the 12th January 2006 on which the Plaintiff relies.

It was for these reasons that I found and held that the Plaintiff had not established a *prima facie* case with a probability of success and consequently proceeded to dismiss his Chamber Summons Application dated and filed on the 17th March 2006 with costs to the Defendants.

Dated and delivered at Nairobi this Twenty-eighth day of March 2006.

P. Kihara Kariuki

Judge