



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
Civil Suit 31 of 2006**

**JANE RABONGO ADEYA .....PLAINTIFF**

**VERSUS**

**1. COMMUNICATION WORKERS UNION OF KENYA**

**2. REGISTRAR OF TRADE UNIONS**

**3. MARTIN AMAYO**

**4. JOHN MWANYAMA**

**5. SHABAN OIRA**

**6. MWANAMI – DISTRICT LABOUR OFFICER,**

**MOMBASA.....DEFENDANTS**

**R U L I N G**

In a plaint dated 22<sup>nd</sup> February 2006, Jane Rabongo Adeya, the plaintiff herein sought for the following orders against Communication Workers Union of Kenya, Registrar of Trade Unions, Martin Amayo, John Mwanyama, Shaban Oira and Mwanami, the District Labour Officer Mombasa hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants respectively:

- (a) an order of injunction restraining the 2<sup>nd</sup> defendant from registering the 3<sup>rd</sup> – 5<sup>th</sup> defendants as officials of the 1<sup>st</sup> Defendant's Mombasa Branch pending the hearing and determination of this suit.
- (b) An order declaring the elections of the aforesaid branch held on 17.2.2006 as irregular, unconstitutional, illegal, null and void.

The subject matter of this ruling is the amended Chamber Summons dated 13<sup>th</sup> March 2006 in which the applicant has prayed for 2 main orders namely:

- (a) An order of injunction restraining the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants from assuming office, acting and or posing as officials or doing any act or deed in their capacity as officials or representatives of Communication Workers Union Of Kenya, Mombasa Branch pending the hearing and determination of the main suit.
- (b) An order of injunction restraining the 1<sup>st</sup> Defendant from conducting the National Elections scheduled for 18<sup>th</sup> March 2006 or permitting the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants from taking part whether as

delegates, candidates, contestants or otherwise pending the hearing and the determination of this suit. The plaintiff swore an affidavit in support of the Chamber Summons dated 22/2/2006.

On their part the defendants opposed the summons by filing a replying affidavit sworn by Martin A. Amayo, the 3<sup>rd</sup> defendant. The defendants also filed grounds of opposition dated 8<sup>th</sup> March 2006.

The background of this matter is brief and straightforward. On the 17<sup>th</sup> day of February 2006, the Mombasa Branch elections of the Communication Workers Union of Kenya were held. However before the elections were held, the plaintiff was removed from the election venue on the ground that she had no right to be at the venue because she was not a member or contributor of the Communication Workers Union. By that time the plaintiff had been dismissed from the employment of Telkom (K) Ltd. hence strictly speaking the grounds which were used to remove her from the election venue were true. The plaintiff appears to have offered her candidature to contest the position of the Secretary of the Branch but she was barred by the election presiding officer despite having been proposed and seconded by members.

The applicant has alleged that she was barred from contesting the elections by the presiding officer on the instigation of John Mwanyama the 4<sup>th</sup> Defendant. This fact has not been controverted by John Mwanyama or Mwanami, the District Labour Officer, Mombasa. It is the contention of the plaintiff that the 4<sup>th</sup> and 6<sup>th</sup> Defendants breached the provisions of Section 29(1)(i) of the Trade Unions Act, when they attempted to block her from contesting the Branch Secretary position. It is the contention of Mr. Magolo for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants that the plaintiff was not entitled to be at the election venue because she was not a member of the union or Branch. To me that appears to be a good argument but when the applicant was proposed and seconded to contest she should have been let into the election venue to take part in the elections. It is not denied that the applicant was legally entitled to contest the elections under Section 29(1) (i) of the Trade Unions Act. It has also been submitted that the applicant has not shown the prejudice or damage she would suffer. That submission in my view flies on the face of law because it is quite clear that the applicant will not be in a position to participate as a delegate in the National Elections of the 1<sup>st</sup> Defendant.

I have already stated that the 4<sup>th</sup> and 6<sup>th</sup> defendants did not file any affidavit to controvert the allegation made against them by the applicant in her affidavit. I will therefore take it to mean that the duo connived to frustrate the applicant from being elected as the Mombasa Branch Secretary of the 1<sup>st</sup> Defendant thus giving an undue advantage to the 4<sup>th</sup> defendant to easily win the election. The law cannot allow that to take place at the alter of legal technicalities raised by the defendants.

If the orders prayed for are not granted this court would be seen as approving the unbridled use of trickery and strong arm tactics in the electoral process of such organizations which cannot be the function of law.

It is unfortunate in this case because the kind of prayers made will affect the entire elections of the 1<sup>st</sup> Defendant. That is the price of the 1<sup>st</sup> Defendant will pay for not conducting its electoral process in a transparent manner and according to the laid down laws. Certain individuals within the 1<sup>st</sup> Defendant's membership should not be allowed to steal a match like what happened in this case. It should be known that it pays to play as per the rules of the game.

The upshot is that the application is allowed in terms of prayers 3 and 6A of the Summons dated 13/3/2006.

Costs of the application is awarded to the applicant.

**Dated and delivered at Mombasa this 17<sup>th</sup> day of March 2006.**

J.K. SERGON

JUDGE

In the presence of Mr. Omido h/b for Mr. Oyoo for the applicant and

N/A Magolo for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents.