



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 42 of 2006

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS1ST PLAINTIFF

SAMUEL BAYA YAA.....2ND PLAINTIFF

VERSUS

LYDIA HADULU MASERA.....1ST DEFENDANT

JUMA MWANDANDU.....2ND DEFENDANT

ALFRED ABURI MIRERI.....3RD DEFENDANT

RULING

By a Summons filed under Order XXXIX rules 1, 2 and 3 of the Civil Procedure Rules, Kenya Union of Commercial Food and Allied Workers and Samuel Baya being the Plaintiffs herein in which they sought to restrain the Defendants herein namely:

Lydia Hadulu Masera, Juma Mwandandu and Alfred Aburi Miereri from initiating, starting, assembling, convening, holding the Annual General Meeting on 19-3-06 or any other meeting in respect of the Kenya union of Commercial Food and Allied Workers Mombasa Branch pending the hearing and determination of this suit. The Plaintiffs also sought for an order to restrain Lydia Hadulu Masera from acting as branch secretary in contravention of the constitution of the first Plaintiff. The Summons is supported by two affidavits deponed by Samuel Baya Yaa. The Defendants opposed the application by relying on the grounds set out in a Notice of Preliminary Objection.

To begin with, there was no affidavit filed to respond to the facts deponed in the supporting and further affidavits of Samuel Baya Yaa. In the absence of any averments to the contrary then I will regard the facts deponed therein to be correct as stated. It is the submission of the Plaintiffs that the Defendants colluded to have the 2nd Plaintiff suspended in contravention of the 1st Plaintiff's constitution. The only response from the Defendants is that the verifying affidavit deponed by the second Plaintiff is not valid because he was not representing the first Plaintiff. I think I will not belabour so much on this ground. It is evident that there are two Plaintiffs. There is an averment by Samuel Baya Yaa to the effect that he has authority to swear verifying affidavit by the 1st Plaintiff. The Defendants' objection therefore cannot lie because the deponent is a party to the proceedings and secondly that the first Plaintiff gave the deponent authority to swear.

The remaining issue is whether or not the Plaintiffs are entitled to the prayers of the injunction. The 2nd Plaintiff says he was elected as the 1st Plaintiff's Mombasa Branch Secretary on 18th December 2004 and that his term was to last for five (5) years. It would appear the Registrar of Trade unions issued a circular on 9-12-2005 directing all Trade Unions to hold both their national and branch elections between 30th March and 30th June 2006. Pursuant to that directive the 1st Plaintiff's Mombasa branch elections were held on 2nd March 2006 in which the 2nd Plaintiff was elected the Secretary. It would appear the Registrar of Trade unions rejected the officials elected on 2-3-2006 on the ground that the notice given was short hence invalid in a letter dated 8th March 2006. What provoked this suit and the consequent application is the letter of suspension slapped on him and signed by the 2nd Defendant. The letter of suspension is dated 27th February 2006. The letter quotes a meeting of a branch committee meeting held on 19th and 25th February 2006 as the forum which suspended the 2nd Plaintiff on various charges. It is the argument of the 2nd Plaintiff that the decision was carried out in contravention of the constitution of the 1st Plaintiff. I have perused aforesaid constitution and it is clear in Rule 19(i) that any full time branch official shall be subjected to disciplinary measures by the National Executive Council. It is therefore clear that the branch did not have authority to suspend the 2nd Plaintiff. This means that the Mombasa branch acted ultra vires the 1st Plaintiff's constitution.

I am satisfied that Plaintiffs have shown they have a prima facie case with a probability of success. In this case it is obvious that the 2nd Plaintiff will be greatly inconvenienced if the order of injunction is not granted.

For the above reasons I allow the application as prayed with costs to the Plaintiffs.

Dated and delivered this 19th day of October 2006

J. K. SERGON

JUDGE

In open court in the absence of both parties.