

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.582 OF 2003

KENYA ELECTRICAL TRADERS ALLIED

WORKERS UNION (KETAWU).....PLAINTIFF

V E R S U S

PETER MUTUA MUTEMI.....DEFENDANT

R U L I N G

This is an application by way of Chamber Summons dated 12.6.2003 made under Order 39 Rule 1,2 & 9 of the Civil Procedure Rules and Section 3A of Cap 21 for orders that:

- “(2) The Defendant be and is hereby restrained by himself, agent, servant or any other person acting in his capacity from commencing, conducting or in any other way affecting or calling to order a SPECIAL DELEGATES CONGRESS of the Plaintiff Union on 28.6.2003 or in any other place pending the hearing and determination of the suit.”

The supporting affidavits of JACK AMINO OMENDA sworn on 12.6.2003 and on 23.6.2003 say that he is the General Secretary of the Plaintiff Union and is not aware that there is any discontent among any or any other members of the Union cited as reason for calling a meeting and that the purported notice to convene a meeting is being done in contravention of provisions of the Union constitution and that the same is null and void and that the congress is being convened for ulterior motive, but the same is opposed through the affidavit of PETER MUTUA MUTEMI sworn on 19.6.2003 saying that the General Secretary has failed to convene a meeting by starting the process in 14 days and that he had been nominated to convene a Special Delegates Congress of the Union and that the same is proper and legal, and that the National Secretary of the Union has no authority to file the substantive suit in the first instance.

I have heard both Mr. Adere and Miss Guserwa for the parties in their very forceful submissions. Normally, the Courts are reluctant to issue orders that may interfere with the internal administration of associations unions or clubs unless their conduct is clearly outside provisions of their domestic constitutions. What is sought here is an interlocutory injunction, which is granted on the principles set out by Spry Ag. J.A. in *GIELLA vs. CASSMAN BROWN & CO. LTD.* 1978 EA 358 when he said that for Applicant to succeed in an application for interim injunction, he must show that he has a prima-facie case with a probability of success, that injunction will normally not be granted unless there is irreparable injury that damages cannot adequately compensate and if the Court is in doubt to grant the same on balance of convenience.

From the affidavits, it is shown that the General Secretary was asked to convene a Special Delegates Congress under the provisions of the Plaintiff's Union's constitution but he declined hence the appointment of the convener. After request has been made to the secretary according to Article IV of the Court, the Secretary can refuse to convene such a meeting but his reasons must be explained. It is when he fails to do so that Executive Board nominates one of its members to convene the congress. The Secretary refused to do so and his reasons seem to be the ones given in paragraph 15 of the replying affidavit which are given ex-post facto after the fact except of paragraphs (d) & (e) of the stated reasons in paragraph 15 of the affidavit of support. It does not appear to me that those were reasons that ought to have explained the refusal.

They were reasons that materialized after refusal. In (e), as for 14 days notice, clearly the same could be said to be 14 days within which to start the process as opposed to the day of meeting and for an

ambiguity in agenda that should be for the meeting. Mr. Adere said that the meeting purported to be convened was Special Congress and not Delegates Congress but whereas these may be matters for the meeting, I do not see how they can affect this application neither were they pertinent in supporting his refusal.

If the meeting is stopped, what will happen to the Defendants? Will damages pay off? I do not think so. This is not a case where damages are appropriate deciding factor. Who do you compensate, the members? The union? And how? Here is a meeting requisitioned by over 2/3 of the membership who must have traveled from all over the country and to have their meeting stopped at the last minute, I do not think would be convenient. I think with respect, that balance of convenience rests in allowing the meeting to continue.

If I allow the application and stop the meeting, wasted effort to prepare the meeting will have been scuttled away and inconvenience caused to the members, while when I refuse, only the Secretary General will be inconvenienced and few others, in any case, they will still have a chance to attend the meeting and raise objections and questions they wish to raise and argue their case there including allegation of any illegality.

For these reasons, I respectfully decline to grant the order prayed and dismiss the application with costs.

DATED this 27th day of June 2003.

A.I. HAYANGA

JUDGE