



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT MISC. CIVIL APPEAL 712 OF 2001

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF UNIONS..... DEFENDANT

RULING

By this judicial review proceedings filed on 21st August, 2001 pursuant to leave granted on 15th August, 2002, the applicants, who used to be officials of the interested party, KUDHEIHA, seek orders of certiorari and mandamus against the Registrar of Trade Unions canceling the registration of new officials of the said UNION done on 25th June, 2001 and directing him to restore the names of the applicants until proper constitutional elections are carried out. The grounds on which the application is based are said to be inter alia that the registration was fraudulently and unlawfully obtained. The application is however strenuously opposed on the grounds inter alia that the registration was as a result of lawfully held elections.

The parties are agreed that the applicants are the outgoing officials of this Union and held what they termed a Quinquennial Conference on 21st June, 2001 at Kenvash Hotel, Naivasha at which elections of new officials were held. It was attended by delegates from its 26 branches including those from its Mombasa Branch. In the statement of facts it was alleged that 10 branch secretaries were allowed to vote and yet they were not eligible to become branch secretaries plus a further 18 delegates who were not entitled vote as they were barred by a court order.

In addition to the above complaints, it was alleged that names of newly elected officials were forwarded to the Registrar on 25th June, 2001 but the registrar ignored objections of same date and registered the new officials on the same date without following the law. The Union does not agree with the aforesaid contentions of the applicants apart from the fact that the meeting was held at Naivasha as stated by the applicants at the invitation of the applicants and all those who participated were allowed to do so after full scrutiny by the applicants. On delegates from Mombasa, they stated that there was no hindrance to their participation as the injunction against their election had lapsed and the non-industry officials had been cleared by the Registrar of Trade Unions. Hence the elections were lawfully held.

On the registration process, it was the Registrar's deposition that all elections starting from the branches of the Union were supervised by his officials and were confirmed by the officials as having been regularly held. Those for the Union were held on 21st June 2001 and confirmed by his officials' by a letter dated 23rd June, 2001 that the new officials had been duly elected. On their part the new officials had filed an application for change of officials on 22nd June, 2001 and as no objections had been received, they were duly registered on 25th June, 2001 the Registrar being satisfied that the elections had been validly carried out. As the applicants objections were received on 26th June, 2001, it was then too late for the Registrar to halt the registration as it had already taken place. In the Registrar's view, his actions were within his powers and there is therefore nothing to be quashed or done.

This is a judicial review proceeding under the provisions of the Law Reform Act sections 8 and 9 thereof. Proceedings thereunder have to be conducted under the provisions of O.53 and orders granted in accordance with the jurisdiction exercised by the courts of justice in England. The provisions of S.8 of the said Act are as follows:

8 (1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari.

(2) In any case in which the High Court in England is, by virtue of the provisions of S.7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938 of the United Kingdom empowered to make an order of mandamus, prohibition or certiorari, the High Court shall have power to make like order”

In England, Judicial Review Orders are only available against public bodies or offices such as the one of Registrar or Respondent herein. An Order of Certiorari is only available if the public body or quasi judicial official exceeded his jurisdiction or contravene the law in dealing with the matter before him or departed from the rules of natural justice. It does not however, lie to correct the course, practice or procedure of the inferior body or official, or a wrong decision on the merits of the proceedings. See Halsbury’s Laws of England 4th Edition Vol. 1 at page 37 paragraph 128.

As regards mandamus, according to Halsbury’s Laws of England, 4th Edition, Vol. 1 of page 111 paragraph 89 and 90, it is stated that:

“The Order of Mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is specific legal right and no specific legal remedy for enforcing that right exists, and it may issue in cases there, although there is an alternative remedy, yet that mode of redress is less convenient, beneficial and effectual.

The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode and performance of the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way”

Keeping the above in view, it is observed that in the instant case, the main complaint is that the Registrar erred in registering officials of the Union whose election was flawed without giving the defeated candidates time to air their complaints. In determining whether or not the Respondent breached the law, regard must be had to the provisions of S. 29 and 8 of the Trade Union Act which allows non-union members to hold offices in Unions and entitles the Registrar to register changes if satisfied of their validity and/or propriety.

Mrs. Guserwa, the learned counsel for the applicants submitted that the elections were flawed as persons not entitled to vote were allowed to participate in the elections. She particularly stated that non industry secretaries had been allowed to participate and that delegates of Mombasa who had been barred by an order of the court did participate in contravention of a court order. Secondly, counsel complained that the change of officials were effected by the Registrar in haste and the objection of the applicants were not taken into account nor were investigations carried out as envisaged by. S.38(4) and (5) of the Act. On his part, Mr. Langat for the Registrar submitted that the Registrar committed no breach of the law as all that he was required to do was for him to be satisfied of the validity. As the elections had all along been supervised by his officials and had received his official’s report of 23rd June, 2001 confirming propriety of the elections, he was entitled to act on the Union’s notification of change of officials of 25th June, 2001 by registering them on 25th June, 2001 by registering them on 25th June, 2001 which was before

the applicants objections were received. Further, Mr. Obura, the learned counsel for the interested party submitted that the nonindustry members validly participated in the elections and that by the time the elections were held the injunction barring Mombasa delegates had lapsed.

In dealing with applications for certiorari; the courts' concern is whether the law was breached or the official acted in excess of his powers. In this regard, it is observed that the ex parte order barring Mombasa delegates was issued on 30th May, 2001. As such ex parte orders are only valid for 14 days and are not extendable and had not been extended by 21st June, 2001, when the elections were held, there was no bar to their participation. It is also observed that non-industry secretaries are not barred but are only subject to the consent or permission of the Registrar. As the Registrar had registered them, they are deemed to have been permitted by the Registrar to hold these offices. No law was therefore breached by their participation in the election. Indeed it was the applicants who were in control and it is ill of them to now cry fowl after permitting the said officials to participate in the elections

Did the Registrar breach any law? S. 38(1) requires changes to be notified within 7 days and by S. 38 (4) it is at his discretion as to whether or not to require evidence of validity or propriety of elections before registration. I see no law which he breached in registering the changes on the same day. It is also not possible to read any ill motive into the exercise as his officials had all along supervised the elections and the deadline for completing all elections was only 5 days away. As there was no complaint on his table before registration he was not under any duty to carry out any inquiry. In any case, whether or not there were sufficient facts to satisfy him before registration is not a matter for judicial review proceedings.

In view of the above, it is this court's holding that the Registrar did not breach any law in registering the change of officials and there is therefore nothing to command him to do. This motion therefore fails and is hereby dismissed with costs. Orders accordingly.

Dated and signed at Nairobi this 1st day of August, 2002.

G.P. Mbitio

JUDGE