



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO 3432 OF 1988

JOSEPH MUTHUSI & 2 OTHERS..... APPLICANTS

VERSUS

WILLIAM GATHOGO & 2 OTHERS RESPONDENTS

RULING

This is an application by way of Chamber Summons for a temporary injunction restraining the defendants/respondents from conducting elections until the determination of this suit.

The plaint filed states that the plaintiffs are members of a Union or rather Trade Union known as Kenya Engineering Workers' Union, a duly registered body under the Laws of Kenya. It also states that the defendants are the officials of the Union, namely, the National Chairman, the General Secretary and the National Treasurer. It further states that the suit was being brought on behalf of the union workers who work at Emco Steel Works Ltd and form part of the general membership of the Union's Nairobi Branch.

The matters in dispute, in so far as they are relevant to the current ruling, are that on 16th August, 1988 the General Secretary of the Union wrote to the General Manager of Emco Steel Works Ltd informing him that there would be a meeting of the union members working for the said company on the 20th August, 1988 at which shopstewards would be elected to represent the workers within the company in the Union. The plaintiffs disputed the validity of the notice convening the meeting alleging that the meeting would be in contravention of Rule 15(d) and (e) of the Union Constitution. They also stated that the plaintiffs who had been elected to represent the workers in the industry were unlikely to attend the meeting which would be to the detriment of the workers and sought a declaration that the meeting scheduled for 20th August, 1988 would be null and void.

On the 19th day of August, 1988, the plaintiffs, while filing the plaint also a filed a Chamber Summons, under a certificate of urgency, seeking *inter alia*, leave to represent the union members at Emco Steel Company Ltd, and for a temporary injunction restraining the defendants/respondents from conducting the said elections until the disposal of the suit. On the same day Mr Justice Akiwumi granted the application for temporary injunction until 2.9.88 for hearing the application *inter partes*. On 2.9.88 Mr Justice Tank extended the injunction to 7.9.88. On 7.9.88 Lady Justice Owuor also extended the injunction to 12.9.88, when I became seised of the matter. On being seised of the above matter, I was called upon to rule on whether or not the plaintiffs needed leave before bringing a suit on behalf of the other workers. I found that that was not required and the matter then proceeded on merits.

Counsel for the plaintiffs strongly submitted that the notice convening the meeting was in contravention of the Union Constitution. He particularly referred to Rule 15 of the Constitution. He also relied on the

affidavit of Joseph Muthusi and the documents annexed thereto. Counsel argued that even though the said rule applied to branch elections, the elections of shopstewards were also governed by the said rule. He stated that no notice of the said meeting had been given to the union members at the Emco Steel Industry and as such the meeting was null and void. On law the learned counsel submitted that the injunctions have to be given to preserve the status quo such as in the case of *S M Otieno* and in *Gheewala vs Gheewela and others*. He states that if the injunction is not granted the case would serve no purpose. In other words, the suit would be rendered nugatory, if the injunction is not granted.

On the other hand, counsel for the defendants argued first, that the suit was in contravention of the Trade Union Act, which requires that all suits must be brought in the name of the Union. Hence the suit was doomed to failure. Secondly, that even if the plaintiffs are held to have properly brought the suit, it had no probability of success as the court cannot make a binding order on breaches of internal regulations of societies, such as the Union of which the defendants are officials. He also submitted that the law on grant of injunctions was clear and that it required *prima facie* case. He also referred the court to a number of authorities.

Although it cannot be said that the principles of granting injunctions has been settled, it can however be safely stated that in Kenya, the principles have been broadly indicated in the case of *Giella vs Cassman Brown*. The principles indicated in that case were that (1) the case has to have reasonable probability of success (2) that the injury likely to be suffered has to be incapable or unsuitable of monetary compensation and (3) that where the court is in doubt then, the grant should be based on balance of conveniences. Recent decisions appear to have modified the first requirement to the existence of a triable issue. They also stress the need for maintenance of status quo rather than monetary compensation as the courts should not act in vain and/or that their decisions should not be rendered nugatory in the course of the pendency of a suit. I will now attempt to apply the aforesaid principles to the facts of the application before me.

The parties to this suit are all members of a registered society or to be more exact, a special society, called a Trade Union. By virtue of that registration it is legally, so to speak, a separate individual and can be sued and can sue in its own name. However being a non-person, it has to act in accordance with its Charter, namely the Constitution, the law relating to such unions and/or natural justice. The issues arising in this application are (1) whether the officials acted in breach of the aforesaid principles in calling the meeting herein and (2) whether this court, acting as court of law could grant a remedy for such a breach.

According to the Constitution of the Union, there is no provision for calling meetings for election of shop-stewards. In the circumstances it will be open to the trial court to find whether or not a reasonable notice was given by those in control of the Union to the union membership under the rules of natural justice, depending on the particular circumstances. There is therefore a triable issue. However I am doubtful of its probability of success as I am not seised of the evidence of the case nor am I aware of the law forbidding the members from requiring their officials to conform to the laid down rules by a court action where their rights are likely to be affected. These are for the trial court. I cannot say whether if a court were satisfied that a breach of the Union's rules had occurred, it would grant a remedy if any.

It is observed that the Union has its own rules, the observance of which can be enforced by a majority of the membership insisting on their observance. If wrong decisions are made, then, the members must be deemed to have so agreed where the rules permit the majority to make decisions. In such cases, in my view it would be futile for the court to interfere where the irregularity is a breach of a regulation which can be regularized by a majority of the membership and does not affect a member's membership directly. In the present case, the running of the Union is vested in the Executive Committee. Further the General Secretary is empowered to call meetings subject to the control of the Executive Committee and the Delegates Conference or Special Delegates Conference. In my view it would be futile for the court to involve itself in the day to day running of a union such as the current one which has its own rules of governing itself. In view of this observation I would be doubtful if a court of law would want to give a remedy which could be reversed by the Union soon thereafter. Its labour would have been in vain. On the other hand the court may find that members' rights are involved and grant a remedy. This is for the trial court. I cannot for sure say that the case is likely to succeed.

On the issue of injury to be suffered by the members, I would say that I personally see none, at least directly. It could also be redressed by requiring a special delegates conference as provided by the Constitution or by the court ordering fresh elections. It is also absolutely remote to suppose that shopstewards elected at meetings convened against the rules of natural justice by a majority of the members would affect the rights of the members. It is however conceivable that the shopstewards might not effectively represent the plaintiff's interests, but if they are in the majority in the industry, then they may find themselves elected. I am therefore doubtful on the injuries the appellants are likely to suffer. They may or may not suffer irreparable loss. Consequently, I will now examine in some details the issue relating to balance of conveniences.

According to the plaint, the national officials have failed to represent the workers as a result of which the workers have suffered and continue to suffer as per paragraph 7 of the plaint. A letter dated 24.2.1988 addressed to the General Secretary of the Union showed that one, Paul Mwaniki had resigned as a Chief Shopsteward at Emco Steel Works Ltd. By a letter dated 29.2.1988, the Chairman of the Works Committee confirmed that they no longer had a quorum for meetings. Consequently the workers were currently uncatered for at the factory. By the said letter, the Committee had requested the General Secretary to call a meeting. The only disadvantage I can see on the part of the plaintiffs is that "Any action taken by Mr Mulei is always intended for his own benefit or of his henchmen" as deponed to by the first named plaintiff in the responding affidavit, meaning possibly that the plaintiffs would not benefit from the elections as they are not henchmen of the General Secretary. However, an unsigned letter of the workers at the industry dated 17.3.88 addressed to the Government reiterates the fact that they were suffering as their General Secretary had failed to organise an election of shopstewards and the proposed elections appear to be a step towards satisfying the workers problems.

After considering the inconveniences which the parties would experience in the event of the elections being held or not being held, I find that the Union and the workers would suffer more if no elections are held pending the outcome of this suit as the workers would remain voiceless for that period. On the other hand if the elections were held the plaintiffs would be at liberty to participate. If they lose but win their case, then the court would be at liberty to nullify the elections and direct fresh elections to be held. The subject matter would still be available for further orders and the courts order would not have been rendered nugatory in any way. In the result, the plaintiffs application for temporary injunction pending the disposal of this suit is dismissed with costs. The *ex-parte* temporary injunction is also hereby discharged.

Dated and Delivered at Nairobi this 28th Day of November, 1988

G.P. Mbito

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JUDGE