



**Ogaja v Nzau (National Chairman) & 6 others (Cause 280 of 2020)
[2025] KEELRC 684 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 684 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 280 OF 2020
MA ONYANGO, J
FEBRUARY 27, 2025**

BETWEEN

OGAJA OGAJA CLAIMANT

AND

JOHN NZAU (NATIONAL CHAIRMAN) 1ST RESPONDENT

TOM MBOYA ODEGE (SECRETARY GENERAL) 2ND RESPONDENT

JUSTUS K MUGO (NATIONAL TREASURER) 3RD RESPONDENT

PAUL KIMUTAI (NATIONAL TREASURER) 4TH RESPONDENT

**JOHN JERRY OLE KINA (1ST DEPUTY SECRETARY
GENERAL) 5TH RESPONDENT**

REHEMA IBRAHIM (NATIONAL TREASURER) 6TH RESPONDENT

REGISTRAR OF TRADE UNIONS (STATE) 7TH RESPONDENT

JUDGMENT

1. The Claimant filed the instant claim in his capacity as a civil servant and member of the Union of Kenta Civil Servants. The 1st to 6th Respondents are sued in their capacity as officials of the union.
2. The 7th Respondent is the Registrar of Trade Unions
3. Vide a statement of Claim dated 17th June, 2020 the Claimant states that it is the right of every trade to determine its own constitution and rules and to elect officers and plan and organize its administration and lawful activities under section 9(a)(i) and (ii) and (b) of the *Labour Relations Act* and Article 41(4) (a) of *the Constitution* of Kenya 2010.



4. The Claimant avers that the rights and freedoms contemplated in Article 41 of *the Constitution* and section 9 of the *Labour Relations Act* have been violated, infringed and breached by the Respondents, their deputies and/or assistants when they conspired to illegally and with impunity change or amend *the constitution* of the Union of Kenya Civil Servants and forcing it on members of the union without adoption by the union's organs mandated to make such amendments thereby offending section 27 of the *Labour Relations Act*.
5. It is the Claimant's averment that the 1st to 6th Respondents illegally amended *the constitution* of the union and secured its registration by the 7th Respondent fraudulently.
6. The Claimant prays for the following orders:
 1. That leave be granted to me to present and prosecute the application herein by myself.
 2. That the application herein be certified as of uttermost urgency and the same be placed and admitted for ex-parte hearing in the first instance.
 3. That the honourable court be pleased to consider the claims and facts in this application as of grave nature so as to issue declaratory and conservatory injunctive orders declaring the union of Kenya civil servants general elections procedurally illegal, null and void and the same be dissolved forthwith.
 4. That the current administrative/management structures of the union illegally constituted.
 5. That the Hon. Court be pleased to immediately order the registrar of trade unions to declare the union constitution of 2011 and 2015 irregularly amended and fraudulently registered and the same to be deregistered forthwith.
 6. That the current officials of the union be declared illegally in office, and the same be barred and restrained from exercising the functions and authorities of the national, county, branches and chapter offices of the union of Kenya civil servants occupying the same, signing documents on behalf of the union and or making any representation to the effect that they are union officials pending the hearing and the determination of the application herein inter-partes.
 7. That the honourable court issues an injunctive order restraining the officials named in paragraph 6 above from accessing withdrawing and/or dealing with banks accounts with the Corporative bank Harambee avenue, Elimu SACCO society limited, Fosa section, Tom Mboya street in any manner howsoever, whatsoever pending hearing and determination of this application and that alternatively the court be pleased to close and or freeze the said accounts so as to limit access, withdrawal and any manner of interference.
 8. That I Ogaja Ogaja being the claimant/applicant and member of the union be granted further leave and orders authorising me in consultation with other members of the union to constitute a national interim caretaker committee to manage the union for 6 months making a legitimate constitution of the registering the same and organizing and conducting general election from grassroots to national.
 9. That orders for forensic audit of all financial positions of the union from 2011 to date be issued.
 10. That the court be pleased to issue an order for collection and conservation of all properties of the union which includes: moveable and non-moveable assets, funds and finances of the union.



11. That the Hon. Court directs for prosecution of the national executive board members for criminal conspiracy to commit economic crimes against innocent, poor and desperate civil servants.
 12. That the honourable court be pleased to issue any other conservative declaratory and or interlocutory orders it may lawfully deem fit to mitigate the designs of the current national officials threatening existence of the union.
 13. That the honourable court further issue injunctive orders restraining respondent herein from contesting in elective positions in the Union.
 14. That the entire management organs of the Unions from branches to National be dissolved to allow members to elect their officials from grassroots to national after constitutional amendment.
 15. Cost of the application.
7. The prayers are contained in the notice of motion filed together with the Statement of Claim which does not have any prayers. I have tried to discern the prayers from the many documents filed by the Claimant who was acting in person and is obviously not conversant with the requirements for filing of pleadings. The Claimant has thus mixed up all the issues in the many documents filed in court which include a Statement of Claim, dated 17th June, 2020, notice of motion dated 29th June, 2020, and supporting affidavit sworn on 29th June, 2020.
 8. The 1st to 6th Respondents filed grounds of opposition dated 20th July, 2020 and a replying affidavit of Jerry Ole Kina, the 5th Respondent also sworn on 20th July, 2020.
 9. In both grounds of opposition and replying affidavit the 1st to 6th Respondents state that the suit is frivolous, vexatious and an abuse of court process and that the Claimant has no locus standi to present the case as he did not demonstrate that he is a member of the Union of Kenya Civil Servants. It is further pleaded that the Claimant is guilty of material non-disclosure of relevant facts.
 10. In the affidavit Mr. Ole Kina he deposes that the Claimant is not a member of the Union. He attached the list of Members from Siaya County Branch of the Union in support this averment.
 11. The 1st to 6th Respondents deny that they have violated the union constitution as alleged by the Claimant. They attached a copy of the Union constitution which provides for amendment thereof at Article 30 at annexure 'JOS-5'.
 12. The 1st to 6th Respondents deny that they have plundered union funds as alleged by the Claimant. They further deny the averments by the Claimant that they have refused to appoint county secretaries and have attached a list of duly appointed county secretaries at annexure 'JOS-7'.
 13. The 7th Respondent filed a replying affidavit sworn by Elizabeth N. Gicheha on 20th November, 2020 and a response to the Claim dated 3rd August, 2021.
 14. In the Response the 7th Respondent states that the claim is time barred, that the amendment of the union constitution was done in compliance with the Labour Relations Act and the Union constitution and that it is too late for the Claimant to complain as he was supposed to do so within 21 days of publication of notice of amendment.
 15. In response to the averment of the Claimant that 2016 elections of the union were conducted unconstitutionally the 7th Respondent states that the elections complied with section 34 of the Labour Relations Act, that the complaint is statute barred and that the branch and national elections of the



Union were contested in Mombasa ELRC Petition No. 12 of 2017 where the court upheld the election results. That the matter is sub judice.

16. The 7th Respondent attached copies of Gazette Notice No. 6343 of 28th August 2015 and publication in the Standard of 3rd September, 2015 as proof of compliance with requirements for amendment of the union constitution pursuant to section 27(4) of the *Labour Relations Act*.
17. The Claimant and 7th Respondent filed submissions in which they reiterated the averments in their pleadings. The 1st to 6th Respondents did not file submissions.
18. I have considered the pleadings, evidence and submissions on record. I have tried as much as I was able, to decipher the specific issues raised by the the Claimant as the Statement of Claim does not contain any prayers. What I gathered from the pleadings is that his complaint was that the 1st to 6th Respondents who were officials of the Union of Kenya Civil Servants amended the union constitution without compliance with the union constitution and the provisions of the *Labour Relations Act*. The 7th Respondent is accused of having registered the amended constitution without compliance with the provisions of the *Labour Relations Act*.
19. Amendment of constitutions of trade unions is provided for in section 27 of the *Labour Relations Act* as reproduced below:

Change of name or constitution of trade union employers, organisation or federation.

27.

- (1) A trade union, employers' organisation or federation may resolve to—
 - (a) change or replace its constitution; or
 - (b) change its name.
- (2) A registered trade union, employer's organisation or federation may apply to the Registrar to approve a change of name or an amendment to its constitution and rules by submitting to the Registrar –
 - (a) a notice in Form I or Form J as the case may be set out in the Second Schedule duly completed and signed by the secretary;
 - (b) a copy of the resolution containing details of the change; and
 - (c) a certificate signed by the secretary stating that the resolution was passed in accordance with *the constitution* and rules.
- (3) Notice of the change specified in subsection (2) shall be submitted to the Registrar within fourteen days of any resolution to change the name or constitution.
- (4) Upon receipt of the notice of change of name or constitution, the Registrar shall give a notice of at least twenty-one days in the Gazette and in three daily newspapers of national circulation



inviting any objections to the proposed change of name or constitution by members of the trade union and where any such objection is raised, the Registrar shall investigate the complaint and the grounds relied upon and may-

- (a) refer the matter to the Industrial Court;
 - (b) refuse to accept the proposed amendments; or
 - (c) make any orders that he may deem fit in the circumstances.
- (5) The Registrar may approve a change of name or to *the constitution* if the applicable requirements of registration of a trade union, employer's organisation or federation are met.
 - (6) The Registrar shall issue a certificate of change of name or change of *the constitution* in Form K or Form L, as the case may be.
 - (7) Any change of name or change to *the constitution* and rules of a registered trade union, organisation or federation shall take effect when the registrar approves the change under this section.
 - (8) A change in the name of a trade union, employers' organisation or federation does not –
 - (a) affect any right or obligation of that trade union, employers' organisation or federation;
 - (b) render defective any legal proceedings by or against it and any proceeding instituted under the former name may be continued or commenced by or against it under the new name.
 - (9) Where the Registrar refuses to approve a change under this section, the Registrar shall give written notice of that decision and the reasons for the refusal. Cancellation or suspension of registration.
20. From the evidence on record, the amendment of *the constitution* of the Union of Kenya Civil Servants complied with the requirements of section 27 of the Act.
 21. Another issue arising from the pleadings is whether the Claimant was a bona fide member of the union and whether he has locus standi to institute the suit herein. The Claimant did not respond to the said objections as raised by all the Respondents. The 1st to 6th Respondents filed membership list for Siaya County as proof that the Claimant was not a member as his name does not appear in the said list of members.
 22. I do not find the list to be proof that the Claimant was not a member as the Claimant himself did not indicate under which branch he is registered. He further described himself as a founder member of the union. It was not clear from the pleadings filed by the Respondents whether or not such category of member is provided for in the Union constitution.
 23. In the absence of proof that the Claimant is not a bona fide member of the union, I find the objections on his locus standi to be unproved and hold that he is properly in court.



24. In conclusion, having found that *the constitution* of the Union of Civil Servants was properly registered in compliance with the requirements of the *Labour Relations Act*, I find no merit in the claim and dismiss the same. Each party shall bear its costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF FEBRUARY 2025

MAUREEN ONYANGO

JUDGE

