



Seafarers Union of Kenya v Ramadhan & 2 others; Registrar of Trade Unions (Interested Party) (Cause E057 of 2023) [2024] KEELRC 1409 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 1409 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E057 OF 2023
M MBARŪ, J
MARCH 14, 2024**

BETWEEN

SEAFARERS UNION OF KENYA CLAIMANT

AND

ATIE SWALEH RAMADHAN RESPONDENT

AND

JOHN HUSSEIN ZAPPA 1ST DEFENDANT

MATARI MWINYI MATARI 2ND DEFENDANT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

RULING

1. The claimant filed application dated 26 January 2024 under the provisions of Section 1A, 1B, 3A and 63(e) of the Civil Procedure Act and Order 40 rule 1, 2, 3 and 4, Order 1 rule 10(2) of the Civil Procedure Rules and seeking for orders that;
 1. Spent.
 2. Spent.
 3. An order be issued for the *status quo* prevailing before the registrar’s letter appointing the splinter group as officials of the Seafarers union of Kenya be maintained pending the hearing and determination of this application.
 4. An order of temporary injunction be issued restraining the following Mwalimu Chii Hamisi, Alfani Jilani Mwamboje, Atie Swale Ramadhan, Said Chako, John Hussein Zappa, Ali Hassan



Bakari, Fadhili Gona, Mwanamgeni Hassan, David Henry Kibuyu, Salim Gombeni Suleiman, Mwanarabu Abresh Saidi, Alamin Ahmed, Muchangamwe Abdalla Omar, Omar Mohamed Mwazeze, Suleiman Omar Bomafrom taking over the Seafarers union of Kenya offices located at Jawambe Hotel in Ganjoni, Mombasa and running Seafarers union of Kenya account number 1135767149 held at Kenya Commercial Bank, Kilindini branch pending the hearing and determination of this suit.

5. Leave be granted to the claimant to amend the plaint and include the International Transport Workers Federation (ITF) in this suit as an interested party.
 6. The court be at liberty to grant any other order it deems necessary in the circumstances of the case.
 7. The cost of this application be provided for.
2. The application is supported by the Affidavit of Stephen Ojiambo Owaki and on the grounds that the claimant conducted its elections as per the guidelines given by the court in its judgment delivered on 2nd January 2024. The respondents who were leading a splinter group also purported to have conducted another election and before they court file returns, this suit was filed to stop the respondents from taking over but the same was overtaken by events. The claimant opted to withdraw the application and proceed with the main claim scheduled for hearing on 29 January 2024. The dispute related to the conduct of elections and registration of the office bearers but the interested party decided to register the splinter group headed by the respondents as officials of the claimant.
 3. In his affidavit, Owaki aver that he has since been informed by the interested party that the respondents have been registered as the officials of the claimant and sent letters to the secretary general, one Atie Swale Ramadhan. It has been confirmed that the secretary general has taken over office. The act of the interested party to register the respondents is in bad faith and an attempt to frustrate this suit.
 4. There will be no prejudice to the respondents if the orders sought are issued to preserve the Seafarers Union of Kenya and to avoid confusion in the management of the union. The respondents should be restrained from taking over office or running the accounts of seafarers' union of Kenya and be stopped from running the account of the union, Account No 11357XXXXX held at Kenya Commercial Bank, Kilindini branch pending the hearing and determination of the claim herein.
 5. The claimant is also seeking leave to enjoin International Transport Workers Federation (ITF) as an interested party herein. National Coordinating Committee Kenya Chapter to mediate between the factions and resolve matters between the general secretary of the claimant to call elections per the court judgment.
 6. In reply, the respondents filed the Replying Affidavit of Atie Swale Ramadhan who aver that she is the 1st respondent and has authority to respond herein. She avers that the instant application is defective and bad in law and should be dismissed with costs.
 7. Atie aver that the instant application and claim dated 22 June 2023 are supported by the Affidavit of Hassan Kombo Ismael who resigned from the claimant union on 17 November 2016 and hence not a member of the union and has no capacity to institute these proceedings on behalf of the claimant. The claimant is a registered trade union with its organs and Hassan Kombo Ismael or Stephen Ojiambo Owaki have no authority to file suit for the union,
 8. Atie also aver that Stephen Ojiambo Owaki purports to be the secretary general of the claimant but has not filed any document in support of the alleged position or membership with the claimant. The independent electoral Board of the claimant issued notice of election to the National Police Service



- and upon a successful election carried out on 24 June 2023 and filing Form Q with the interested party on 26 June 2023, the union elections were registered and notice issued through letter dated 16 January 2024.
9. The applicant, Isaka Musa Awula and others who raised objections against the election of the respondents received letter from the interested party confirming that the judgment of the court delivered on 2 February 2023 in Mombasa ELRC Petition No 5 of 2021 had been complied with. On 16 January 2024 the interested party notified the applicant why Form Q dated 22 June 2023 could not be registered by giving 8 reasons why their election could not be registered. The orders sought herein are in bad faith meant to deny claimant members representation by officials of their choice. The claim herein is *res judicata* as the same matter was determined in Mombasa ELRC Petition No 5 of 2021 and which suit the applicant withdrew through the firm of Omulala E. M. & Company Advocate and dated 17 March 2023.
 10. The functions of the union have been dormant due to leadership of the claimant. The interested party has since registered the officials of the claimant and the orders sought herein to bar the officials from running the union or operating union accounts is contrary to Article 36 and 41 of the Constitution and should be demised.
 11. Both parties attended and agreed to file skeleton written submissions and also make oral submissions.
 12. The claimant/applicants submitted that there were purported elections of the respondents which contravened the union constitution and hence there was no election on 24 June 2023 as alleged. For any gathering, a police permit must be issued and Likoni Police Station did not issue any permit for the purported meeting where elections were held. The claimant's constitution requires that once an election has been conducted by its officials it should comprise of all positions and not just the three official purported to have been elected. There were ulterior motives behind the elections to access union bank account as the authorised officials. The orders sought should issue to protect the union funds and pending the hearing of the claimant herein.
 13. The applicant submitted that the response by the respondents that Hassan Kombo Affidavit to support the claim herein is not proper should be dismissed since he is not required to be a member to file suit. It is not necessary for him to be a paid up member to file suit. He cannot vote but he is allowed to file suit.
 14. The respondents submitted that the claimant union held two different elections on 21 June 2023 and 24 June 2023 by different groups of the claimant's members. Stephen Ojiambo did not have the mandate to call for elections as a general secretary. He had been elected on 31 April 2016 as general secretary to hold office for 5 years and which lapsed in the year 2021.
 15. The respondents submitted that the judgment in Mombasa ELRC Petition No 5 of 2021 nullified the elections held on 21 June 2023 and allowed for new elections. There were fresh elections to which the applicant objected and the interested party gave 8 reasons why the elections of 21 June 2023 could not be registered. The elections can only be confirmed by the interested party upon certification of validity. The elections of 24 June 2023 have since been confirmed.
 16. The suit herein is supported by the Verifying Affidavit of Hassan Kombo who is not a paid up member of the claimant. He violated Section 33 of the Labour Relations Act.



Determination

17. The claim herein is filed by Seafarers Union of Kenya as the plaintiff. Suits before this court are filed by a Claimant pursuant to Rule 4 of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) (the Rules). A claimant is defined under the Rules.
18. Unlike proceedings with regard to employment claims, a trade union is allowed to move the court pursuant to the [Labour Relations Act, 2007 \(LRA\)](#) read together with the Rules. A suit commenced by a trade union must be lodged under the authority of the Authorised Representative of the trade union as defined under the [LRA](#). The law recognises the General Secretary as such Authorised Representative and defined under Section 2 to mean;
 19. In this Act, unless the context otherwise requires— “authorised representative” means—
 - (a) the general secretary of a trade union;
 - (b) an employer or the chief executive officer of an employer;
 - (c) the secretary of a group of employers;
 - (d) the chief executive or association secretary of an employers’ organisation; or (e) any person appointed in writing by an authorised representative to perform the functions of the authorised representative;Hence, for the claimant to move the court as herein done, the same should and ought to be through the hand and authority of the authorised representative and general secretary.
20. The subject application is supported for the claimant by Stephen Ojiambo Owaki and in his Supporting Affidavit aver that he is the secretary general. Such position is challenged by the respondents who have attached the current returns issued by the interested party as of 29 January 2024 indicating that the secretary general of the claimant union is Atie Swale Ramadhan.
21. The returns by the interested party as the officer mandated under the law to register trade unions is the primary record of the status of any trade union in the Republic. Unless contrary evidence is submitted, which is not the case here, the returns of 29 January 2024 suffice.
22. Should the court restrain the respondents from taking over the claimant’s union offices or the running of account No 11357XXXXX?
23. On the returns by the interested party as of 29 January 2024 when this claim was filed, the listed officials of the claimant union are *prima facie* the current office holders. To stop the running of the office or access to union accounts would not achieve justice pending the hearing of the claim herein.
24. The respondents have also raised the issue that the claim herein dated 22 June 2023 is supported by the Verifying Affidavit of Hassan Kombo Ismael who is not paid up member. The applicant asserts that though not paid up, such position does not stop him from filing suit as herein done.
25. As outlined above, a claim filed for and on behalf of a trade union is not an ordinary employment claim. It is regulated under the [LRA](#). The initiator is the general secretary or a person authorised in *writing* by the general secretary.
27. Hassan Kombo Ismael or Stephen Ojiambo Owaki cannot file a claim under the name of the claimant as its benefactors. They have a right to file a claim in their own persons as aggrieved party as members of the claimant or as appellants from the decision of the interested party. On the face of current returns



by the interested party, the subject of general secretary hence determined, to move the court as herein done is contrary to the *LRA*.

28. The application herein dated 26 January 2024 is on the foundation of the claim herein dated 22 June 2023. At this point, the subject elections noted in the returns by the interested party that the claimant members held elections on 24 June 2023 had not been registered. Form Q has since issued as at 29 January 2024 and Stephen Ojiambo Owaki is not the claimant's general secretary.
29. The respondents raised the issue of the matter being *res judicata*. That there was Mombasa ELRC Cause No 5 of 2021 which addressed similar matter. A Notice of Withdrawal dated 17 July 2021 issued. Such marked the matter withdrawn. It stopped to exist. The claim herein is not *res judicata* as alleged. However, there is Mombasa ELRC Petition No E005 of 2021 which proceeded and judgment delivered on 2 February 2023. The petitioners therefrom are the current respondents against the claimant, general secretary and the interested party. Hence Mombasa ELRC Cause No.5 of 2021 and Mombasa ELRC Petition No E005 of 2021 are different suits though interested with the parties herein
30. To issue the orders sought in light of the Memorandum of Claim and the transient processes from June 2023 to date would be to ignore key changes within the claimant union. A proper analysis of all factors would require the court to hear all parties on the merit.
31. Accordingly, orders sought in applications dated 26 January 2024 shall not issue. Application is hereby declined. Costs in the cause.

DELIVERED IN OPEN COURT AT MOMBASA THIS 14 DAY OF MARCH 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

