



Kenya County Government Workers Union v Registrar of Trade Unions (Employment and Labour Relations Appeal E141 of 2023) [2024] KEELRC 1044 (KLR) (25 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 1044 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E141 OF 2023**

**MN NDUMA, J
APRIL 25, 2024**

**BETWEEN
KENYA COUNTY GOVERNMENT WORKERS UNION APPELLANT
AND
REGISTRAR OF TRADE UNIONS RESPONDENT**

JUDGMENT

1. The issue in dispute in this appeal is refusal by the Registrar of Trade Unions to register the newly elected officials of the appellants union vide a letter of the Registrar dated 3/7/2023.
2. The appellants seeks an order in the following terms: -
 1. The decision of the respondent dated 3rd July 2023 be set aside, discharged, vacated and/or varied.
 2. The respondent be directed to register the newly elected officials in the Machakos branch pursuant to the Branch Elections held on the 23rd April 2022.
 3. Costs of the appeal
3. The grounds of appeal may be summarized that:
 - i. The respondent erred by finding that the notice calling for special branch congress dated 5/4/2022 was flawed.
 - ii. The respondent erred in law and fact by finding that the removal of the Branch chairperson, secretary and treasurer was contrary to Article 5.5.1 of the union's constitution as the said officials were replaced in the same branch congress.



- iii. That the reasons given by the respondent for the refusal to register the new officials are not valid in law and or in fact hence the nullification of the appellant's Machakos branch election held on 23/4/2022 was unlawful.
4. The appeal is opposed vide replying affidavit of Beatrice Mathenge the Registrar of Trade Unions. The Registrar states that her office lawfully and rightfully refused to register the change of officials of the appellant union in terms of section 35(4) of the *Labour Relations Act*, 2007.
 5. That the appeal is bad in law and incompetent as the three (3) branch officials that were removed from office during the special Branch Congress held on 23/4/2022 have not been enjoined to the appeal as respondents yet if the appeal succeeds the three officials will be removed from office to their loss and prejudice.
 6. That the appellant has not proved that the branch officials who were removed were not members of the union and had any arrears in payment of union dues. That the respondent provided detailed and concise grounds for her decision not to register the new officials which document is before court marked "RSDI"
 7. That the decision was lawful, justifiable and in accordance with section 35 of *LRA*, 2007.
 8. That under Article 5 of the union's constitution a branch is one of the organs of the union just like the National Delegates Conference (NDI), the National Executive Committee (NEC) the National Secretariat (NS) and hence each organ should perform its functions provided under the Constitution without interference from the others.
 9. That the General Secretary ought to have allowed the Branch to conduct its affairs as provided for under the union's constitution and not interfere with its governance as he purported to do by removing its officials.
 10. That under Article 5.4.1 the Secretary General is not a member of the Branch Congress which is an independent organ of the union.
 11. That under Article 5.4.3.1 of the union constitution, the Secretary General had no power to call the Special Branch Congress as he purported to do. That only a majority decision of the Branch Executive Committee (BEC) or on written request of not less than 1/3 of the fully paid members of the Branch could such a meeting be lawfully held.
 12. That the Branch is self-governing. That there is no evidence before court showing that the Branch Secretary failed to convene a Branch Congress as alleged by the appellant.
 13. That the union constitution does not provide for a procedure of removal or suspension of officials. In any event any such removal shall adhere to Article 47(1) and (2) of the *Constitution* of Kenya 2010 read with section 4 of the *Fair Administrative Action Act*, 2015. That the union constitution ought to provide for removal of officials in terms of the first schedule to the *LRA* 2007, clause 4.
 14. That the union constitution has not provided for the reasons and procedure for removal of union officials which it should. That the branch has nine (9) elective positions and only three (3) positions being that of Chairperson, Branch Secretary and Treasurer are in dispute.
 15. That the official record all the nine positions have been duly filed and the branch is functional. That the appeal lack merit and it be dismissed.
 16. The appellant filed further affidavit joining issues with the respondent and reiterated its case against the respondent.



Determination

17. The parties filed written submissions which the court has carefully considered together with depositions by the parties. The issues for determination are:
- a. Whether the respondent acted *ultra vires* and unlawfully in refusing to register the newly proposed officials.
 - b. Whether the appellant is entitled to the reliefs sought.
18. The starting point is section 35 of the LRA Cap 233 Laws of Kenya which provides: -
- (2) Notice of any changes of officials or of the title of any officials shall be submitted to the Registrar in form Q set out in the second schedule within fourteen days after the change, together with prescribed fee and the Registrar shall register the change, subject to sub-section (4) and (5).
 - (3) Before registering any change of officials or correcting any register, the Registrar may require the production of any relevant evidence of the change.
 - (4) If, after inquiring, the Registrar is not satisfied as to the validity of any appointment or the propriety of any proposed correction, the Registrar may refuse to register the change of officials or to correct the register.
 - (5) No change of officials shall have effect until it is registered by the Registrar.”
19. In the present case, the Registrar was not satisfied that the persons presented for registration had been properly elected as officials of the Machakos Branch on the basis that the meeting in which the persons were allegedly elected was not convened by a lawful official of the Branch, being the Branch Secretary but was instead convened by the national General Secretary of the union.
20. The Registrar submitted that the General Secretary had no such power in terms of section 6.2.3 of the union constitution and that Article 5.4 and 5.5 of the union’s constitution, was clear on how a Special Branch Congress could be convened.

Article 5.4 reads: -

(1) Composition

The Branch Congress (BC) is composed of all the members of the union registered in the particular branch in line with the provision of this constitution on membership.

5.4.1.d The Branch Congress is convened by the Branch Secretary by giving a minimum of two weeks’ notice in writing.

5.4.1.f In case the Branch Secretary fails or refuses to convene the BC when due, one third (1/3) of the members of the BC may decide by notice to the General Secretary to convene the BC on a date and at a venue decided by them. In this event, the BC must designate a fully paid member to act as the convener instead of the Branch Secretary.”

21. A Special BC as was the case in this matter may be convened in terms of 5.4.3(i) as follows: -



- (i) A special BC of members may be called by a majority decision of the Branch Executive Committee or on the written request of not less than one third (1/3) of the fully paid-up members of the Branch.
 - (ii) The Branch Secretary must give notice to all members of the date, time and place of the special BC at least one week before the special BC.
22. Furthermore, in terms of Article 5.5 the Branch Executive Committee in terms of 5.5.i comprises of: -
- Branch chairperson, Branch Vice person, Branch Secretary, Branch Assistant Secretary, Branch Treasurer, Branch Assistant Treasurer, Branch Women’s representative, branch youth representative and elected shop stewards representing designated departments at the shop-floor.
- (ii) A member of the BEC may be removed from office by a simple majority vote of the members in the Branch. The vacancy so created may, if necessary, be filled by members in the next BC on a Special BC such action must be in accordance of provisions of Article 4(2)(g) of the *Constitution*.”
23. Article 4(2)(g) of the *Constitution* titled discipline gives grounds and an elaborate disciplinary procedure that may lead to suspension or expulsion of a member and the appeal process available to such member who has been suspended.
24. It is the considered position by the court that the notice convening the Special Branch Congress (SBC) dated 5/4/2022 was deficient in these respects: -
- . a. It was not issued by the Branch Secretary or a designated person by a decision of the Branch Congress.
 - b. It did not declare the specific vacant positions to be filled.
 - c. The position of the Branch Secretary, Branch Chairperson and Branch Treasurer were not vacant at the time the notice convening SBC on 5/4/2022 were issued.
 - d. The notice calling for the SBC did not contain in the agenda the removal of officials but indicated that their conduct would be deliberated upon.
 - e. Neither the National Delegates Congress (NDC) nor the Branch Congress (BC) has the power to remove elected officials from office. In terms of Article 5.1.3 and 5.4.2, elected officials may only lose their positions if they are suspended or expelled from membership of the union in an NDC as provided for under Article 4(g) (i) of the constitution aforesaid.
25. The court agrees with the conclusion reached by the Registrar that the process of removal of the three officials is contrary to the provisions of the union constitution and the appellants did not give regard to the rules of natural justice; the specific procedure provided for suspension and removal in the union constitution and the action violated article 47 of the Kenya *Constitution* 2010 as read with section 4 of the *Fair Administrative Action Act* No. 4 of 2015.
26. Article 47 (1) of the Constitution provides: -
- 1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - 2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by an administrative action the person has the right to be given written reasons for the action.”



27. The appellants failed in all the above respects. The decisions by Mwita J in *Kenya Human Rights Commission and another versus Non-Governmental Organizations Co-ordination Board and another* is on point as follows: -

"40. Taking the above jurisprudence into account, there is no doubt in my mind that acting, as it did, the respondent violated 1st petitioner's right to a fair administrative action contrary to Article 47 of the Constitution. Administrative actions that flow from statutes must now meet the constitutional test of legality, reasonableness and procedural fairness. Accordingly, hearing a party, before taking any action against him is no longer discretionary. It is firmly entrenched in our constitution as an inviolable right. It is an important safeguard against capricious and whimsical actors that lead to abuse of authority by public officers exercising administrative and quasi-judicial functions. These no longer have place in our constitutional dispensation."

28. Here is a case of blatant abuse of office by national officials of the union against the elected Branch officials.

29. The Registrar was in place and best suited to refuse unlawful invitation to remove lawfully elected Branch officials for no good cause and in violation of their right to *Fair Administrative Action Act* and to a fair hearing.

30. Accordingly, the appeal lack merit and is dismissed with costs

DATED AT NAIROBI THIS 25TH DAY OF APRIL, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Oketch for appellant

Ms. Oyugi for respondent

Mr. Kemboi, Court Assistant

