



**Kenya County Government Workers Union Bungoma County
Branch v Bungoma County Public Service Board & another (Petition
1 of 2019) [2024] KEELRC 767 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 767 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

PETITION 1 OF 2019

JW KELL, J

APRIL 11, 2024

**IN THE MATTER OF ARTICLE 2,3,10, 22, 27,41,30,33,27,41,47,48,50&73
OF THE CONSTITUTION OF KENYA ,2010**

**ON ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS AS WELL AS ENFORCEMENT OF THE SAME RIGHTS**

AND

**IN THE MATTER OF THE SECTION 57, 58,(3B & 5) , 59,60 ,74
OF THE COUNTY GOVERNMENT ACT , 2012, SECTION 107(1&
2) OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012, AND
SECTION 9(C) , 17, 20(2) OF THE PUBLIC ETHICS ACT, 2003**

AND

**IN THE MATTER OF THE FAIR ADMINISTRATION
ACT, EMPLOYMENT ACT AND CONTRACT ACT**

BETWEEN

**KENYA COUNTY GOVERNMENT WORKERS UNION BUNGOMA COUNTY
BRANCH PETITIONER**

AND

BUNGOMA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT

THE COUNTY GOVERNMENT OF BUNGOMA 2ND RESPONDENT



RULING

1. The Applicant is the petitioner which following a change of officials, the General Secretary appointed the law firm of James Oketch & Company Advocates in place of J.O. Makali Advocates to represent the union and vide the instant application dated 10th January 2024 seeks the following orders: -
 - a. The leave be given to the firm of James Oketch & Company advocates to formally come on record as advocates of the applicant, Kenya County Government Workers Union Bungoma County Branch.
 - b. That costs of this application be provided for.
2. The application was brought under Order 9 of the *Civil Procedure Rules* among other provisions of the law and premised on several grounds the key being:-
3. That the Union had since replaced the Bungoma County branch officials with a caretaker committee for the reason of acting contrary to the interests of the union including the attempt to withdraw the petition.
4. That under the *Labour Relations Act* section 2, the General Secretary is the authorised representative of the union, and as such the Branch Officials had no authority to withdraw the petition.
5. That the act of withdrawing of the petition was further contrary to the union constitution article 5(5.4)(1)(k) which reads: “No BC(Branch Congress) or any member of the BEC(Branch Executive Committee) shall take any action on any subject which commits the union as a whole, without the sanction of the General Secretary and no branch shall publish views or deal with any matter in a way that is detrimental to the union as a whole.”
6. That article 6(2)(2.3)(x) of the union constitution is to the effect that the General Secretary has a duty to represent the union in the dispute resolution bodies.
7. The application was supported by the affidavit of John Ndunda the Deputy General Secretary who stated he was also a member of the caretaker committee appointed to replace the Bungoma County Branch officials following the resolution of the National Executive Committee to remove the Bungoma branch of the union (JN1 was the resolution dated 7th October 2023) Ndunda further annexed the union constitution (JN2) and further averred that the union had resolved to appoint the firm of James Oketch & Co. Advocates to represent the applicant petitioner in the petition proceedings (JN4 and JN5 were the appointment letter and the minutes of 7th October 2023 where the Bungoma county branch committee was disbanded respectively).
8. The application was unopposed. There was filed affidavit of service of the application to all parties.
9. The court had directed the application be canvassed by way of written submissions. Only the applicant complied by filing written submissions on the 29th March 2024 through the law firm of James Oketch and Company Advocates.

Decision

10. The issue for determination is whether the application is merited.
11. The facts are not disputed.



12. The Applicant submits that Order 9 Rule 9 of the Civil Procedure Rules provides in part that when there is a change of advocate after judgment has been delivered, such change shall not be effected without an order of the court upon an application with notice to all the parties.
13. The Applicant to buttress its position submits that the relevance of Order 9 rule 9 of the Civil Procedure Rules was reiterated in Violet Wanjiru Kanyiri v. Kuku foods Limited (2022) eKLR where the court stated that; “The provision of Order 9 Rule 9 of the Civil Procedure Rules make it mandatory that change of Advocates after judgement has been entered must be through an order of the court upon application with notice to all parties or upon a consent filed between the outgoing advocate and the proposed incoming advocate. The reasoning behind the provision was well articulated in the case of S. K. Tarwadi v. Veronica Muehlmann (Supra) where the judge observed as follows: “... In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgement is delivered and then sack the advocate and either replace him..”
14. The Advocates have been appointed in place of the law firm of J.O. Makali & Co. Advocates after judgment. The application is thus proper pursuant to order 9 rule 9 of the Civil Procedure Rules to wit:- “When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court— (a)(b) upon an application with notice to all the parties; or upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.” There was no consent hence the instant application. The application is not opposed.
15. The General Secretary has appointed the firm of James Oketch & Co advocates to act in place of J.O Makali & Co. advocates representing the union. The General Secretary is the authorised representative of the Union under section 2 of the Labour Relations Act to wit:- “authorised representative” means — (a) the general secretary of a trade union (e) any person appointed in writing by an authorised representative to perform the functions of the authorised representative;”
16. The application is not opposed. The facts are taken as true.
17. In the upshot the application is found to have merit for grant of leave of the Court.
18. The Court allows the application and grants leave to the firm of James Oketch & Company advocates to formally come on record as advocates of the applicant, Kenya County Government Workers Union, Bungoma County Branch, the Petitioner.
19. Each party to bear own costs in the application.
20. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 11th DAY OF APRIL 2024.

J.W. KELI

JUDGE

In the presence of:

C/A: Brenda Wesonga

For Applicant : Oketch

For Respondents: Makokha



Petitioner- Masengeli

COURT DIRECTIONS

The Application dated 23rd January 2024 by Maelo Muyundi on the County Report will be heard orally in court. Parties to file and exchange their responses and replies. Mention on 25th April 2024 to confirm compliance and take hearing date.

It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 11th DAY OF APRIL 2024.

J.W. KELI

JUDGE

In the presence of:

C/A: Brenda Wesonga

For Applicant : Oketch

For Respondents: Makokha

Maelo Muyundi

