



Mutiso & 4 others (Suing on Their Own Behalf and on Behalf of Members of KCPA) v Gikonyo & 12 others (Cause E688 of 2024) [2024] KEELRC 13386 (KLR) (22 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 13386 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E688 OF 2024
S RADIDO, J
OCTOBER 22, 2024**

BETWEEN

**JORUM MWEI MUTISO 1ST CLAIMANT
DAVID NDUNGU 2ND CLAIMANT
BOSCO MURIITHI 3RD CLAIMANT
MARGARET KANAKE 4TH CLAIMANT
RAPHAEL MAGANGA 5TH CLAIMANT
SUING ON THEIR OWN BEHALF AND ON BEHALF OF MEMBERS OF KCPA**

AND

**PETER GIKONYO 1ST RESPONDENT
TOM WANAMBISI 2ND RESPONDENT
JOSEPHINE NDIKWE 3RD RESPONDENT
STELLA THUO 4TH RESPONDENT
JOSEPH MWAURA 5TH RESPONDENT
BONFACE MWANGANGI 6TH RESPONDENT
WIFENZIO NJERU 7TH RESPONDENT
BONFACE NJOROGE 8TH RESPONDENT
JIMMY SIMBI WAMALWA 9TH RESPONDENT
NICHOLAS ONDIMU 10TH RESPONDENT
JOSEPH KIMEMIA 11TH RESPONDENT
REGISTRAR OF TRADE UNIONS 12TH RESPONDENT**



RULING

1. The Claimants sued the Respondents on 22 September 2024 alleging that the Respondents had breached the Constitution of the Kenya Coffee Producers Association by failing to call an Annual General Meeting, and calling an unlawful Annual General Meeting where they were purportedly re-elected as officials.
2. Filed together with the Memorandum of Claim was a Notice of Motion seeking interim reliefs.
3. When the Motion was placed before the Court on 3 September 2024, the Court directed the Claimants to serve ahead of further directions on 18 September 2024. The Court did not sit on 18 September 2024 and the Cause was rescheduled to 15 October 2024.
4. On 15 October 2024, Mr Kanyoko advocate informed the Court that he had instructions to act for the Respondents. He also stated he had filed and served through email a Notice of Preliminary Objection.
5. However, the Claimants informed the Court that they had not been served with the Notice of Preliminary Objection.
6. Trusting the word of the Respondents' advocate Mr Kanyoko, the Court directed the Respondents to serve the Notice of Preliminary Objection together with submissions physically on or before 25 October 2024.
7. The Court also directed the Claimants to file and serve their submissions on or before 8 November 2024 ahead of Ruling on 21 November 2024.
8. When the Court logged into the CTS system on 17 October 2024 to commence the drafting of the Ruling, the Notice of Preliminary Objection was not in the system (a check in the system this morning revealed the Preliminary Objection was not on the record).
9. It is clear that the Respondents had lied or misrepresented to the Court that they had filed and served the purported Notice of Preliminary Objection. Not even a Notice of Appointment of Advocate or Memorandum of Appearance had been filed.
10. The misrepresentation on the part of the Respondents' advocate is a clear case of professional misconduct which the Court cannot countenance. The Court cannot speculate on the objective of the Respondents' advocate in misrepresenting the status of the Court record.
11. The Court is, therefore, constrained issue an order to preserve the status of the action.

Orders

12. In light of the above, the Court orders:
 - i. An order of temporary injunction is hereby issued restraining the Respondents by themselves, servants and or agents from carrying out any transactions for and on behalf of the Kenya Coffee Planters Association, a trade union or its accounts held at Cooperative Bank Wakulima House Branch pending further directions of this Court on 21 November 2024.
 - ii. Mr Kanyoko Advocate to personally bear the costs wasted in the sum of KShs 10,000/-.
 - iii. The costs to be paid on or before 21 November 2024.



Delivered virtually, dated and signed in Nairobi on this 22nd day of October 2024.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Musee Manyalo & Associates

For Respondent Advocate not formally on record

Court Assistant Wangu

