



Odima & another v General Secretary Kenya National Private Security Workers Union & another (Cause 11 of 2022) [2024] KEELRC 13584 (KLR) (19 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13584 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 11 OF 2022
MA ONYANGO, J
DECEMBER 19, 2024**

BETWEEN

PETER ODIMA 1ST CLAIMANT

FRANCIS MADEGWA 2ND CLAIMANT

AND

**GENERAL SECRETARY KENYA NATIONAL PRIVATE SECURITY WORKERS
UNION 1ST RESPONDENT**

REGISTRAR OF TRADE UNION 2ND RESPONDENT

JUDGMENT

1. The Claimants are office bearers in the position of branch secretaries for Eldoret and Kakamega branches of the Kenya National private Security Workers Union, respectively.
2. The 1st Respondent is the General Secretary and the Chief Executive Officer of the Union, a trade union registered in Kenya to represent private security guards.
3. The 2nd Respondent is the Registrar of Trade Unions charged with registration and supervision of trade unions nationally.
4. Vide a Memorandum of Claim which is undated was filed on 24th March 2022 together with a motion of even date, the Claimants seek the following orders against the Respondents: -
 - a. The applicants be allowed to perform their mandate and functions as the branch secretary for Eldoret branch and Kakamega branch respectively.
 - b. The applicants be paid their salary arrears, dues and allowances withheld by the 1st respondent as envisaged under the union's constitution and the *employment act*.



- c. A conservatory order by way of injunction restraining the General Secretary of Kenya National Private Security Workers Union, the Registrar of Trade Unions, their representatives/ employees/assignees and/or agents from intimidating/harassing and/or threatening the Applicant and/or removing the applicants name from the register as the branch secretary for Eldoret and Kakamega respectively.
 - d. An order compelling the 2nd Respondent not to remove and/or ratify any decision made by the 1st respondent in relation to the (NEC) meeting convened on the 25/3/2022 at Sirikwa hotel and/or reinstate the names of the applicants as the branch secretaries for Eldoret and Kakamega branches respectively pursuant to the names of officials of the Kenya National Private Security Workers Union submitted to the 2nd respondent
 - e. That orders compelling the 1st Respondent to produce audited union accounts and bank statements regarding transactions and expenditures of the union for the last three years and that the said accounts be subjected to external auditing by qualified auditors and that the results of the audit be made public.
 - f. Costs to be borne by the Respondents.
 - g. Any other further and/or better relief as this Honourable Court may deem just and fit to grant.
5. The Claimants aver that elections were conducted pursuant to the Union's constitution, the Labour Relations Act and the Constitution of Kenya in the year 2021 and the Claimants were duly elected as the Branch Secretaries for Eldoret and Kakamega respectively of the Kenya National Private Security Workers Union.
 6. According to the Claimants, sometimes in January 2019, being dissatisfied with the way the Union was being managed, contrary to the vision, mission, aims and objectives of a trade union, they expressed their concerns vide a letter dated 2nd January 2019 to the 1st Respondent.
 7. The Claimants state that they wrote the letter dated 2nd January 2019 in order to safeguard the best interests of the Union's membership.
 8. Further, that on 12th April 2019, they wrote another letter expressing concerns that the leadership was violating the Union's Constitution and had actually gone against the spirit, the sole objectives of a trade Union and against the principles set down under the law.
 9. It is the Claimants' averment that the 1st Respondent invited them for a meeting scheduled for 21st January 2022 but they did not attend as the invite was on very short notice and they had not been facilitated by the 1st Respondent.
 10. The Claimants allege the 1st Respondent illegally and unprocedurally victimized the Claimants by withholding their salaries and threatening them with illegal removal from office contrary to the principles of Audi Alteram Partem, the right to fair hearing and the right to fair administrative action.
 11. The Claimants allege that the 1st Respondent has never presented any audited accounts with regard to the operations of the union for the last 3 years as envisaged under the law and any party who is critical to his administration is maliciously targeted and removed from office.
 12. On this basis, the Claimants seek for auditing of accounts and the protection of the members from witch hunt for the sake of transparency and accountability.



13. The Claimants state that both Eldoret and Kakamega branches have not received any complaint from members regarding their underperformance to warrant their removal from office and further, that the 1st Respondent has never communicated any complaint to the branches through the Branch Secretary.
14. The Claimants particularized the 1st Respondent's unlawful, illegal, unprocedural, irregular and unfair conduct as follows:
 - i. Intimidating/harassing/bullying the Claimants with the intention of making the discharge of their duties hard.
 - ii. The Claimants were never notified of any meeting to be held
 - iii. Illegally/unlawfully removing the Claimants from office without serving a proper reason.
 - iv. Failing to give the Claimants a chance to defend themselves before a proper disciplinary panel.
 - v. Including Non-Union members in the NEC meeting contrary to the Union's Constitution.
15. In response, the 1st Respondent filed a Reply to Statement of Claim and a Counter-claim dated 24th April 2023 where he denied the averments made by the Claimants in the Memorandum of Claim and averred that the Claim herein does not demonstrate any lawful action to warrant the grant of the prayers sought therein.
16. According to the 1st Respondent, the claim herein has been brought in bad taste as the Claimants have not exhausted the internal dispute resolution mechanisms provided for under the Union's Constitution and as such the suit before court is premature and should be dismissed with costs.
17. In his counter claim, the 1st Respondent averred that the 1st Claimant has on various occasions solicited commissions from Union members whose disputes have been handled by him and the 1st Respondent has received complaints from members which behavior has completely tainted the image of the Union.
18. The 1st Respondent also contended that the Claimants have failed to remit the branch records including membership details, branch bank statements and reports as required.
19. Further, that the 1st Claimant is facing criminal charges in Eldoret Criminal Case No. 308 of 2018 in which he has a case to answer and as such, he is unfit to hold office.
20. The 1st Respondent has alleged that the Claimants are among the four flagged down for misappropriation and diversion of Union dues to other accounts different from the Union's gazetted account by collecting and depositing cheques in the Branch accounts and proceeding to withdraw the money for their personal use. That the 1st Claimant has misappropriated Kshs 731,985 while the 2nd Claimant has misappropriated Kshs 1,402,851.
21. The 1st Respondent therefore sought for the following orders against the Claimants: -
 - i. Permanent removal of the Claimants from the Eldoret and Kakamega branch offices.
 - ii. Freezing of the Eldoret and Kakamega Branch Bank Accounts.
 - iii. Provision of Branch membership information and all the branch records and reports.
 - iv. The 1st Claimant do pay Kshs. 731,985/= to the 1st Respondent
 - v. The 2nd Respondent do pay Kshs. 1,402,851/= to the 1st Respondent
 - vi. Costs and Interests of the Counterclaim.



22. On 27th June 2023, the 2nd Respondent filed a Reply to Statement of Claim dated 27th June 2023 denying the contents of the Memorandum of Claim. Further, the 2nd Respondent contended that the prayers sought by the Claimants against it in the instant suit are not available as its role is the registration of trade unions and not the internal affairs of the Claimants and the 1st Respondent.
23. The suit was fixed for hearing on various dates where the Claimants testified on 5th October 2023 and the 1st Respondent tendered his evidence on 2nd November 2023.
24. The 1st Claimant testified as CW1 and stated that he joined the Kenya National Private Workers Union in 2002 as an Industrial Relations Officer and was elected in 2005 as the Branch Secretary.
25. In his testimony, the 1st Claimant stated he was summoned by the General Secretary sometimes in January 2020, through the Branch Secretary Forum in a whatsapp group to attend a meeting scheduled for 21st January 2022. The 1st Claimant asserted that he did not attend the meeting as he had not been facilitated with transport.
26. According to the CW1, he was served with a Notice to Show Cause dated 2nd February 2022 and the ground in the show cause letter was that he had failed to attend the meeting. CW1 told the court it was indicated in the show cause letter that his salary would be stopped until he showed cause.
27. CW1 stated that he responded to the show cause letter on 4th February 2022 but was not paid his salary for February and March 2022 which action prompted him to seek orders in court compelling the 1st Respondent to pay him the withheld salaries. It is the 1st Claimant's case that the 1st Respondent did not comply with the orders of the court until June 2022 and only paid salaries from July onwards.
28. The 1st Claimant prayed for the court to lift his suspension from office and to compel the 1st Respondent to pay him his withheld salaries.
29. On cross examination, CW1 stated that under the Union's Constitution, as the Branch Secretary he is subject to internal discipline machinery but contended that since the Eldoret branch did not have an issue with him, he did not have any reason to follow the process laid out in the Union's Constitution.
30. CW1 admitted to requesting a meeting with NEC over issues regarding his woes with the 1st Respondent and stated that instead the 1st Respondent invited the entire membership to Eldoret. He stated that he declined to attend the said meeting as new issues were raised against him.
31. Regarding the allegations made by the 1st Respondent in the counter-claim that the 1st Claimant had converted the union's money to his personal use, CW1 stated that the union account is a central gazetted account and the union dues are remitted directly to head office.
32. The 1st Claimant maintained that he was suspended by the 1st Respondent contrary to the requirement that NEC would suspend him after resolution by the branch NEC, in this case, Eldoret NEC.
33. While responding to the allegation by the 1st Respondent that he had not recruited members, the 1st Claimant stated that he recently recruited 100 members and sent check off forms to the 1st Respondent who refused to implement the same.
34. Upon being cross examined by state counsel Jepkemei, CW1 admitted that he has no claim against the 2nd Respondent.
35. The 2nd Claimant testified as CW2 and stated that he joined the Union in 2011 and was elected as the Branch Secretary, Kakamega Branch, a position he has held three times.



36. The 2nd Claimant reiterated the averments made by the 1st Claimant on the circumstances surrounding their suspension from office.
37. On cross examination, the 2nd Claimant stated that the court had directed the 1st Respondent to pay their salaries from June 2022 onwards which money was paid in December 2022. He also maintained that the 1st Respondent paid them half salary after suspending them from office. The 2nd Claimant accused the 1st Respondent of usurping the powers of NEC in suspending them.
38. On cross-examination, CW2 stated that the NEC meeting was held in December 2022 despite the court's order of 25th March 2022 barring the 1st Respondent from discussing or suspending the Claimants.
39. Isaac Craftstone Mukabale Andabwa, the 1st Respondent herein, testified on 2nd November 2023 as RW1. RW1 adopted his witness statement as his evidence in chief and relied on the documents he filed in support of his case. RW1 stated that the claim before court by the Claimants is a diversion as the Claimants had disciplinary issues with the Union.
40. On being cross examined by the 1st Claimant, RW1 stated that the union's constitution provides that union officials must always attend meetings when meetings are called. He however acknowledged that the 1st Claimant had informed him that he would not be able to attend the meeting of 21st January, 2022.
41. RW1 also maintained that CW1 had not recruited any member and that he had diverted union dues to the branch account. He however agreed with CW1 that no employee had filed any complaint against him.
42. On cross examination by 2nd Claimant, RW1 stated that the 2nd Claimant refused to attend the meeting of 21st January 2022 and that as a consequence, he exercised powers as General Secretary to stop his salary. According to RW1, he had the mandate of NEC to suspend the 2nd Claimant from office.

Determination

43. I have examined the pleadings, the evidence and submissions of the parties herein. The issues for this court's determination are:
 - i. Whether the 1st Respondent followed the due process in suspending the Claimants
 - ii. Whether the 1st Respondent's Counter claim is merited
 - iii. What reliefs should issue

Whether the 1st Respondent followed the due process in suspending the Claimants

44. From the court's analysis of this case, it appears that the disagreement between the Claimants and the 1st Respondent are deep rooted and the failure of the Claimants to attend the meeting called by the 1st Respondent on 21st January 2022 was just a catalyst to the underlying issues between the Claimants and the 1st Respondent.
45. The 1st Respondent in his testimony before court stated that he suspended the Claimants from office after they failed to attend the meeting. He averred that under the Union's constitution, failure to attend meetings by union officials is a valid reason for suspension.
46. The 1st Claimant on his part attributed his failure to attend the meeting to the short notice he was given and the lack of transport to Nairobi. The 1st Respondent on cross examination by the 1st Claimant



admitted that he was made aware by the 1st Claimant of his inability to attend the meeting prior to the meeting being held.

47. From the material placed before the court, after the Claimants failed to attend the meeting of 21st January 2022, they were not only issued with show cause letters but also had their salaries withheld.
48. I have perused the Union's constitution attached to the 1st Respondent's documents. Discipline is captured under Rule No. 22. It provides as follows:

An official/officer or member may be suspended or expelled from the Union by the if:

- i. He/she fails within 30 days on demand in writing by the National General Secretary to pay subscriptions which are more than three weeks in arrears.
 - ii. If he/she infringes on any of the terms of this Constitution or acts in a manner which is detrimental to the interests of the Union, provided any member(s) suspended or expelled shall have the right of appeal against such suspension or expulsion to the Special NDC or NDC.
 - iii. No member shall be suspended or expelled unless he/she has been given an opportunity to state his/her case personally in writing (meeting of the NEC of which he/she has received not less than twenty one (21) days' Notice in writing. Such notice shall include details of allegations on which the member is charged.
 - iv. A member who has appeared before NEC, shall if he/she is dissatisfied with the decision of the NEC and has lodged an appeal in the matter provided, has the right to re-instate his case before the Special NDC or NDC when the matter shall be considered.
 - v. A disgruntled member attending Special NDC or NDC on matters appeal shall be entitled to call witness in support of his case.
 - vi. Any decision taken by the NEC to suspend or expel a member shall, when appeal has been lodged in the manner provided, be subject ratification or otherwise by the Special NDC or NDC.
 - vii. Upon expulsion of a member, all money or privileges due to the union by such members shall become payable or ceased with immediate effect. If the payment is not made within 30 days, the NEC may take such steps as it considers necessary to secure a settlement.
49. From a reading of the above Rule, there is no doubt that the 1st Respondent violated the Union's Constitution in suspending the Claimants and withholding their salaries. Firstly, the reason for their suspension, that is, failure to attend a meeting, is not among the reasons cited in Rule 22.
50. Secondly, Rule 22(iii) provides that a member shall not be suspended unless he or she has been given an opportunity to defend himself.
51. In the instant case, no evidence was tendered in court to show that the Claimants were given an opportunity to present their cases and to defend themselves before being suspended.



52. Further, the Claimants in their testimonies before court stated that they were suspended by the 1st Respondent. This evidence was not rebutted by the 1st Respondent. In fact, on cross examination by the 2nd Claimant, he averred that he was given the mandate to suspend the Claimants.
53. Flowing from the above, it is clear that the actions of the 1st Respondent in solely suspending the Claimants for the reason of failing to attend a meeting was in violation of the union's constitution.
54. I thus find that the suspension of the Claimants was irregular and unprocedural.

Whether the 1st Respondent's Counter claim is merited

55. In his counter claim, the 1st Respondent accused the Claimants of failing to recruit members and of misappropriating union funds.
56. The Claimants in their evidence refuted these allegations. On the allegation that they had failed to recruit members, the 1st Claimant led evidence that he had recruited over 100 members and sent the check off forms to the 1st Respondent who declined to implement the same. This evidence was not controverted by the 1st Respondent and in my view, the said allegation was not proved.
57. With regard to the allegations that the 1st and the 2nd Claimants misappropriated Kshs 731,985 and Kshs. 1,402,851 respectively, no evidence was tendered in court to prove these allegations. The Claimants in their testimonies maintained that the union has a centralized gazetted account where union funds are directly remitted to head office. This was also confirmed by the 1st Respondent. It is worth noting that the 1st Respondent on cross examination stated that there were no complaints against the Claimants from the other employees at the branch levels.
58. In the absence of material evidence that the Claimants misappropriated union funds, it follows that the allegations of misappropriation of funds have not been proved.
59. The other allegations that the Claimants were unfit to hold office were also not proved.
60. The counter claim is therefore unmerited.

What reliefs should issue

61. Having found that the suspension of the Claimants was not procedural, I make a finding that the said decision is a nullity and I declare so.
62. The counter claim is dismissed as it was not proved.
63. Consequently, Judgement is entered for the Claimants against the 1st Respondent in the following terms:
 - i. The suspension of the Claimants is lifted and the 1st Respondent is ordered to pay the Claimants all their outstanding salary arrears, dues and allowances within 30 days from the date of delivery of this judgment.
 - ii. An order be and is hereby issued to the 1st Respondent directing that he allows the Claimants to perform their mandate and functions as the Branch Secretaries for Eldoret and Kakamega without victimization.
 - iii. In view of the relationship between the parties and the fact that the Claimants represented themselves, there shall be no orders for costs.
64. Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF DECEMBER, 2024
MAUREEN ONYANGO
JUDGE

