



**Kibondo & 3 others v Ogutu & 4 others (Petition E012 of 2021)
[2023] KEELRC 71 (KLR) (25 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 71 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E012 OF 2021**

S RADIDO, J

JANUARY 25, 2023

**IN THE MATTER OF SECTIONS 3, 4, 7, 8 AND 9 OF THE LEADERSHIP
AND INTEGRITY ACT CAP 19 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF SECTIONS 4, 5, 6, 7 AND
31(5) OF THE LABOUR RELATIONS ACT, 2017**

AND

**IN THE MATTER OF SECTIONS 4, 5, AND 10 OF THE
PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT, 2015**

AND

IN THE MATTER OF SECTION 7 OF THE NATIONAL COHESION ACT NO. 12 OF 2008

BETWEEN

**JASON OCHIENG KIBONDO 1ST PETITIONER
EDWARD OKUMU WANJIRA 2ND PETITIONER
CHARLES OTIENO CHILA 3RD PETITIONER
BEATRICE ADHIAMBO OTIENO 4TH PETITIONER**

AND

**JOHN OGUTU 1ST RESPONDENT
FRANCIS WANGARA 2ND RESPONDENT
JOYCE ANYANGO ODERO 3RD RESPONDENT
COUNTY LABOUR OFFICE 4TH RESPONDENT
KENYA UNION OF SUGAR PLANTATION & ALLIED
WORKERS 5TH RESPONDENT**



JUDGMENT

1. On or around, the Kenya Union of Sugar Plantation & Allied Workers (the Union) gave notice of branch elections for its branches, including the Awendo Sony branch.
2. Joyce Anyango Odero (3rd Respondent) offered herself for the position of 2nd Assistant Secretary-General. The elections were set for 30 January 2021.
3. The Petitioners felt that the 3rd Respondent did not meet the eligibility/qualifications, and they moved the Court on 10 February 2021, seeking to interdict the branch elections.
4. The Court directed the Petitioners to serve the Petition and Motion and when the parties appeared on 18 February 2021, it declined to grant any injunctive orders but directed the parties to file and exchange pleadings and submissions ahead of delivery of judgment on 26 May 2021.
5. The 1st, 2nd, 3rd, and 5th Respondents filed a Response to the Petition on 12 March 2021.
6. On 16 March 2022, the Court granted leave to the Petitioners to amend the Petition, and an Amended Petition was filed on 22 March 2022.
7. The remedies prayed for in the Amended Petition were:
 - (a) An order to issue compelling the 5th Respondent to nominate the Branch Treasurer i.e., the 4th Petitioner, as the 2nd National Assistant General Secretary.
 - (b) An order stopping the harassment, intimidation, suspension of any officials or members.
 - (c) The Awendo branch officials be compelled to issue monthly bank statements to all members showing income and expenditure of any funds and utilised by the branch.
 - (d) An order to issue to the Respondents and its officials to change signatories from the previous office to the current one.
 - (e) That each and every Respondent be held liable for sub judice and be condemned.
 - (f) That this Honourable Court be pleased to issue a permanent order stopping and or nullifying and or cancelling the appointment of the 2nd Assistant Secretary General in the elections held on the 30th January 2021 and of the 3rd Respondent after contesting for the position of 2nd Assistant Secretary General at the national office.
 - (g) That the Honourable Court be pleased to permanent orders restraining the 3rd to 5th Respondents from permitting sanctioning, clearing or in any way allowing the 3rd Respondent to take office and instruments of power linked to the position of 2nd Assistant Secretary General at the national office.
 - (h) That this Honourable Court be pleased to grant conservatory orders restraining the 5th Respondent from forwarding the name of the 3rd Respondent, Joyce Anyango Odero, to the 4th Respondent for purposes of taking office and instruments of power linked to the position of 2nd Assistant Secretary General.
 - (i) That this Honourable Court be pleased to grant permanent orders restraining the 5th Respondent from receiving, accepting, processing, debating, considering or in any way



approving the 3rd Respondent Joyce Anyango Odero for purposes of taking office and the instruments of power.

- (j) That the Honourable Court be pleased to make such orders as it deems necessary to safeguard the ends of justice.
 - (k) That the Respondents bear the costs of this Petition and application.
8. Thereafter, a flurry of applications followed, thus frustrating the delivery of judgment on 26 May 2021.
 9. The Court issued new directions on the Amended Petition on 26 May 2022, with judgment reserved for 5 October 2022.
 10. The Respondents filed their submissions on 15 August 2022 and they identified the Issues in dispute as:
 - i. Whether due procedure was followed in suspending the 4th Petitioner?
 - ii. Whether the instant suit has been prematurely filed before this Court?
 - iii. Whether the 1st – 3rd Petitioners have any locus to institute the instant suit before this Honourable Court?
 - iv. Whether this Honourable Court should dismiss the instant application and Petition?
 11. When the Petition was called out for judgment on 5 October 2022, it turned out that the Petitioners had not complied with the directions to file and serve submissions by 15 July 2022. Upon the application of the Petitioners, the Court granted them until 27 October 2022 to file and serve the submissions with judgment set for 7 December 2022.
 12. Again, the Court had to postpone the delivery of the judgment because the Petitioners had failed to file their submissions. The reason given was that the advocate on record had been attending to a terminal ill close relative who has since passed away.
 13. The Petitioners did not file the submissions by the agreed timeline. The submissions were eventually filed on 3 January 2023.
 14. As already stated, the 1st, 2nd, 3rd and 5th Respondents filed joint submissions on 15 August 2022.
 15. The Petitioners identified 5 Issues for adjudication in the submissions:
 - i. Whether the Respondents have complied with or are in contempt of the orders regarding the reinstatement of the 4th Petitioner.
 - ii. Whether the election conducted on the 5th February 2021 violates salient provisions of the Constitution of the 5th Respondent and the Kenyan Constitution?
 - iii. Whether the Court has jurisdiction to determine the matter, and not the trade unions and/or employers' organisation and federation? (sic).
 - iv. Whether the 3rd Respondent was qualified for appointment and election?
 - v. Whether the Petitioners are entitled to the reliefs sought?
 16. The Court has considered the Amended Petition, record and submissions.



Locus standi

17. The Respondents challenged the locus standi of the 1st – 3rd Petitioners to file the Petition on the ground that they had not demonstrated that any decision by the Respondents had affected or aggrieved them.
18. The Respondents contended that mere friendship with the 4th Petitioner could not grant these Petitioners a cause of action.
19. In response, the Petitioners argued that Articles 3, 10, 22(1) & (2), 258 contemplate any person bringing a suit in the public interest where there were allegations of violations of the Constitution.
20. The Petitioners asserted that as members of the 5th Respondent, they had a genuine interest in the affairs of the Union.
21. The Respondents although not admitting explicitly that the Petitioners were members of the 5th Respondent acknowledged that the Petitioners had unsuccessfully participated in its elections.
22. Since the Petition revolved around the elections, the Court finds that the 1st – 3rd Respondents had the locus standi to join in the Petition.

Prematurity

23. The Respondents also challenged the Petition on the ground that it was premature because the 4th Petitioner had not exhausted the alternative dispute resolution avenues set out in Rules 6 and 15(h) (iv) of the Union’s Constitution.
24. The Respondents contention was that upon suspension, the 4th Petitioner should have appealed to the National Executive Board or the Annual/Special Conference.
25. Although the Court addressed the question of prematurity in a previous Ruling, it has relooked at the Union’s Constitution.
26. Rule 15(h)(iv) provides:

Any branch officer may be suspended from office by a three quarters (3/4) majority decision of the Branch Executive Committee which shall have power to appoint one of its members being among the office-bearers therein to act in his place pending the decision of the Annual/Special Conference as to whether subject to appeal by a suspended officer, he should be removed altogether.
27. In the Courts view, the Rule contemplates a suspended officer appealing to the Annual/Special Conference. In other words, a suspension of a branch official requires a ratification at an Annual/Special Conference.
28. The Petitioners did not demonstrate that they attempted to make use of the aforesaid avenue and consequently, the Court agrees with the Respondents that the Petition was premature.

Contempt of court

29. On 15 April 2021, the Court issued an order directing the Respondents to reinstate the 4th Petitioner to the office of branch treasurer pending further directions/judgment.
30. On 29 June 2021, the Petitioners filed a contempt application contending that the Respondents had failed to comply with the order.



31. The Petitioners urged the Court in their submissions to deny the Respondents audience on account of having disobeyed the orders issued on 15 April 2021.
32. On 26 May 2022, the Court indicated that the contempt application would be taken together with the Amended Petition.
33. In light of the final conclusions/orders by the Court and further considering the failure by the Petitioners to comply with several timelines issued by the Court leading to the delay in expeditious determination of the Petition, the Court finds the contempt application of no legal utility.

Suspension of the 4th Petitioner

34. The Petitioners also challenged the verbal suspension of the 4th Petitioner from the office of branch Treasurer, Awendo branch, during a meeting allegedly held on 23 February 2021.
35. The Respondents defended themselves by stating that if such a decision was taken, it was a decision by the branch office taken pursuant to rule 15(h)(iv) of the Union's Constitution and that the branch office was not a party to the proceedings.
36. The Respondents produced a letter dated 16 February 2021 inviting the 4th Petitioner to a meeting scheduled for 23 February 2021 and the minutes of the meeting.
37. The minutes indicate that the 4th Petitioner was allowed to defend herself during the meeting, after which a vote was taken to suspend her until she offered an apology.
38. Since the Union's constitution provides for the suspension of a branch official, and the 4th Petitioner was allowed to defend herself before the decision was taken, the Court is unable to agree with her that the suspension was unlawful.

Eligibility and qualifications of 3rd Respondent/constitutional violations

39. The Petitioners asserted that the 3rd Respondent did not meet the integrity test because she had not been elected at the branch to qualify for a national position (it was also asserted that she had not served in any Committee of the Union).
40. In the Petitioners' view, there was a risk of the 3rd Respondent embezzling funds of the Union upon election and further that she did not meet the threshold outlined in the national values and principles set in Articles 73 and 232 of the *Constitution*.
41. The 3rd Respondent was elected and assumed the office of Assistant General-Secretary upon registration by the Registrar of Trade Unions on 30 January 2021.
42. Rule 6(b) of the Union's Constitution provides for the membership or composition of the National Executive Board.
43. The National Executive Board comprises the National Chairperson, Vice National Chairperson, 1st Deputy General Secretary, 2nd Deputy General Secretary, 1st Assistant General Secretary, 2nd Assistant General Secretary, National Treasurer, Assistant National Treasurer, three Principal Officers of the Women's Committee, three national trustees and 10 (ten) other members elected by the annual Conference from among members of the Annual Conference.
44. The Respondents produced records to show that the 3rd Respondent had been elected as Secretary of the Union's National Women Wing and was thus a member of the National Executive Board.



45. With respect to qualifications/eligibility for a position within the National Executive Board, the same is set out in Rule 7, and these are, in brief, not being in arrears with subscriptions and literacy in English or Kiswahili.
46. Additional eligibility criteria are outlined in section 31 of the *Labour Relations Act*.
47. The Rules do not require that to be elected to the National Executive Board or an office within the Board, one needs to have been elected as a branch official.
48. Further, the Petitioners did not place evidence before the Court that the 3rd Respondent had integrity challenges disqualifying her from holding a post in the Union.
49. The Court thus finds no merit in the challenge to the eligibility of the 3rd Respondent to hold a national office in the Union.

Harassment of officials/members

50. The Petitioners did not provide evidence that any officials or members had been harassed or victimised.

Monthly bank statements/signatories

51. An evidential or legal foundation for this head of the claim was not placed before the Court.

Complaints of sub judice

52. Again, no foundation or basis was laid for this head of the claim.

Conclusion and orders

53. From the above, the Court finds no merit in the Petition/Amended Petition, and the same is dismissed with costs to the Respondents.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF JANUARY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioners E.A. Ochieng & Co. Advocates

For 1st, 2nd, 3rd and 5th Respondents, Leonard Johns & Co. Advocates

For 4th Respondent did not participate

Court Assistant Chrispo Aura

