



**Ramadhan & 5 others v Seafarers Union of Kenya & 2 others (Petition
5 of 2021) [2023] KEELRC 318 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 318 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION 5 OF 2021
AK NZEI, J
FEBRUARY 2, 2023**

BETWEEN

ATIE SWALEH RAMADHAN & 5 OTHERS PETITIONER

AND

SEAFARERS UNION OF KENYA 1ST RESPONDENT

GENERAL SECRETARY SEAFARERS UNION OF KENYA ... 2ND RESPONDENT

REGISTRAR OF TRADE UNION 3RD RESPONDENT

JUDGMENT

1. On 13th April 2021, the Petitioners, all of whom are members of Seafarers Union of Kenya (the 1st Respondent) filed an evenly dated petition and pleaded as follows:-
 - a. that on 25th September 2020, the 3rd Respondent issued Notice for elections of Trade Unions.
 - b. that the 2nd Respondent kept the Notice from the 3rd Respondent without bringing it to the attention of the 1st Respondent's Board members until April 2021 when the 1st Petitioner (Deputy General Secretary) received a letter signed by the 2nd Respondent convening an Annual Conference of the 1st Respondent.
 - c. that on 30th March 2021, there was an executive Board meeting of the 1st Respondent which agreed to call for a Conference meeting of members to establish an Elections Board.
 - d. that the 1st Respondent has a registered constitution which must be adhered to, and which contains a clause on elections, and which sets out the functions of the Elections Board as:
 - i. to organise and oversee elections at all levels of the Union.
 - ii. to receive nominations for various positions from the Conference and to vet them.



- iii. to determine who are validly nominated and disseminate this information.
 - iv. to generally organise and conduct the elections and announce the results,
 - v. to process complaints/disputes and to present their report with recommendations to the Conference.
 - vi. to provide a final report to the Conference indicating who has been elected in the relevant position.
- e. that according to his letter dated 18th March 2021, the 2nd Respondent had become the referee and a player at the same time, and hence no justice could be obtained.
2. The Petitioners sought the following reliefs:-
- a. a declaration that the 2nd Respondent's letter dated 18th March 2021 purporting to be an Election Notice of the 1st Respondent did not comply with the Constitution of the 1st Respondent and is therefore unlawful.
 - b. that any election of the 1st Respondent which may have been carried out/held on 14th April 2021 based on the 2nd Respondent's letter dated 18th March 2021 is null and void, and if the same found its way to the 3rd Respondent and was registered, then the same be quashed.
 - c. that the 1st Respondent be ordered to urgently carry out/hold a Conference meeting of its members to establish an Elections Board within thirty (30) days of the date of judgment or any other period as the Court may deem fit, and thereafter the said Elections Board to liaise with the County Labour Office Mombasa for purposes of holding its national elections.
 - d. costs of the petition.
3. I have not seen on record a formal response to the petition by the 1st and 2nd Respondents. I have however noted on record a witness statement filed on 24th May 2021 and titled "1st Respondent's Witness Statement". The same is signed by one Stephen Ojiambo Owaki and is dated 24th May 2021. It is stated in the said statement that the 1st Respondent's constitution was promulgated in 2014, and that under Article 6 of the 1st Respondent's said constitution, the 1st Respondent Union's elections are to be conducted by an Elections Board.
4. The 3rd Petitioner filed a Response to the petition on 24th May 2021 and pleaded, inter alia, that Article 6 of the 1st Respondent's Constitution establishes an Elections Board and its mandate. The 3rd Respondent further pleaded that the conduct of the Elections Board must be in conformity with Section 34(2) of the [Labour Relations Act](#) and the Provisions of Article 41 of the [Constitution](#) of Kenya 2010.
5. The 3rd Respondent, who is the Registrar of Trade Unions, further pleaded that the 1st Respondent's elections must be within five (5) years, and must adhere to statutory provisions, failing which they would be in contravention of Section 34(2) (b) of the [Labour Relations Act](#) 2007.
6. Directions on hearing of the petition were taken on 21st April 2021 before L. Ndolo, J On 18th November 2021, counsel for the 3rd Respondent informed the Court that the 3rd Respondent would not be filing witness statements and documents as earlier directed, and would not be calling any witnesses.
7. When hearing commenced on 18th November 2021, the 3rd Petitioner (Mwalimu Chii Hamisi – PW1) testified on behalf of the Petitioners. He relied on his affidavit sworn on 13th April 2021 in support of



- the petition as part of his evidence. He further produced in evidence some seven documents listed on the Petitioners' list of documents dated 13th April 2021. PW1 further testified that on 25th September 2020, the Registrar of Trade Unions (3rd Respondent) issued a notice requiring them (1st Respondent) to hold elections and that thereupon, the 1st Respondent's General Secretary summoned a Board meeting of the 1st Respondent and informed them that he (the General Secretary) had already issued a notice on the date for elections.
8. PW1 further testified that the notice issued by the 1st Respondent's General Secretary (on 18th March 2021) required those seeking to be elected to take their forms to him, arrogating himself the role of a referee. That the Board deliberated on the issue and agreed that the notice be withdrawn, but the Secretary never withdrew the same.
 9. PW1 further testified that the right procedure would have been for the Secretary to call the Board on receiving notice from the 3rd Respondent, which would then have called the Union's members who would then have set up an Elections Board. The witness further testified that elections were held on 14th April 2021 on the basis of the unlawful notice send out by the 1st Respondent's General Secretary, and that the same should be nullified to pave way for proper elections.
 10. Cross examined, PW1 told the Court that he had also filed a witness statement dated 26th April 2021 and filed on 27th April 2021, which was also his evidence. The witness further testified:-
 - a. that the Board meeting called by the General Secretary was held on 11th March 2021, and that there was no Elections Board as at the time.
 - b. that he (PW1), and his co-Petitioners were elected in 2016 at a time when there was no Elections Board, and that the Registrar of Trade Unions assisted in the holding of the elections.
 - c. that under Article 6(1) (1) of the 1st Respondent's Constitution, an Elections Board can only be constituted by a Conference of all the 1st Respondent's Union members.
 - d. that the notice issued by the Secretary was dated 18th March 2021 and that there had been no resolution to constitute an Elections Board.
 - e. that the Petitioners did not attend the Conference on 14th April 2021, during which elections were held, as they had come to court and sought to have the elections stopped.
 11. Re-examined, PW1 testified that the notice issued by the 2nd Respondent (1st Respondent's General Secretary) on 18th March 2021 was irregular in that it required those vying to take their papers to the General Secretary instead of the Elections Board in accordance with the 1st Respondent's Constitution. That the elections notice was issued when there was no Elections Board in place.
 12. The Respondents' case proceeded on 7th June 2021. The 1st and 2nd Respondents called one witness, Stephen Ojiambo Owaki (RW1), who described himself as the 1st Respondent's General Secretary. He adopted his witness statement dated 24th May 2021 and filed on even date as his testimony. He also referred to an affidavit that he had sworn regarding a Notice of Motion dated 29th April 2021. I have noted from the Court's record that the said Notice of Motion (dated 29th April 2021) was determined vide a Ruling delivered on 15th July 2021.
 13. RW1 produced in evidence twelve (12) documents listed on the 1st and 2nd Respondent's list of documents dated 24th May 2021, save for the document listed on the list as item no. 1. The Court marked those documents as the 1st and 2nd Respondent's exhibit nos. 1-11 in the order of listing. The witness further testified that the Petitioners, all of whom were members of the 1st Respondent's



Executive Board which ran the Union, were part of the meeting held on 11/3/2021 which decided that elections be called. He produced minutes of that meeting in evidence. He further testified that the letter dated 18th March 2021 (calling for elections) was written after that meeting. That elections were held on 14th April 2021 and were overseen by Mombasa County Labour Officer.

14. RW1 further testified that the 1st Respondent did not have an Elections Board, and had never had it. That the Petitioners had been elected in 2016 without an Elections Board, but declined to participate in the elections held on 14th April 2021, and filed the petition herein on 13th April 2021. That the elections proceeded, and returns were filed as by law required.
15. It was RW1's further evidence that under the 1st Respondent's constitution, an Elections Board is supposed to be formed during the Union's Annual Conference, and that the Elections Board is supposed to receive nominations prior to an election which is supposed to be held during the Union's annual Conference (Articles 4 and 6 of the Unions constitution) and that after elections, the Union's Executive Board remains in office for five years.
16. Cross-examined, the witness (RW1) testified:-
 - a. that the 3rd Respondent's letter dated 25th September 2021 directed Unions to strictly operate within their registered constitutions.
 - b. that one of the functions of the 1st Respondent's Elections Board is to receive nominations for various positions and to vet them.
 - c. that the letter dated 18th March 2021 by the 1st Respondent's General Secretary (RW1) directed members to submit nominations to the General Secretary (RW1) but not to the Elections Board.
 - d. that minutes of the 1st Respondent's Executive Board meeting held on 30th March 2021 had resolved that the notices issued by the Secretary General were null and void, but the elections proceeded.
17. Re-examined, RW1 testified that the entire scenario about an Elections Board is not workable because according to the 1st Respondent's constitution, the Annual Conference establishes an Elections Board, which then receives nominations and conducts elections on the same day. The witness further testified that he did not attend the 1st Respondent's Executive Board meeting held on 30th March 2021 (which nullified and voided the elections notice issued by RW1 on 18th March 2021.)
18. Upon considering the pleadings filed and evidence adduced by parties herein, issues which emerge for determination, in my view are:-
 - a. whether the 2nd Respondent's letter dated 18th March 2021 calling for the 1st Respondent's elections was lawful.
 - b. whether the 1st Respondent's elections held on 14th April 2021 were validly held.
19. On the first issue, Sections 34(2) of the *Labour Relations Act* provides as follows:-

“The Constitution of a Trade Union, employers' organisation or federation shall:-

 - a. Not contain a provision that discriminates unfairly between incumbents and other contestants in elections; and



- b. Provide for the election, by secret ballot, of all officials of a trade union at least once every five years.”

20. Article 6 (1) of the 1st Respondent’s registered constitution, to which both parties referred, and which the Petitioners produced in evidence, provides as follows:-

- “ 1(a) the Conference must establish an Elections Board.
- (b) the Elections Board is composed of nine persons who may be members of the Union who have no intention of vying for, and have no interest in any position in the Union.
- (c) persons who are not members of the Union may be nominated into the Elections Board.
- (d) the persons to be elected as Elections Board members may be nominated by any member of the governing body of the Union in writing.
- (e) the persons nominated must be persons of integrity, who are transparent and accountable, and generally objective. It is the duty of those nominated to show, in writing, that the nominees satisfy those requirements.
- (f) it is the duty of the Conference to vet and appoint the members of the Elections Board.
- (g) once appointed, members of the Elections Board must be independent, and must be facilitated to perform their functions.”

21. Article 6(2) of the 1st Respondent’s Constitution lists the overall functions of the Elections Board as:-

- “ (a) to organise and oversee elections at all levels of the Union.
- (b) to receive nominations for various positions from the Conference and to vet them.
- (c) to determine who are validly nominated and disseminate this information.
- (d) to generally organise and conduct the elections and announce results.
- (e) to process complaints/disputes and present their report, with recommendations to the Conference.
- (f) to provide a final report to the Conference indicating who has been elected in the relevant positions.”

22. The 2nd Respondent’s letter dated 18th March 2021 calling for elections on 14th April 2021, which the 2nd Respondent produced in evidence (Respondents’ exhibit no. 6) stated in part:-

“...pursuant to Article 4:3(a) (ii) and (iii) of the Seafears Union of Kenya’s Constitution and [Labour Relations Act](#) 2007, a notice is hereby issued to convene the Annual Conference.



The Annual Conference will be held on Wednesday 14th April 2021 at the Mission to Seafarers – Mombasa – Centre. The meeting will start at 8.30am

Agenda

1. Elections of Union officials

All those interested and want to vie for positions during the elections must submit their names to the General Secretary two weeks before the meeting.”

23. Although the 2nd Respondent (1st Respondent’s General Secretary) may have had capacity to convene an Annual Conference of the 1st Respondent under Article 4:3(iii) of the 1st Respondent’s Constitution, he had no capacity to lawfully or validly call for, and receive names and /or nominations of those interested in vying for positions during the convened Annual Conference. That is the province of the Elections Board pursuant to Article 6(2) of the 1st Respondent’s Constitution. To that extent, the 2nd Respondent’s letter dated 18th March 2021 was an illegality. I so find and hold.
24. The 1st and 2nd Respondents did not plead or demonstrate that there existed an Elections Board in the 1st Respondent Union that could receive nominations and conduct elections of the 1st Respondent Union on 14th April 2021. The 2nd Respondent’s act of calling for elections under such circumstances was itself an illegality. The Court was not told who conducted the alleged elections on 14th April 2021. According to the “list of elected officials as at 14th April 2021” produced in evidence by the 2nd Respondent the (1st and 2nd Respondent’s exhibit no. 10), the 2nd Respondent (RW1) is shown to be one of those purported to have been “elected”. He appears to have played the role of a player and a referee as pleaded by the Respondents.
25. On the second issue, and in view of the foregoing, the elections alleged to have been conducted on 14th April 2021 in the absence of an Elections Board were a sham and an illegality. The elections were not validly held, and I so find, hold and declare.
26. On whether the reliefs sought are deserved, it is my finding that they are. I enter judgment for the Petitioners against the 1st and 2nd Respondents as follows:-
 - a. it is hereby declared that the 2nd Respondent’s letter dated 18th March 2021 purporting to be an Election Notice of the 1st Respondent was unlawful, to the extent that it called for elections on 14th April 2021 and forwarding to the 2nd Respondent of names of those interested in vying for positions during the elections.
 - b. any elections of the 1st Respondent Union which may have been held on 14th April 2021 on the basis of the 2nd Respondent’s letter dated 18th March 2021 was null and void, and any registration of the 1st Respondent’s officials that may have been effected by the 3rd Respondent on the basis of such elections is hereby quashed.
 - c. the 1st Respondent shall, within ninety (90) days of this judgment, establish an Elections Board in accordance with its registered constitution, and shall, within a further period of sixty (60) days, hold its elections in accordance with its registered constitution.
 - d. each party will bear its own costs of the petition.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 2ND FEBRUARY 2023.

AGNES KITIKU NZEI

JUDGE



Order

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

Appearance:

Ms. Idunyu for Petitioners

N/A Respondent

