



**Nyangweso v Registrar of Trade Unions & 4 others (Petition E023 of 2022) [2023] KEELRC 1052 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1052 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION E023 OF 2022  
NJ ABUODHA, J  
APRIL 28, 2023**

**BETWEEN**

**GEORGE MOSETI NYANGWESO ..... PETITIONER**

**AND**

**REGISTRAR OF TRADE UNIONS ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL GENERAL SECRETARY, KENYA BUILDING,  
CONSTRUCTION, TIMBER AND FURNITURE EMPLOYEES  
UNION ..... 2<sup>ND</sup> RESPONDENT**

**THE DEPUTY NATIONAL GENERAL SECRETARY, KENYA  
BUILDING, CONSTRUCTION, TIMBER AND FURNITURE EMPLOYEES  
UNION ..... 3<sup>RD</sup> RESPONDENT**

**THE COUNTY LABOUR OFFICER, UASIN GISHU COUNTY .... 4<sup>TH</sup>  
RESPONDENT**

**PETER MAKOKHA ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner herein concurrent with the petition dated 30<sup>th</sup> August 2022 filed notice of motion of even date seeking orders among others that:
  - i. The 1<sup>st</sup> Respondent be restrained from gazetting and or registering new officials of the Kenya Building, Construction, Timber & Furniture Employees Union Eldoret Branch as contained in the list forwarded to the 1st Respondent by the 4th Respondent pending hearing and determination of this application inter partes and thereafter pending the hearing and determination of the Petition.
  - ii. Costs of this application be provided for.



2. The motion was supported by the affidavit of the Petitioner who deponed on the main that:
  - i. I am an official of the Kenya Building, Construction, Timber & Furniture Employees Union Eldoret Branch.
  - ii. On 8<sup>th</sup> July, 2022 the court ordered the 2<sup>nd</sup> Respondent to conduct fresh branch elections within 60 days.
  - iii. Subsequently the 3<sup>rd</sup> Respondent called for branch elections which was fixed on 28<sup>th</sup> August, 2022.
  - iv. The union's branch elections were held on 28<sup>th</sup> August, 2022.
  - v. One of the candidates who was vying for the position of the Union's branch elections is the 5<sup>th</sup> Respondent.
  - vi. The 4<sup>th</sup> Respondent declared the 5<sup>th</sup> Respondent as the newly elected branch Secretary.
  - vii. The 5<sup>th</sup> Respondent was not eligible to vie for the position of Union branch secretary as he is not a paid-up member of the union.
  - viii. The 5<sup>th</sup> Respondent is an agency member and not a member of the union.
  - ix. Rule 15 of the Kenya Building, Construction, Timber & Furniture Employees Union constitution provides that for a person to be eligible for elections as member they have to be paid-up members of the union.
  - x. It therefore follows that the election of the 5<sup>th</sup> Respondent as the Union's branch secretary is null and void as the 5<sup>th</sup> Respondent was not eligible for election.
  - xi. I am apprehensive that the 4<sup>th</sup> Respondent will forward the name of the 5<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent for registration thereby rendering the instant application nugatory.
3. The 5<sup>th</sup> Respondent in his replying affidavit stated inter alia that:
  - i. I am an employee of RaiPly Wood Company on payroll No 6181
  - ii. I have read and understood the petitioner's application dated 30<sup>th</sup> August 2022 together with the affidavit sworn by George Moseti and wish to say as follows,
  - iii. I vied and was elected as the KBCTFIE Union's Branch elections held on the 28<sup>th</sup> August 2022 at Eldoret Secondary School with 178 Votes
  - iv. The elections were repeat elections ordered by this Honourable Court on the 8<sup>th</sup> July 2022
    - v. It is not true that I am not a member of KBCTFIE Union
    - vi. My Union dues have been deducted from my salary as Agency fee.
    - vii. The reasons for that is because the Petitioner, when he was the Branch Secretary frustrated my efforts to join the Union by failing to honour the checkoff form I signed in December 2020
    - viii. I was forced to write to the 2<sup>nd</sup> Respondent to inform the office of the harassment I received from the Petitioner
    - ix. Due to the petitioner denying my joining the Union. I was forced to start paying my Union contribution of 2.25% from my salary directly to KBCTFIE Union.



- x. I was therefore qualified to vie for the position of the branch secretary as a paid up member according to the Union s Constitution.
  - xi. Before I could submit my application form I asked the 2<sup>nd</sup> Respondent tor confirmation from the union s record that I am a paid up member of the Union to enable me convince the members sign my application forms.
  - xii. The 2<sup>nd</sup> Respondent did write back confirming that I have been paying Union dues and a paid up member under Article 15 of the Union’s Constitution.
4. The 1<sup>st</sup> Respondent on the other hand through a notice of motion dated 21<sup>st</sup> September 2022 moved the Court for prayers among others, that this Court vacates the interim orders issued to the Petitioner on 1<sup>st</sup> September 2022, restraining the 1<sup>st</sup> Respondent (Registrar of Trade Unions) from gazetting and or registering new officials of the Union.
5. The application was further supported by the affidavit of Francis Murage who deponed on the main that:
  - i. I am the General Secretary of the 1<sup>st</sup> Respondent and therefore competent to swear this affidavit.
  - ii. The Union’s Eldoret branch repeat elections were held on the 28<sup>th</sup> August 2022 following a court Judgement issued by this Honourable Court on the 8<sup>th</sup> July 2022.
  - iii. The 5<sup>th</sup> Respondent herein, Peter Makokha, was the duly elected Branch Secretary having garnered 178 votes while the Petitioner got 65 votes.
  - iv. Contrary to the petitioner’s allegations, the Union confirmed that Makokha, the 5<sup>th</sup> Respondent, was qualified to vie for the position of Branch Secretary, Eldoret.
  - v. The said Peter Makokha is a bona fide and a paid up member of the Union in compliance to the Union’s constitution Rules 14 and 15
  - vi. Mr Peter Makokha has had his Union dues deducted as agency fee by his employer, Raiply Wood Limited.
  - vii. Sometime in December 2020, while the Petitioner was still serving as the Branch Secretary KBCTFIE Union, and during a member recruitment drive, Peter Makokha, the 5<sup>th</sup> Respondent signed a checkoff form confirming to have joined the Union.
  - viii. As is the practice, the branch secretary assigns membership numbers to the members recruited before the same may be served on the employer.
  - ix. In this case, the Petitioner maliciously refused to assign the relevant details to the 5<sup>th</sup> Petitioner and denied him a chance to become a Union member
  - x. The 5<sup>th</sup> Petitioner wrote to the National General Secretary protesting the malice he, and others, endured from the Petitioner.
  - xi. Thus the Petitioner resorted to paying own Union dues contribution of 2.25 % of his salary despite having the employer deducting his Union dues under agency fee.
  - xii. Therefore the 5<sup>th</sup> Respondent is a bonafide Union member, a position the Petitioner could not have known as he was voted out of office in the Unions elections of January 2021 which



office has been under the management of the 2nd Respondent during the pendency of Eldoret ELRC Pet No E004/21 filed by the Petitioner and 3 Others.

- xiii. The County Labour officer was provided with proof that the 5th Respondent had satisfied the requirements of Rule 14 & 15 of the Unions Constitution on elections of Branch Secretaries.
  - xiv. There being no other ground relied on by the Petitioner in his Petition except that the 5<sup>th</sup> Respondent did not comply with the Unions election regulations, and the 2nd Respondent having demonstrated that the 5th Respondent was in compliance, this honourable Court has no other reasons to sustain the interim orders issued on the 1<sup>st</sup> September 2022
  - xv. It is not true that the petitioner is an official of the Kenya Building Construction, Timber & Furniture Employees Union, having failed in his re-election bid as the Eldoret Branch Secretary in the Trade Unions elections held on the 31<sup>st</sup> January 2021, as well in the repeat elections held on the 28<sup>th</sup> August 2022.
  - xvi. This Honourable Court upheld the position that the Petitioner had no extension of tenure as Branch Secretary, Eldoret.
  - xvii. As it were in the Union's elections of 31<sup>st</sup> January 2022, the petitioner herein was rejected by the Union members, Eldoret branch, where he got 65 votes and Peter Makokha Petitioner garnering 178 votes.
  - xviii. The Petitioner is not claiming to have won the elections.
  - xix. The orders granted the Petitioner restraining the Registrar of Trade Unions from gazetting or registering new officials of the branch will cause untold suffering to the branch officials who have been without a representative since Jan 2021.
  - xx. The real intent of the Petitioner is to punish the branch members for having rejected him in the 2 elections which intent this honourable must sanction by vacating the ill obtained orders.
6. The Petitioner in return filed a replying affidavit in opposition to the motion in which he deponed among others that:
- i. I am also advised by my Advocates on record which counsel I hold to be sound that Section 35 (5) and Section 35 (6) of the *Labour Relations Act* provide that no change of officials shall have effect until it is registered by the Registrar and that no person who is not registered by the Registrar in accordance with section 35 shall act or purport to act as an official of a trade union.
  - ii. Peter Makokha the 5<sup>th</sup> Respondent in the Petition was not registered by the Registrar of Trade Unions and the fourteen (14) days period within which he was to be registered lapsed.
  - iii. Since Peter Makokha was not registered as the new official of the Union branch, he is not allowed to act or purport to act as one because he was not a registered by the Registrar of Trade Unions within the prescribed period.
7. The 1<sup>st</sup> and 4<sup>th</sup> Respondents through one Caroline Chemursoi who stated that she was the County Labour Officer, Uasin Gishu and had full authority by the Ministry of Labour and Social Protection to swear the affidavit on her behalf and the Registrar of Trade Unions (1<sup>st</sup> Respondent). She further deponed that:
- i. I wish to state that on 17<sup>th</sup> August, 2022, the County Labour Offices received a notice from Kenya Construction, Timber & Furniture Employees Union through the Labour Commissioner of an intended election slated for 28<sup>th</sup> August, 2022. The notice appointed



me to preside over the election, at Eldoret Secondary School. This effectively made me the Returning Officer of the elections.

- ii. Pursuant to their Constitution, the 2<sup>nd</sup> Respondent through their letter of 26<sup>th</sup> August 2022, wrote to our office forwarding a list of approved candidates for various positions in the upcoming elections.
  - iii. Alongside the said letters at Paragraph 7 above, we also received a duly stamped electoral register of KBCTFIE Union Members, Eldoret Branch, which in essence confirmed the members of the Union and who would ideally be eligible to vote in the upcoming elections.
  - iv. On receipt of the said manual register, I counterchecked the electoral register to confirm if all the candidates were members of the Union so as to ascertain their suitability, and indeed I confirmed that their names appeared in the member register, thus their candidature was valid.
  - v. Subsequently, the elections were conducted on 28/08/022 as scheduled, the result of which 321 members turned out to vote, 3 votes spoilt. There were 4 candidates for the Branch Secretary Post with the following results:
    - a. George Museti Nyangweso – 65 votes
    - b. Peter Mutoka Makokha – 178 votes
    - c. Christopher Oyier – 70 votes
    - d. Hannington Omimwa Suchia – 5 votes
  - vi. From the results, Peter Mutoka Makokha having garnered the most votes, was declared the winner.
  - vii. Subsequently, I prepared my report and forwarded the same to the Registrar of Trade Unions, therein communicating the results of the elections for purposes of registration of newly elected members.
  - viii. In so far as the functions of the 1<sup>st</sup> and 4<sup>th</sup> Respondents are concerned, the said did that which per law are allowed to do. Any other contention as per the Petition herein are in-house issues to be dealt with by the Union using its internal avenues, and which avenues the 1<sup>st</sup> and 4<sup>th</sup> Respondents have no control over.
8. In the submission in support of the petition, the Petitioner submitted among others that the 5<sup>th</sup> Respondent was not a member of the Union. The 5<sup>th</sup> Petitioner did not pay the membership fee of Kshs.1,000/= as provided for under Rule 3(ii) of the Union's Constitution. The 5<sup>th</sup> Respondent merely denied the allegation without proving his membership by adducing any evidence of membership fee by way of receipt or membership number.
9. According to the Petitioner the 5<sup>th</sup> Respondent admitted in his own affidavit that he was not a member of the Union and that he had been paying agency fee. He further alleged that the Petitioner frustrated his efforts to join the union by failing to honour the check off forms but never supported the allegations by any evidence.
10. The Petitioner further submitted that the Union's constitution provided that any member who had paid up all his dues and had been a member for a minimum period of six months would be eligible for election as branch officer. The 5<sup>th</sup> Respondent was cleared to vie for the position of Branch Secretary but was not a member of the union. It was evident that he was cleared in blatant disregard to the Union's constitution



11. The Union was governed by its constitution and members agreed to be bound by the provisions of the constitution and therefore the elections ought to have been conducted in strict compliance with the Union's constitution.
12. Mr. Runi for the Interested Party submitted that the 5<sup>th</sup> Respondent was an agency member 6181 and as such not eligible for election. Alleging that signed checkoff forms were forwarded to the 2<sup>nd</sup> Respondent did not suffice as he was depositing money in the Union's account directly as opposed to being deducted directly from his salary like other members of the Union. In this regard, Counsel relied on the case of Daniel Paul Njoroge & 9 others v Registrar of Trade Unions.
13. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted that trade union elections are conducted pursuant to Section 24 of the *Labour Relations Act* which provided in part that election of officials of a trade union shall be conducted in accordance with its registered constitution. The qualification of officials wishing to run for any elective post of a trade union are subject to that Union's constitution. Rule 15 of the Union's constitution in issue provided that any member who has paid up all his dues and has been a member for a minimum period of six months shall be eligible for election as a branch officer.
14. Mr. Murage for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent further submitted that it was incumbent duty on the 2<sup>nd</sup> Respondent to scrutinize and confirm that a member vying for a position meets the requirements of clause 15 of the Union's constitution.
15. The 5<sup>th</sup> Respondent was an employee of Rai Ply Woods and that the employer deducted agency fee from his wages as opposed to union dues. The 5<sup>th</sup> Respondent also paid equivalent union dues directly to the 2<sup>nd</sup> Respondent. According to Counsel the reason for double contribution by 5<sup>th</sup> Respondent was well explained in the replying affidavit of F. K. Murage to have been occasioned by the malicious actions of the Petitioner who blocked the 5<sup>th</sup> Respondent's intention of converting from agency fee paying member to a union dues paying member by not only refusing to forward the form S signed by the 5<sup>th</sup> Respondent but also refusing to assign the 5<sup>th</sup> Respondent a branch membership number as required. To save himself the Respondent was forced to remit his own Union dues despite the fact that agency fee had been deducted from his salary.
16. The 5<sup>th</sup> Respondent provided bank slips as evidence that he was paid up member at the time of filing application forms under Rule 15 of the Union's constitution. Being satisfied that the 5<sup>th</sup> Respondent was qualified under Rule 15(a) the 2<sup>nd</sup> Respondent proceeded to allow the 5<sup>th</sup> Respondent to vie for the position of Branch Secretary.
17. The 5<sup>th</sup> Respondent on its part submitted that before being allowed to vie for any position in the Union, one is required under Rule 15 of the Union's constitution to first fill an application form for scrutiny by the Union's executive council to confirm whether one is qualified as not to run for any such position by being a paid up member.
18. According to the 5<sup>th</sup> Respondent, he attached with the application bank slips as evidence that he had been depositing his union dues directly to the Union's account in addition agency fee deducted from his salary.
19. Section 34(1) of the *Labour Relations Act* provides that "election of officials of trade union ... shall be conducted in accordance with their registered constitution". Rule 15(1)(a) of the Union's constitution provides that:

"Any member who has paid up all his dues and has been a member for a minimum period of six months shall be eligible for election as branch officer."



20. Rule 15(b) further provides:

“All prospective candidates shall be required to complete application forms prepared for the purpose by the National General Secretary and approved by the Executive Council. Such forms shall among other particulars show full name of the candidate, his membership number, date he became a member and in which branch, his current employer’s name and address.”

21. The 5<sup>th</sup> Respondent in his replying affidavit shown on 15<sup>th</sup> September 2022 attached among others his application letter dated 29<sup>th</sup> November 2022 to join the Union alongside three others namely Nyabela, Chirchir and Nandalwa. The 5<sup>th</sup> Respondent further attached signed checkoff form authorizing deduction of union dues from his salary and several letters informing the Respondent of payment of union dues in addition to agency fee. The 5<sup>th</sup> Respondent further attached banking slips as evidence of such payment.

22. By a letter dated 19<sup>th</sup> August, 2022 the Union wrote to the 5<sup>th</sup> Respondent informing him among others that being an employee of Raiplywood and having been a paid up member for more than six months, he was entitled to all benefits associated with union membership as enshrined in the Union’s constitution including election as Branch Secretary General. The contention by the Petitioner is that the 5<sup>th</sup> Respondent was not a member of the Union but an agency fee paying member and that agency membership did not qualify him to run for any office in the union.

23. The 5<sup>th</sup> Respondent on the other hand produced letters and documents including banking slips to show that in addition to deduction from his salary of agency fees he was directly remitting to the Union’s account Union dues.

24. Further, by a letter dated 19<sup>th</sup> August 2022, referred to earlier, the Union’s National General Secretary, informed the 5<sup>th</sup> Respondent among others that his application of 18<sup>th</sup> December 2020, seeking to become a member of the Union and the accompanying check off forms were not honoured due to lack of details from Eldoret Branch where the 5<sup>th</sup> Respondent was a member. The letter however informed the 5<sup>th</sup> Respondent that records showed that he had been paying monthly subscriptions directly to the Union’s account with effect from February 2021 as provided under the Union’s constitution and Section 52 of the *Labour Relations Act*.

25. Rule 15(a) referred to earlier provide that any member who has paid up all his dues and has been a member for a minimum period of six months is eligible for election as branch officer. The circumstantial facts as outlined above leads to no other reasonable conclusion except that the 5<sup>th</sup> Respondent was for all practical purposes a member of the Union how else would one explain and or construe the letters and the banking slips produced by the 5<sup>th</sup> Respondent except that they were a set of acts by a person who considered himself a member of the Union? To contend that simply because the 5<sup>th</sup> Respondent did not have a membership number, he was not a member of the Union would amount to elevating a trifle to status of a serious factual or legal question which it does not deserve.

26. The Court takes the view that regular payment of membership dues by the 5<sup>th</sup> Respondent in addition to agency fee coupled by assurances and clearance to run for the branch election by the National General Secretary of the Union was sufficient enough to prove that the 5<sup>th</sup> Respondent was indeed a member of the Union within the meaning of Rule 15 of the Union’s constitution. His election as the Union’s Branch Secretary on 28<sup>th</sup> August 2022 was therefore valid.

27. In conclusion, the petition is found without merit and is hereby dismissed with costs.



28. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 28TH DAY OF  
APRIL 2023**

**ABUODHA J. N.**

**JUDGE**

In the presence of:-

.....for the Claimant

..... for the Respondent

