



REPUBLIC OF KENYA



KENYA LAW
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Kadukha v Kenya National Private Security Workers Union (Petition E054 of 2022) [2023] KEELRC 1143 (KLR) (11 May 2023) (Judgment)

Neutral citation: [2023] KEELRC 1143 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E054 OF 2022

S RADIDO, J

MAY 11, 2023

IN THE MATTER OF THE RIGHT TO FAIR LABOUR PRACTICES

AND

IN THE MATTER OF ARTICLES 1(1) & (4), 2(1), 19, 20, 21(1), 22(1), 23(3), 25, 28, 41(1), 47(1) & (2), 50(1) AND 259(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE CONSTITUTION OF THE REPUBLIC OF KENYA, 2010

AND

IN THE MATTER OF RULE 2(1), 3(1), 4 AND 10 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF RULE 7 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2016

BETWEEN

PATRICK SAGWA KADUKHA PETITIONER

AND

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION RESPONDENT



JUDGMENT

1. Patrick Sagwa Kadhuka (the Petitioner) was elected as Branch Secretary, Kisumu of the Kenya National Private Security Workers Union (the Union) on or around February 19, 2021.
2. On December 7, 2022, the Union's National General Secretary wrote to all Branch Secretaries of the Union's Kisumu, Kakamega, Eldoret and Kitale branches, requesting them to present financial statements for the past 3 years within 7 days (the letter also noted that there were allegations of misappropriation of union funds).
3. The letter further warned the branch secretaries of contemplated action if the request was not complied with.
4. The letter was a follow up to an earlier letter dated November 23, 2022 from the National General Secretary to the branch Treasurer asking for the same documents.
5. The Petitioner responded to the demand on December 9, 2022, asking for facilitation in order to prepare and submit reports for 2 years (the Petitioner indicated that the financial statements for 2020 had been presented on October 16, 2020).
6. In the letter of response, the Petitioner also denied misappropriation of union funds and stated that the Registrar of Trade Unions had been conducting inspections of the financial records of the branch. The Petitioner indicated that the only bank account operated by the branch was for compensation awarded by the Courts, and that union subscriptions were always deposited into the bank account of the national office.
7. On December 16, 2022, the Union's National Executive Council met and resolved to suspend the Petitioner from office because he had failed to present books of accounts to enable preparation of returns to the Registrar of Trade Unions.
8. The suspension letter also alleged unexplained deposits and withdrawals from the branch bank account. The Petitioner was instructed to hand over office to the Assistant branch secretary.
9. The Petitioner felt aggrieved and on December 30, 2022, he filed the instant Petition alleging that the suspension violated his rights to a fair hearing, fair labour practices, fair administrative action and dignity.
10. The Petitioner prayed for the following orders (some of the orders sought were not clear):
 - (a) A declaration that the action of the Respondent suspending the Petitioner for indefinite period is unfair, unlawful, violates the rights to fair labour practices and therefore it is unconstitutional thus null and void.
 - (b) The Petitioner be reinstated to his position with full benefits.
 - (c) A declaration that the Respondent's constitution doesn't comply with fair labour practices as well as fair administrative action as the Petitioner is subject to appeal to the same body that suspended him.
 - (d) A declaration against the action of the Respondent of subjecting the Petitioner on suspension which is indefinite period without a chance of being heard violated the terms of the union's constitution as well as the Constitution of Kenya.



- (e) A declaration that the Respondent has violated the constitutional right of the Petitioner herein right to legitimate expectation to be subjected to disciplinary procedure that complies with fair labour practices and fair administrative action.
 - (f) Damages for violation of his constitutional rights.
 - (g) Costs of the Petition.
11. The Court gave directions on January 3, 2023, and as a result the following were filed:
- (a) Replying affidavit by the Union's National General Secretary on February 3, 2023.
 - (b) Further affidavit by the Petitioner on February 10, 2023.
 - (c) Submissions by the Petitioner on February 15, 2023.
 - (d) Submissions by the Respondent on 28 February 2023.
12. The Court has given due consideration to the Petition, affidavits and submissions.

Unlawful suspension

13. It is not in dispute that the Petitioner was suspended indefinitely through a letter dated December 19, 2022 to enable the completion of on-going investigations and that the suspension was a resolution of the Unions National Executive Council.
14. The reason given for the suspension was that the Petitioner had failed to comply with section 42(2)(ii) and (iii) of the *Labour Relations Act* (the proviso requires a trade union official to render true financial statements when called upon by a competent authority).
15. Rule 22 of the Union's Constitution allows the National Executive Council to suspend or expel an official or a member.
16. The authority given to the National Executive Council to suspend or expel an official or a member is circumscribed at Rule 22(iii) in the following terms:
- An official/officer or member may be suspended or expelled from the Union by the National Executive Council if:
- (iii) No member shall be suspended or expelled unless he/she has been given an opportunity to state his/her case personally or in writing at a 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 the allegations on which the member is charged.
17. The first letter sent out to the Petitioner in respect to the allegations leading to the suspension was dated December 7, 2022, and it called upon the Petitioner (and others) to forward financial statements within 7 days.
18. The Petitioner responded on 9 December 2022 and on December 16, 2022, the National Executive Council met and resolved to suspend him.
19. The Union did not place any material to show that apart from the letter of December 7, 2022, the Petitioner was invited to appear before the National Executive Council to defend himself.
20. There was also no evidence that the Petitioner was given the 21-days envisaged by the Rule to appear before the Council or that he was alerted that his suspension was on the cards.



21. The Court has no hesitation on finding that the failure to comply with Rule 22(iii) renders the suspension of the Petition invalid.
22. The Court also notes that the Union's Constitution does not define the period of suspension of an official or member before the ratification of the decision by the National Delegates Conference.
23. The Union may need to relook at the provision on suspension as indefinite suspension may fall afoul of the right to fair labour practices or the right to fair administrative action, if applicable.

Conclusion and Orders

24. Flowing from the above, the Court finds and holds that the indefinite suspension of the Petitioner was unlawful for being contrary to the Union's Constitution.
25. The Court issues the following orders:
 - i. The suspension of the Petitioner is vacated.
 - ii. The Respondent is at liberty to take any disciplinary action against the Petitioner but in strict compliance with its Constitution.
26. The Petitioner is still a member and official of the Respondent. Each party, therefore, to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 11TH DAY OF MAY 2023.

Radido Stephen, MCI Arb

Duty Judge

Appearances

For Petitioner P D Onyango & Co Advocates

For Respondent D B Wati & Co Advocates

Court Assistant Chrispo Aura

