



**Odiwuor v Universities Academic Staff Union & 4 others; Otieno & another (Interested Parties) (Cause E015 of 2023) [2023] KEELRC 1007 (KLR) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1007 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E015 OF 2023**

**S RADIDO, J  
MAY 3, 2023**

**BETWEEN**

**WYCLIFFE HUMPHREY ODIWUOR ..... CLAIMANT**

**AND**

**UNIVERSITIES ACADEMIC STAFF UNION ..... 1<sup>ST</sup> RESPONDENT**

**UNIVERSITIES ACADEMIC STAFF UNION, MASENO UNIVERSITY  
CHAPTER ..... 2<sup>ND</sup> RESPONDENT**

**DR STEPHEN ONYANGO OKEYO ..... 3<sup>RD</sup> RESPONDENT**

**DR BENARD OKAL (SUED AS THE COMMISSIONER TO THE BY-  
ELECTION) ..... 4<sup>TH</sup> RESPONDENT**

**DR SARAH OBINGA (SUED AS THE COMMISSIONER TO THE BY-  
ELECTION) ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**GEORGE OJUONDO OTIENO ..... INTERESTED PARTY**

**ALEXANDER OKOTH OCHIENG ..... INTERESTED PARTY**

**RULING**

1. The Universities Academic Staff Union, Maseno University Chapter (the Union chapter) issued a notice for by-elections to fill the position of Union chapter Secretary on February 11, 2023. The by-election was to be held on March 10, 2023.
2. Dr Stephen Onyango Okeyo (3<sup>rd</sup> Respondent), George Ojuondo and Alexander Okoth Ochieng were cleared to vie for the position on February 21, 2023.



3. On March 9, 2023, Wycliffe Humphrey Odiwuor (the applicant) moved the Court contesting the eligibility of the 3<sup>rd</sup> Respondent to stand for the office of the Union chapter Secretary primarily because the 3<sup>rd</sup> Respondent had been dismissed by the University on February 27, 2023.
4. Since the challenge was mounted on the eve of the elections, the Court declined to issue ex-parte orders, and the applicant was directed to serve the Respondents and Interested Parties.
5. The by-elections went ahead as scheduled and the 3<sup>rd</sup> Respondent was elected.
6. When the parties appeared in Court on March 13, 2023, the applicant informed the Court that due to the changed circumstances, he wanted to amend his pleadings (the Court granted the leave).
7. On the same day, the applicant filed a Motion seeking orders:
  - (1) ...
  - (2) That pending the hearing and determination of this application inter-partes, an interim order of injunction do issue to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents restraining them from forwarding the name of the 3<sup>rd</sup> Respondent to the Registrar of Trade Unions for registration and further restraining the 3<sup>rd</sup> Respondent from transacting any business whatsoever of the 2<sup>nd</sup> Respondent as the chapter Secretary.
  - (3) That pending the hearing and determination of this suit, an interim order of injunction do issue to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents restraining them from forwarding the name of the 3<sup>rd</sup> Respondent to the Registrar of Trade Unions for registration and further restraining the 3<sup>rd</sup> Respondent from transacting any business whatsoever of the 2<sup>nd</sup> Respondent as the chapter Secretary.
  - (4) That costs of this application be provided for.
8. The main ground in support of the Motion was that the 3<sup>rd</sup> Respondent was not eligible to contest or hold any office with the Union because he was no longer in the service of Maseno University, having been dismissed on 27 February 2023.
9. The applicant cited articles 4, 14 and 20 of the Union's constitution.
10. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed Grounds of Opposition to the Motion on 16 March 2023 and a replying affidavit on 23 March 2023, contending that the application was incompetent, the orders sought had been overtaken by events as the 3<sup>rd</sup> Respondents name had already been forwarded to the Registrar of Trade Unions, the 3<sup>rd</sup> Respondent had not resigned as a member of the Union and was thus entitled to enjoy all rights accruing to members, membership of the Union did not cease with dismissal by the employer and that it was not their duty but that of the Labour Officer to forward the name of the person elected to the Registrar of Trade Unions for registration.
11. The applicant filed a supplementary affidavit and submissions on 3 April 2023 while the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed their submissions on April 6, 2023.
12. The 3<sup>rd</sup> Respondent filed his submissions on April 12, 2023.
13. The Court has considered the Motion, affidavits, Grounds of Opposition and submissions.
14. The applicant objected to the competency of the 3<sup>rd</sup> Respondent's replying affidavit on the ground that there was no evidence of written authority from the 1<sup>st</sup> Respondent.



15. Since the 3<sup>rd</sup> Respondent is currently an elected official of a chapter of the 1<sup>st</sup> Respondent and he also deposed that he had the requisite authority to swear the affidavit on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. The applicant has not placed any evidence before the Court that the authority was not given and at this juncture, the Court cannot disregard the affidavit and the assertions therein.
16. In order to secure the order(s) sought, the applicant was required to establish a prima facie case.
17. The Court has looked at the articles of the Union's constitution (articles 4, 14 and 20), which the applicant contends locked out the 3<sup>rd</sup> Respondent from contesting or holding an office with the Union.
18. Article 4 provides for membership, Article 14 speaks to elections while Article 20 is on the designation and duties of chapter officers.
19. The Court has also looked at section 31(1) of the *Labour Relations Act* which provides:
  - (1) The officials of a trade union or employers' organisation shall be persons who are, or have been, engaged or employed in the sector for which the trade union or employers' organisation is registered.
20. At this interlocutory stage, and in light of section 31(1) of the *Labour Relations Act*, the Court is of the view that it is debatable whether the mere fact that the 3<sup>rd</sup> Respondent had been dismissed would be enough to lock him out of holding a union office, and therefore, the applicant has not established a prima facie case.
21. The Court is also of the view that it is debatable whether the membership eligibility criteria outlined in Article 4(i)(a) of the Union's Constitution is applicable to determinations as to whether membership comes to an end.
22. The orders sought in the Motion dated 13 March 2023 are therefore declined.
23. The Cause should be progressed to a hearing on the merits.
24. Costs of the Motion in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 3<sup>RD</sup> DAY OF MAY 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For applicant O.J. Okoth & Co. Advocates

For 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents Onsongo & Co. Advocates

For 3<sup>rd</sup> Respondent Amos O. Oyuko & Co. Advocates

