



**Ngongo v Registrar of Trade Unions & 3 others (Cause E018 of 2021)
[2023] KEELRC 2113 (KLR) (20 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2113 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E018 OF 2021
S RADIDO, J
SEPTEMBER 20, 2023**

BETWEEN

PHILISTER NGONGO CLAIMANT

AND

REGISTRAR OF TRADE UNIONS 1ST RESPONDENT

LABOUR OFFICER, BUSIA 2ND RESPONDENT

KENYA NATIONAL UNION OF TEACHERS 3RD RESPONDENT

PATRICK OMOTTO MULAMBA 4TH RESPONDENT

JUDGMENT

1. On 25 September 2020, the Registrar of Trade Unions (the Registrar) notified all trade unions that they were required to hold elections in 2021 in terms of section 34 of the *Labour Relations Act*.
2. As a result, on 10 November 2020, the Secretary General of the Kenya National Union of Teachers (the Union) issued a Notice of KNUT General Elections to be held from 4 January 2021 to 31 June 2021.
3. On 15 December 2020, the Secretary General issued a calendar of branch elections. The Secretary General issued other Circulars on the elections on 18 December 2020 and 6 January 2021. The elections for Busia branch were set for 13 February 2021 at Lwanya Primary School.
4. Philister Ngongo (the claimant) and Patrick Omotto Mulamba (the 4th respondent) contested for the position of Branch Executive Secretary. The 4th respondent was declared the winner with 736 votes. The claimant received 550 votes.
5. The claimant was not satisfied with the conduct of the elections and she sued the respondents on 16 February 2021, alleging that the elections were marred with irregularities, ballot stuffing and were not in conformity with the Unions constitution as well as the Constitution of Kenya, 2010.



6. The Statement of Claim was accompanied with a Motion which was dealt with in the course of the proceedings.
7. The 4th respondent filed a Response on 12 April 2021, the Labour Officer on 11 May 2021.
8. The claimant filed a Reply to the Labour Officers Response on 20 May 2021.
9. The claimant filed her proposed Issues on 14 June 2021.
10. The Issues were:
 - i. Whether the elections held on 13 February 2021 for the position of Executive Branch Secretary for KNUT Busia branch was marred by ballot stuffing?
 - ii. Whether the process leading to the said elections allowed for discrimination against the claimant as opposed to the incumbent?
 - iii. Whether the claimant should be granted prayers as per the Statement of Claim?
 - iv. Which party bears costs of the Claim?
11. On 15 June 2021, the parties agreed to adopt the Issues as framed by the claimant and the hearing commenced on 17 March 2022 and continued on 10 May 2022, 13 June 2022, 27 September 2022, 5 December 2022, 16 February 2023, 16 March 2023 and 13 June 2023.
12. The claimant filed her submissions on 31 July 2023, the Registrar and Labour Officer on ..., the Union on 29 August 2023 and the 4th respondent on 25 August 2023.
13. The Court has considered the pleadings, evidence and submissions.

Irregularities: Ballot stuffing

14. To support the contention of ballot stuffing, the claimant testified that when the ballot stuffing in favour of the 4th respondent was brought to her attention, a report was made to the Police (Matayos Police Station) under Occurrence Book entry OB No.13/13/02/2021.
15. The claimant further asserted that 300 ballots were stuffed to favour the 4th respondent leading to 986 total ballots for the position of Branch Executive Secretary, unlike the other contested positions, and that she was denied access to the voters' register and poll diary to confirm the total number of voters and those who actually voted.
16. Further, the claimant testified that marked ballots were found at around 8.00pm near the voting venue and that the Police collected them.
17. The claimant's proposer/agent(s) on their part testified that towards the end of the voting, an alarm on ballot stuffing was raised, the police were called and they arrested a suspect.
18. To rebut the allegations of ballot stuffing, the 4th respondent stated that the total voter turnout for the position of Branch Executive Secretary was 1286 and not 986 as claimed by the claimant and that all the agents including the claimant's signed the results notification.
19. Another witness for the claimant testified that acting on the instructions of the 4th respondent and after being paid, he pre-marked ballots near the voting venue and gave them to voters and later joined other voters at the voting venue.



20. On the events at the voting venue, the witness stated that due to the arrangements in the classroom used, it was not possible to notice the ballot stuffing.
21. It was incumbent upon the claimant to prove on a balance of probabilities that there was ballot stuffing and further that the votes for the position of Executive Secretary were markedly more than those for other positions.
22. The claimant did not discharge that burden. No evidence was led on the total votes for the other positions up for grabs nor was there a notice to the Returning Officer to produce in Court for scrutiny the ballot papers/boxes.
23. A scrutiny of the ballots would have shown if different stamps had been used to mark the ballots.
24. The claimant produced electronic evidence in court. The evidence related to events after the election process and outside the venue of the voting. Without more, the court is unable to find a factual/legal nexus with the process and outcome of the elections.
25. Despite making a report to the Police, the claimant failed to disclose the outcome of any investigations carried out by the Police. No witness from the Police department was called to testify in court.
26. Further, the claimant did not pinpoint the provisions of the Union's constitution which were not complied with during the election process or the effect of such failure on the outcome of the elections.
27. The claimant also asserted that indelible ink was not placed on the fingers of those who had voted and thus the possibility of some voters having a second go in the voting process.
28. The evidence from the Returning Officer was that voters had to be identified with copies of pay slips and identity cards. The names would then be crossed.
29. The claimant did not controvert this evidence, and the court, therefore is of considered view that the opportunity for voting more than once was not proved even assuming that indelible ink was not used.

Bias

30. The claimant further alleged bias on the part of the election officials (the allegations on bias were not easy to follow).
31. According to the claimant, the Returning Officer sent away an observer, gave them commitment forms to sign before the voting so predetermining the outcome of the vote and that there was disregard of statutory requirements with respect to the elections.
32. However, what was not disclosed is whether the agents of the claimants, who were serving teachers signed the commitments forms before the declaration of results or whether the forms were unique to the particular branch elections. The claimant's proposer and agent, in his written witness statement which was adopted as part of the evidence categorically stated that he signed the form declaring the winner after the declaration of results.
33. Equally not revealed were the details of the observed allegedly chased out of the voting venue and how such a fact impacted the outcome of the elections.

Conclusion and Orders

34. Having considered the evidence, the court finds that claimant failed to place before it concrete evidence to back up the allegations of irregularities in the elections which would have affected or negated the will of the voters, or that Labour Officer, Busia as the Returning Officer was biased.



35. The Cause is dismissed with costs to the respondents.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 20TH DAY OF SEPTEMBER 2023.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For claimant Amondi & Co. Advocates

For 1st and 2nd respondents Ms Adwar, Senior Litigation Counsel, Office of the Hon Attorney General

For 3rd respondent Ms Tusiime instructed by SMS Advocates LLP

For 4th respondent Mr Rakoro instructed by Rakoro & Co. Advocates

Court Assistant Chrispo Aura

