



REPUBLIC OF KENYA



KENYA LAW
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Otieno & 37 others v Union of Kenya Civil Servants & 3 others (Petition E027 of 2023) [2023] KEELRC 3294 (KLR) (11 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3294 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E027 OF 2023
S RADIDO, J
DECEMBER 11, 2023
IN THE MATTER OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES
10, 41, 50, 232 AND 258 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF
SECTION 44, 47 OF THE LABOUR RELATIONS ACT, 2012
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF
ARTICLES 1 (A), 3 (H), 5 (D) 8 (B), (E), (G) (J), 20 (2) AND 25 (2)
OF THE UNION OF KENYA CIVIL SERVANTS CONSTITUTION

BETWEEN

BENARD OTIENO 1ST PETITIONER
MALICK M SHANGUYA 2ND PETITIONER
PATRICK ODERO & 35 OTHERS 3RD PETITIONER
AND
UNION OF KENYA CIVIL SERVANTS 1ST RESPONDENT
TOM MBOYA ODEGE 2ND RESPONDENT
ALISOKOR MUHAMUD ISHAQ 3RD RESPONDENT
ABDULMALIK A ABDALLA 4TH RESPONDENT



RULING

1. The Court gave directions on the hearing and determination of this Petition on 9 October 2023.
2. The Respondents were directed to file and serve the responses on or before 13 October 2023 with judgment reserved to 6 December 2023.
3. The Respondents filed their affidavit on 27 November 2023 (outside the agreed timelines and of 13 October 2023) and on 27 November 2023, they filed a Motion dated 23 November 2023, seeking the enlargement of time to file and serve the replying affidavit out of time.
4. The Court directed the Respondents to serve the Motion and the Court took brief oral submissions on 4 December 2023.
5. After the submissions, the Court indicated that it would give the reasons for allowing or rejecting the admission of the affidavit as part of the judgment on 13 December 2023.
6. The primary grounds advanced by the Respondents for the late filing were that the National Treasurer had been out of the country attending a meeting in Geneva, there was need to consult with the Union's auditors and that the input of the National Executive Board was required in the preparation of the response and it took time to call a meeting of the Board.
7. The Petitioners objected to the application and they argued that the National Executive Board normally had monthly meetings and that in fact it had met and scheduled a meeting of the Advisory Council and National Delegates Conference for 18 December 2023 and 19 December 2023, and suspended two branch officials as well.
8. The Petitioners further contended that the Respondents were out to buy time in order to scuttle the litigation and alter the Union's Constitution.
9. The *Constitution of Kenya* underscores the fundamental right to a fair hearing. The Court is also clothed with the power to enlarge time for the filing of any process where merited.
10. In order to remain faithful to the normative value of the right to fair hearing, the Court admits the Respondents documents filed out of time.
11. However, to ensure equality of arms within the context of the right to a fair hearing, and in order not to shut out the Petitioners from an opportunity to reply to the assertions in the replying affidavit, the Court has found it necessary to grant the Petitioners a chance to file and serve a further affidavit.
12. This need led the Court to request the Deputy Registrar to notify the parties to appear in Court today.
13. And because part of the dispute herein relates to the inspection of records which the Petitioners may need to interrogate the financial statements scheduled to be presented during the National Delegates Conference on 19 December 2023, the Court orders:
 - (i) That a temporary order staying the holding of the Advisory Council meeting and National Delegates Conference set for 18 December 2023 and 19 December 2023, respectively be and is hereby issued.
14. The Court will agree with the parties on the timelines for filing the further affidavit, if need be, after this Ruling.



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

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioners Otieno Aluoka & Co. Advocates

For Respondents Nyamweya Mamboleo Advocates

Court Assistant Chrispo Aura

