



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E095 OF 2021 AS CONSOLIDATED WITH E083 OF 2021

KENYA UNION OF WATER AND SEWERAGE EMPLOYEES..... CLAIMANT

VERSUS

KENYA COUNTY GOVERNMENT WORKERS UNION.....1ST RESPONDENT

KENYA COUNTY GOVERNMENT WORKERS UNION

(KCGWU) (NAIROBI BRANCH).....2ND RESPONDENT

REGISTRAR OF TRADE UNIONS.....3RD RESPONDENT

MATILDA JEBET KIMETO.....INTERESTED PARTY

RULING

1. The applicant in an application dated 5th May, 2021 prays for an order in the following terms:-

(c) **THAT** the honourable Court be pleased to issue an order suspending the changes made on 3rd May, 2021 on the 1st Respondent's register arising from elections held on 30th April, 2021 to allow for attendance in Court for taking hearing directions as may be directed by the Court and the 2nd respondent do maintain the register as subsisting prior to 30th April, 2021.

(d) **THAT** the honourable Court be pleased to issue interlocutory orders staying or suspending any decisions, proceedings and any resolutions made during and after or as a result of the elections held on 30th April, 2021 in Kisumu Tom Mboya Labour College pending hearing and determination of the suit herein.

(e) **THAT** the Honourable Court be pleased to issue interlocutory order quashing the decisions, proceedings and resolutions made during and after or as a result of the elections held on 30th April, 2021 in Kisumu Tom Mboya Labour College Kisumu pending hearing and determination of this application.

(f) **THAT** the honourable Court be pleased to issue an interlocutory order staying and or suspending any decisions, proceedings and resolutions made during and after as a result of the elections held on 30th April, 2021 at Tom Mboya Labour College – Kisumu pending hearing and determination of the suit.

(g) The costs of this application be borne by the respondents.

2. The application is premised on grounds set out on the face of the Notice of Motion and buttressed in the supporting affidavit of Elijah Otieno Awach, the General Secretary of the applicant the nub of which is that on 15th January, 2021, Hon. Maureen Onyango delivered a ruling in case Collective Bargaining Agreement No. 34 of 2020, the import of which was that the 1st respondent lacks Legal capacity to represent the employees of Nairobi Water and Sewerage Company limited as water company and that the proper union for that purpose is the applicant union.

3. That despite the said Court order, the 1st respondent on 30th April, 2021 proceeded to conduct its elections of National officials allowing employees of 25 water companies as delegates and more so to contest positions for and in brazen defiance of the Court Ruling. That the 1st respondent has refused and/or neglected to remove employees of the Water companies from its register as directed by the Court.

4. That it is in the interest of justice that the decisions and or resolutions arising from the elections held on 30th April, 2021 at Tom Mboya Labour College – Kisumu be suspended pending, hearing and determination of the suit so as to preclude the blatant defiance of the Court orders and bring order in the industry.

5. The application is opposed vide a replying affidavit of the 1st respondent dated 2nd May, 2021 in which is deposed that the issue of inclusion of Water and Sewerage members in the national delegates of 30th April, 2021 was litigated and a judgment issued by Hon. Justice Monica Mbaru on 29th April, 2021, on the eve of the election allowing the inclusion of the Water and Sewerage members.

6. The parties have filed written submissions which the Court has carefully considered.

7. It is patently clear that this Court per Nduma Nderi, J. issued a ruling in respect of an application on 29th April, 2021 in the consolidated cause E095 and E083 of 2021, in which the Court ordered:-

1. That an interlocutory injunction be and is hereby issued staying the decision, proceedings and resolutions made pursuant to the union elections conducted on 5th February, 2021 with respect to the 1st respondent and the employees of Nairobi City Water and Sewerage Company Limited pending the hearing and determination of this suit.

2. That the main suit to be fixed for hearing on a priority basis and it be concluded within the shortest time possible.

3. That costs in the cause.”

8. On 29th April, 2021 on the same date, Nduma J. made a ruling in the consolidated suit aforesaid, the same issues were determined by Hon. Monica Mbaru, in a judgment of the same date 29th April, 2021, which judgment allowed the inclusion of the Water and Sewerage members national delegates on 30th April, 2021.

9. It is apparent that as at 30th April, 2021, despite, the interim orders issued by Nduma, J. on 29th April, 2021, there was on the same day, a final judgment in Petition 046 of 2021 whose effect was to determine the same issues that were pending in the consolidated suit 095 and 083 of 2021.

10. There was clearly material non - disclosure of important facts to Court regarding a judgment which was pending on the same subject matter in Petition 046 of 2021. It would appear, the same non-disclosure regarding a ruling that was to be delivered by Nduma J. happened in Petition 046 of 2021. The parties herein set the two Courts of equal jurisdiction on a collision cause.

11. The Court in the consolidated suit E095 of 2021 and E083 of 2021 had identified the need to have the main suit heard and determined so as to resolve the issues in dispute.

12. It is also getting clear to this Court that the matter of which is the right union for the employees of Water and Sewerage Company, which matter is also the subject matter in the consolidated suit E095 and E083 was long determined by the Industrial Court and the Court of Appeal as was recognized by Maureen Onyango, J. in a ruling delivered in case Collective Bargaining Agreement No. 34 of 2020, the import of the ruling being that the 1st respondent lacks the legal capacity to represent employees of Nairobi, Water and Sewerage Company under any water company as follows:-

“Kenya County Workers’ Union (KCGWU) must respect the unchallenged determination of this Court that it is not correct or proper union for employees of the water sector where the Nairobi Water and Sewerage Company operates. It must also respect the unchallenged decision of this Court as confirmed by the Court of Appeal and expunge employees of Water and Sewerage Company from the membership clause of its constitution.”

13. In view of the judgment by Mbaru, J. delivered in Petition 046 of 2021, which decision authorized inclusion of employees of Water and Sewerage Companies to participate in the national delegates conference of 30th April, 2021, the Court has no basis at this interim stage to grant the orders sought by the applicant in the application dated 5th May, 2021.

14. The Court on 29th April, 2021 directed the matter be set down for hearing on a priority basis so that the matter be determined on the merits. The Court reiterates those directions so that final decision is arrived at upon consideration of all relevant facts which the Court may not have been aware of at the time various contradictory decisions were made.

15. Application is dismissed.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 20TH DAY OF JANUARY, 2022.

MATHEWS N.NDUMA

JUDGE

Appearances

Mr. Othoo for Oketch for Claimants

Mr. Mathenge for respondents

Ekale – Court clerk.