



Kenya Union of Kenya Post Primary Teachers (KUPPET) (Kajiado County Branch) ((Suing on Behalf of George Mulunda Kasawa (Grievant)) v Teachers Service Commision & another (Cause E1053 of 2021) [2022] KEELRC 12720 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEELRC 12720 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1053 OF 2021**

M MBARŪ, J

JUNE 30, 2022

BETWEEN

**KENYA UNION OF KENYA POST PRIMARY TEACHERS (KUPPET)
(KAJIADO COUNTY BRANCH) CLAIMANT
(SUING ON BEHALF OF GEORGE MULUNDA KASAWA (GRIEVANT))**

AND

**TEACHERS SERVICE COMMISISON 1ST RESPONDENT
BOARD OF MANAEMENT, CATHOLIC DIOCESE, NGONG TOWNSHIP
SECONDARY SCHOOL 2ND RESPONDENT**

RULING

1. The claimant filed application dated December 16, 2021 seeking for orders that and injunction do issue restraining the respondents from convening or conducting any disciplinary proceedings against the grievant or investigating, dismissing, discussing or passing a decision with regard to his employment based on allegations of sexual misconduct until the suit herein is heard and determined.
2. The application is supported by the affidavit of Zadock Kisiyena the executive secretary of the claimant union, Kajiado branch and on the grounds that the grievant was interdicted by the respondents through letter dated November 4, 2021 through unfair and arbitrary process contrary to the [Teachers Service Commission \(TSC\) Code of Regulations for teachers](#) and the allegations made against him at the show cause meeting were different from those he had earlier received in the notice. the interdiction and disciplinary proceedings are based on allegations emanating from third parties other than the victims alleged to have been sexually harassed and no sexual misconduct has been reported or investigated by the government agencies. The alleged victims of sexual misconduct were interviewed by the board of management and they denied the allegations.



3. In his Affidavit, Kisiyena avers that the allegations made against the grievant were bare and without any evidence and the alleged victims of sexual misconduct were interrogated by the board of management and they denied the same. The notice to show cause and the hearing before the board dressed different matters which prejudiced the grievant and the orders sought should issue pending the hearing of the claim.
4. In reply, the 1st respondent filed the Replying Affidavit of Catherine Morogo Kertich the Deputy Director in charge of Discipline at the TSC head office and who avers that the proceedings herein are filed by a non-suited party and the law only allows a legal person to file proceedings and the claim by the claimant should be struck out with costs.
5. He claimant is not a resisted trade union recognised in law. The executive secretary has no authority to execute documents on behalf of the claimant as such mandate is only vested on the General Secretary. The noted objections should be allowed.
6. Without prejudice, Ms Kertich avers that the TSC is a constitutional commission pursuant to Article 237 of *the Constitution* with powers to register teachers and terminate employment among other duties. The 2nd respondent is established under the provisions of the *Basic Education Act* and upon the registration of the grievant by the TSC he was placed at the 2nd respondent on May 12, 2016 but resigned on September 21, 2016 to join politics. He was re-employed on November 26, 2018 and placed at the 2nd respondent.
7. In a letter dated October 21, 2021 the 2nd respondent principal and agent of TSC reported gross misconduct of sexual misconduct of the grievant and upon which were investigations, the grievant was interdicted and allowed time to show cause and invited to a disciplinary hearing but he had no good explanation for his gross misconduct leading to dismissal from employment and has since been removed from the Register of Teachers and the application before court is overtaken by events and cannot be granted.
8. In reply, the 2nd respondent filed the Replying Affidavit of Thaddeus Muange Kiswii the principal, 2nd respondent and who avers that the grievant was employed as a teacher and placed at the 2nd respondent school and in October, 2021 he received information alluding to immoral sexual behaviour between the teacher and some female students which he reported to the Sub County Director Kajiado North for investigations. On October 19, 2021 a team investigated the matter and filed a report.
9. The grievant was informed of the recommendations and issued with notice to show cause and then invited to a disciplinary hearing on November 4, 2021. The invitation letter specified the allegations and upon which he was interdicted and granted 21 days to respond and hearing before he 1st respondent which recommended dismissal of the grievant.
10. The grievant is an employee of the 1st respondent and only placed at the 2nd respondent and on the decision of the employer, the 2nd respondent is improperly joined in these proceedings.

Determination

The parties attended court and made oral submissions.

11. The 1st respondent filed Notice of Preliminary objections and also addressed the same in the Replying Affidavit of Ms Kertich. The gist of these objections is that the claimant is not a known person in law capable of suing on its own name and done in this case and the executive secretary has no capacity to execute documents as herein done for the grievant.



12. There is no response by the claimant in this regard as pertains to the objections made.
13. To the Notice of motion dated December 16, 2021 the claimant has a Memorandum of Claim and under paragraph (C) (i) the claimant is defined as;

The claimant is a trade union registered under Kenya law and brings this action as KUPPET (Kenya Union of Post Primary Education Teachers) Kajiado County branch on behalf of the grievant. ...
14. Under the *Labour Relations Act*, 2007 (LRA) a trade union to have legal personality must be registered in terms of part III of the Act and where there is a branch with a legal personality, such must be registered in accordance with Section 25 of the *LRA*.
 - (1) A trade union, employers' organisation or federation shall apply to the Registrar to register its branches in Form F set out in the Second Schedule.
 - (2) An application to register a branch shall—
 - (a) be made by an authorised representative within thirty days of the formation of the branch;
 - (b) specify the name of the branch, its postal address and the place at which the branch will meet or conduct its business; and
 - (c) specify the titles, names, ages, occupation and place of work of all officials of the branch.
 - (3) The authorised representative specified under subsection (2) shall give notice to the Registrar in writing of the dissolution of any branch of a trade union, employers' organisation or federation.
15. The claimant does not conform to any provisions of Part III of the *LRA* or the specifics of Section 25 thereof.

The claimant is a non-suited party to file suit herein.
16. Further to the above, the claim and the Notice of Motion is supported by a person other than the grievant as the right-holder or his advocate and sworn by an executive officer of the claimant. Even where the claimant may have had standing to file suit, which is not the case here, a trade union is at all material times to be represented in court proceedings by the General Secretary being the authorised officer to attend for the trade union or through a person given written authority by the General Secretary as defined under Section 2 of the *LRA*.
17. An executive secretary is a party unknown in law as a legal representative of a trade union registered pursuant to the provisions of the *LRA*. The claim herein is fatally defective and cannot stand.
18. Even where the court were to consider the orders sought, with the disciplinary proceedings sought to be stopped and the employment of the grievant sought to be preserved now concluded with a dismissal and removal from the Register of Teachers, the interim orders sought are overtaken in time and cannot issue and to address them in view of the given facts would not aid justice.
19. On the above findings, the claimant without proper standing, the filed documents supported by a non-suited party, the suit must suffer the obvious and is hereby struck out. Each party shall bear own costs.

DELIVERED IN COURT AT NAIROBI THIS 30TH DAY OF JUNE, 2022.



M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and

