



Njoroge & 3 others v Registrar Trade Unions & 2 others; Juma & another (Interested Parties) (Petition E004 of 2021) [2022] KEELRC 4154 (KLR) (8 July 2022) (Judgment)

Neutral citation: [2022] KEELRC 4154 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E004 OF 2021**

**NJ ABUODHA, J
JULY 8, 2022**

BETWEEN

**DANIEL PAUL NJOROGE 1ST PETITIONER
EVANS ATUYA 2ND PETITIONER
EDWARD MUTESI 3RD PETITIONER
GEORGE MOSETI 4TH PETITIONER**

AND

**REGISTRAR TRADE UNIONS 1ST RESPONDENT
NATIONAL GENERAL SECRETARY KENYA BUILDING CONSTRUCTION
TIMBER & FURNITURE EMPLOYEE UNION 2ND RESPONDENT
PRESIDING OFFICER KENYA BUILDING CONSTRUCTION TIMBER &
FURNITURE EMPLOYEE UNION ELDORET BRANCH 3RD RESPONDENT**

AND

**LEVY JUMA INTERESTED PARTY
EDWARD WANYONYI INTERESTED PARTY**

JUDGMENT

1. The petition was consolidated with Nairobi petition No E037 of 2021 and proceeded under the present file as the lead file.
2. In petition number, E037 the petitioner Levy Juma brought the petition as the Eldoret branch secretary of the 1st respondent. He stated in the main that:



- a. That the Eldoret branch of Kenya Building, Construction, Timber and Furniture Industries employees union did hold its election on the January 31, 2021 in which branch officers were elected.
 - b. That after the said elections it was the responsibility of the national general secretary to file returns to the office of the registrar of trade unions recorded in form Q as required by law within fourteen (14) days, the 1st respondent has then failed to file the aforesaid document with the registrar of trade union denying the members their rights of being represented with the union.
 - c. That the 1st respondent has violated and/or infringed on the rights of the members from Eldoret branch and left lacuna in the leadership of the branch. He has further gone ahead and conducted the national elections of the respondent union in exclusion of the branch of Eldoret. That the hurry to conduct the national elections on the 7th of March was a scheme of the incumbent secretary general to have advantage of his competitor.
 - d. That according to the circular of the 2nd respondent on the September 25, 2020 all national elections for unions were to commence from April 1, 2021. Further, there are no orders restricting the 1st respondent from filing returns of the elections of Eldoret branch to the registrar of trade unions.
3. The petitioner therefore sought orders among others that the registration of officials elected on March 7, 2021 be suspended, that an order issues nullifying the elections held by the national office on March 7, 2021 and finally an order of *mandamus* compelling the respondents to register the Eldoret brach officials elected on January 31, 2021.
4. The 1st respondent filed a replying affidavit through one Francis Murage who stated he was the 1st respondent's general secretary. He deponed among others that:
- a. That it is true the 1st respondent, following directions issues by the registrar of trade unions on the September 25, 2020, held its Eldoret branch elections on the January 31, 2021.
 - b. That the 1st respondent had availed all parties, wishing to contest in the said elections, opportunity to acquire the application forms as required by the 1st respondents constitution rule 15(b).
 - c. That for reasons only known to him, the petitioner with 2 others filed NairobiELRC Pet No E037 against the 1st respondent alleging to have been denied the forms at the 1st respondent's Eldoret branch which allegations had not been brought to my attention.
 - d. That on its own motion, 1st respondent, compromised the petition and issued the forms to the 3 petitioner.
 - e. That the petitioner herein, Levy Juma, returned his filled form on the January 29, 2021.
 - f. That upon scrutiny of the petitioner's form and upon further investigations, the 1st respondent noted that the petitioner is/was not a member of its Eldoret branch; that he was not paid up member and that he did not prove to have been engaged or employed in the sector for which the 1st respondent is registered.
 - g. That the petitioner cited a fictitious employer by name Jackit constructions.
 - h. That the petitioner did not display evidence of employment by the said employer.



- i. That the petitioner was not a paid up member of the 1st respondent in compliance with rule 15 of the 1st respondent's constitution to enable him vie for the post of the branch secretary.
 - j. That based on the above facts, the 1st respondent disqualified the candidature of the petitioner.
 - k. That the 1st respondent wrote to the petitioner on the January 30, 2021 communicating his disqualification
 - l. That the county labour officer in charge of the elections was also notified and issued a copy of the letter.
 - m. That the petitioner, upon being served with the notice by the presiding officer on Joyceline Pamela A, M'maisti, declined to acknowledge receipt of the same.
 - n. That the petitioner, accompanied by unruly supporters who were armed with clubs, threatened and intimidated the said presiding officer to coerce her allow the petitioner participate in the elections.
 - o. That the said presiding officer has sworn an affidavit alluding to the events that took place on the said date of 31st January in Eldoret ELRC Pet No 4 of 2021.
 - p. That Eldoret ELRC Pet No 4 of 2021 has been initiated by other 4 contestants seeking nullification of the said elections for failure to comply with the 1st respondent's constitution.
 - q. That the 1st respondent could not file form Q due to the irregularities surrounding the election of the petitioner one of them being that he had no capacity to contest for the position of the branch secretary.
 - r. That contrary to the petitioner's allegations, the 1st respondent conducted its National Elections in its Quinquennial delegates conference held on the March 7, 2021.
 - s. That the quorum for the said Quinquennial delegates conference constitutes two thirds of the total delegates eligible to attend and vote.
 - t. That the petitioner has no legitimate expectation on the face of his open defiance to the constitution of the 1st respondent.
 - u. That the 1st respondent Eldoret branch elections held on the January 31, 2021 had no winner for the position of the branch secretary as the petitioner's elections was a nullity *ab initio*.
5. The 2nd respondent also filed a replying affidavit through E.N Gicheha who deponed in the main suit.
- a. That the mandate of the 2nd respondent is the registration and regulation of the trade unions, employer's organization, and federations.
 - b. That the 2nd respondent *vide* a letter Ref M.&SP/TU/Elections 2021, dated September 25, 2020 directed all trade unions, employer organizations and federations to hold elections between 4th January and January 31, 2021.
 - c. That in compliance with the directive of the 2nd respondent, the 1st respondent held its elections on the January 31, 2021. The election were presided over by the Nandi county labour officer.
 - d. That on the February 3, 2021, the 2nd respondent received an objection letter dated February 1, 2021 from Kariuki Mwaniki & Co Advocates on behalf of the petitioner's.



- e. That on the February 4, 2021, the 2nd respondent received an objection letter dated February 3, 2021 from one, Christopher Oyier.
 - f. That on February 9, 2021 the 2nd respondent received a copy of the letter addressed to the union's general secretary from Emily Kimani & Co Advocates still complaining about the delay of filing the form Q with the 2nd respondent.
 - g. That on February 11, 2021 the 2nd respondent received a letter from Levy Juma complaining about the delay of filling the names of officers/officials (form Q) by the union's general secretary.
 - h. That the 2nd respondent submits that the elections were presided over by the Nandi county labour officer who is not a party in this instant petitioner.
 - i. That the union's general secretary is yet to lodge the form Q with the 2nd respondent and therefore no change of officials has been effected.
 - j. That the 2nd respondent further submits that the 14 days within which the form Q was to be submitted is over.
 - k. That the 2nd respondent further submit that there is a matter in court at Eldoret raising similar issue, petition No 4 of 2021 touching on the issues of 1st respondent's elections.
6. Petition 4 (the lead file) was commenced by the four petitioners who described themselves as members of Kenya Building Construction, Timber and Furniture Employee union. (herein referred to as the union). They stated among others that:
- a. The petitioners contend that they are paid up members of Kenya Building Construction, Timber and Furniture Employee Union therefore have all the right to participate in the union activities including elections.
 - b. The petitioners contend that though the 3rd respondent oversaw elections for their Eldoret branch officials, the elections were marred with irregularities, violence and intimidation and were totally conducted in breach of the union constitution.
 - i. Allowing non – members to participate and conduct the elections.
 - ii. Allowing non-paid up members to participate and conduct the elections.
 - iii. Allowing candidates to vie without payment of the requisite member fees.
 - iv. Allowing candidates who had not complied with the elections rules as envisaged in rule 15 of the union constitution to vie.
 - v. Conducting elections midst of chaos, violence and intimidation.
 - vi. Allowing contestants to file in papers at the venue and proceed to contest.
 - vii. Failing to follow the register of members in issuing ballot papers.
 - viii. Succumbing to intimidation by persons who are not members of the union.
 - c. The petitioners contend that the acts of the respondents infringed their rights to freedom of association, expression, fair labour practices enshrined in the union constitution and the Constitution of Kenya 2010.



- d. The petitioners further contend that all members of the Kenya Building Construction, Timber & Furniture employees Union should be allowed to practice their democratic right in electing their leaders democratically and the 3rd respondent committed an injustice by locking out genuine members of the union from participating in the exercise.
 - e. The petitioners therefore seek to have the elections conducted on January 31, 2021 nullified and fresh elections held in strict compliance with rule 15 of the union constitution and the constitution of Kenya 20210
7. The 1st respondent, the Registrar of Trade Unions filed a reply affidavit in which she repeated most of the depositions contained in her earlier relying affidavit in response to petition 37 of 2021 and more specifically with respect to this petition she stated in the main that:
- a. That pursuant to my said mandate. Vide letter Ref ML&SP/TU/Elections2021 dated September 25, 2020, I directed all trade unions, Employers' Organizations and Federations to hold elections between January 4, 2021 and January 31, 2021.
 - b. That in compliance with my said directive, the 3rd respondent held its elections on the January 31, 2021. The elections were presided over by the Nandi county labour officer.
 - c. That on or about February 3, 2021, I received an objection letter dated 1st February from the petitioner's advocate on record.
 - d. That in the said letter. The petitioners through their said advocates alleged that there were incidences of violence and malpractice. There were no other supporting documents and or tangible evidence of the said allegations attached to the said letter.
 - e. That on or about February 4, 2021. I received an objection letter from one Christopher Oyier.
 - f. That the said Christopher Oyier made serious allegations of malpractice during the said elections. However, no document and or tangible evidence was attached to the said letter to substantiate his said allegations.
 - g. That on or about February 9, 2021, I receive a copy of a letter addressed to the 2nd respondent from Kogo Kimutai & Co Advocates still requesting my office to hold on the registration of the new officials.
 - h. That on or about February 11, 2021, I was served with court documents in respect of the petition herein.
 - i. That I confirm that the elections subject to the petition herein were presided over by the Nandi county labour officer, the 3rd respondent herein.
 - j. That I further confirm that as at on February 12, 2021, when I was served with court documents in respect of the petition herein. The 2nd defendant herein had not lodged form Q with my office and thus no change of office/officers has been affected.
 - k. That I also confirm that no tangible evidence was presented to my office to support the various allegations of malpractice during the elections
 - l. That as at now, the requisites 14 days within which the form Q was to be submitted have lapsed and thus the petitioner's allegations can only be determined by this honourable court.
8. The 2nd and 3rd respondent did not seem to have filed a direct response to the petition but in response to an application by the 4th petitioner, the 2nd respondent deposed in the main that:



- a. That I am not in contempt of this honourable court's orders issued on the February 18, 2021 as alleged in the notice of motion.
 - b. That the orders of the February 18, 2021 was for maintenance of status quo.
 - c. That the petitioners have no mandate to purport to run the activities of the KBCTFIE union, Eldoret branch.
 - d. That the branch elections were conducted on the January 31, 2021 pursuant to the notice and directions of the registrar of trade unions issued on September 25, 2020
 - e. That the tenure of all trade unions officials is 5 years.
 - f. That pursuant to that notice, the 2nd respondent conducted its Eldoret branch elections on the January 31, 2021.
 - g. That the said branch elections are the subject matter of this cause with the claimant seeking nullification thereof
 - h. That it's true that the said elections were marred with obvious and glaring irregularities as alluded to by the presiding officer, Joycelene Pamela A M'maiti, the 3rd respondent herein in her replying affidavit herein sworn on the February 22, 2022.
 - i. That the alleged winner was a candidate known as Levy Juma who had been disqualified by the 2nd respondent for not meeting the constitutional threshold to contest the said elections
 - j. That Mr George Moseti is the former branch secretary for the 2nd respondent's Eldoret branch.
 - k. That the 2nd respondents branch elections are regulated by its constitution rules 14 and 15, which states that all the branch officials shall remain in office for a period of 5 years with a bar to being re-elected.
 - l. That therefore, at the point of the branch elections conducted on the January 31, 2021, Mr George Moseti's tenure and that of all the incumbent officials had lapsed by operation of the law.
 - m. That by submitting themselves to contest the said elections of 31st January, the said former branch secretary Mr George Moseti and other then incumbent officials affirms the above position.
9. The 3rd respondent on her part deposed that:
- a. That I was served with a letter dated January 11, 2021 by the branch secretary of Kenya Building Construction, Timber and Furniture Employee Union inviting me to preside over the Eldoret branch elections which was scheduled for January 31, 2021.
 - b. That the contents of paragraph 7 of the supporting affidavit are true. The branch secretary of the Kenya Building Construction, Timber and Furniture Employee Union Eldoret branch served me with a copy of the constitution of the union prior to the elections.
 - c. That in response to paragraph 8 of the supporting affidavit I wish to state as follows:
 - i. At the time elections were being conducted I did not have the prescribed blank nomination forms which were supposed to be issued by the union to the candidates to elections as per the union constitution.



- ii. I gave plain papers to Enock Abasi, Justus Mose, Hannington Sucha Priscah Cheptoo, Fredrick Miti and Collins Wanyama.
 - iii. The afore-mentioned wrote their names, the names of the proposer and seconder.
 - iv. I gave the afore-mentioned persons the plain papers because they had surrounded me intimidated me and insisted that they must contest in the said elections.
- d. That in response to paragraph 9 of the supporting affidavit wish to state as follows:
- i. The persons mentioned at paragraph 6 above and their supports were armed with clubs.
 - ii. They threatened and intimidated me and were shouting and instating that they must vie.
 - iii. After they had written down their names and names of proposers and seconders and I included them in the aspirants list.
 - iv. It is not true that I did this in order to force an outcome. I did it because I was fearing for my security because they were armed, chaotic and had threatened to burn down the office vehicle.
- e. That in response to paragraph 12 of the supporting affidavit I wish to state as follows:
- i. That on January 31, 2021 on the election day I was served with a letter dated January 27, 2021, from the 2nd respondent indicating that Mr Levy Juma had been disqualified and should not participate in the elections.
 - ii. That I served Mr Levy Juma with a copy of the letter but he declined service of the letter.
 - iii. Mr Levy Juma together with his supporters insisted that he would vie in the elections.
 - iv. Due to the intimidations I allowed him to contest in the said elections.
 - v. Edward Wanyonyi and Stephen Korir had nomination forms but had no receipts.
10. From the two petitions and the affidavits filed in support or opposition as summarized above, two issues emerge. First whether the branch elections held on January 31, 2021 were valid, free and fair and represented the wishes of the union branch members. Second, if the court were to come to the conclusion that elections were invalid and unfair what should be the status of the Eldoret branch. That is to say, should the incumbent officials prior to the botched elections, if so found continue in office until valid elections are held?
11. From the record, there is affidavit evidence particularly by Joyceline Pamela M'maitisi who was tasked with the responsibility of presiding over the branch elections on January 31, 2021, and that of Francis Murage, the general secretary of the union. According to Ms M'maitisi on the date of the elections she did not have blank nomination forms to be issued to candidates for elections as per the unions constitution. She was therefore forced to issue plain papers to Enoch Abasi, Justus Mose, Hannington Sucha, Priscah Cheptoo, Fredrick Miti and Collins Wanyama. This she said she did because they had intimidated her while armed with clubs and insisted that they must contest in the elections. Ms M'maitisi further stated that on January 31, 2021, the day of the election she was served with a letter dated January 27, 2021 from the 2nd respondent (general secretary) to the effect that Mr Levy Juma (the petitioner in E037 of 2021) had been disqualified and should not participate in the elections.



12. Mr Murage on his part stated that Levy Juma, the petitioner in E037 of 2021, upon scrutiny of his nominations forms and further investigations, 1st respondent noted that Levy was not a member of the Eldoret branch and that he was not paid up and further that he did not prove that he had been engaged or employed in the sector in which the 1st respondent was registered. According to Mr Murage Levy cited a fictitious employer named Jackit construction and never displayed evidence of employment by the said employer.
13. The court has perused the record and did not find any response to the serious allegations against Mr Juma. They therefore remained uncontroverted.
14. For one to be validly elected he or she must be a paid up member of the union (rule 15 of the Constitution). Mr Levy Juma never disputed the allegation by tendering any evidence to the contrary. Therefore, to resolve the issue around the elections purportedly held on January 31, 2022 that returned Mr Levy Juma as elected, the court finds and holds that the same were invalid as the person so elected as secretary general lacked the capacity to be elected as such. Concerning the other candidates elected on the said election, the court has taken note of the serious allegations contained in Ms M'maisti affidavits concerning intimidation and threat to violence on her person which were not controverted, and takes the view that the environment obtaining could not yield a free and fair election. The elections are therefore also invalidated. The 2nd respondent was therefore justified in not submitting form Q to the 1st respondent to effect changes in the Eldoret branch officials.
15. The second question framed therefore is: what is the status of Eldoret branch office? section 34(1) of the *Labour Relations Act* requires all trade unions, employer organizations and federations to conduct their elections in accordance with their registered constitution. Further rule 14(c) of the unions constitution provides that all branch officers shall remain in office for a period of five years and that nothing in the paragraph shall prejudice the right of any officer to be re-elected. The courts understanding of this clause and practice in the union circles is that elections are held at the end of every five-year cycle. There seems to be no room for continuance in office of officers who have served their five-year term unless re-elected.
16. The petitioners herein all participated in the botched elections which took place on January 31, 2021 and were purportedly defeated by the Levy Juma's team. By seeking re-election, the petitioners acknowledged that their mandate had expired and required renewal. The elections in issue have been invalidated by the court therefore it would be irregular to reward the petitioners with an order to continue in office which otherwise for the order of the court, they lost and in any event as observed, the union's constitution does not seem to allow any mandate beyond the five year cycle unless re-elected. Further, even if it were possible for the court to order that the petitioners continue in office after January 31, 2022 such an order would be inequitable to the petitioners in petition E037 of 2021 whose election have been invalidated by the court on account of the union's constitution. The same constitution caps the tenure of union officials at 5 years subject to re-election.
17. The above observation resolves the issues raised by the petitioners concerning their continuance in office and demand to be paid their salaries and allowances as the branch officials. For avoidance of doubt the same is not payable for reasons given above.
18. In conclusion and in disposition of the consolidated petitions, prayers sought in petition number E037 of 2021 are all rejected with the consequence that the petition is hereby dismissed.
19. Second, prayer (a) of petition 4 of 2022 is hereby allowed to the extent that a declaration is hereby issued that no valid election of Kenya Building Construction, Timber and Furniture Employees union was conducted on January 31, 2021 and the results thereof are hereby declared null void.



20. Further, prayer (c) of the petition 4 of 2021 is hereby allowed to the extent that 2nd respondent is hereby ordered to organize and conduct Eldoret branch elections in accordance with the unions constitution within 60 days of this judgment.
21. Finally, in view of the fact that the petitioners in E004 of 2021 are partially successful and the nature of the issues in both petitions, each party shall bear their own costs of the petition.
22. It is so ordered.

DATED AT ELDORET THIS 8TH JULY, 2022 DELIVERED AT ELDORET THIS 8TH JULY, 2022

ABUODHA JORUM NELSON

JUDGE

