



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**PETITION NO. E108 OF 2020**

**DUNCAN MWANGI.....1<sup>ST</sup> PETITIONER**

**GEORGE GITAHU.....2<sup>ND</sup> PETITIONER**

**BENSON MUANGE.....3<sup>RD</sup> PETITIONER**

**KENNEDY KEBUTT.....4<sup>TH</sup> PETITIONER**

**JESSE MUIGAL.....5<sup>TH</sup> PETITIONER**

**THADEUS WASWA.....6<sup>TH</sup> PETITIONER**

**(On their own behalf and on behalf of another 162 Petitioners)**

**VERSUS**

**KENYA PETROLEUM OIL WORKERS UNION.....RESPONDENT**

**RULING**

1. The Petitioners assert they are members of the Respondent. They seek to be put in the Register of the Respondent Union. On its part, the Union is opposed to the grant of stay orders which would interfere with its functions and the keeping of the strict guidelines and time lines in respect to the Annual Delegates Conference and Elections as required under the Union Constitution. At the core of the dispute is the issue of whether the Petitioners are members or not. The Secretary General of the Trade Union has articulated steps the employees who wish to be members have to take.

2. Per Section 4(1) of the Labour Relations Act 2007, every employee has a right to participate in joining a Trade Union or federation of Trade Unions, join a Trade Union or leave a trade union. Per Section 4(2) of the Labour Relations Act, every member of a Trade Union has the right, subject to the Constitution of the Trade Union to participate in its lawful activities and participate in the election of officials and representatives *inter alia*.

3. The Constitution of the Trade Union herein has elaborate procedure of getting to be a member. There is provision per Rule 3.1 and 3.2.1 that a member can be anyone above 18 years working in the relevant sector being the Petroleum Sector – oil and gas – provided said person is one who fills up an application form and fills a form for check off. There is an entrance fee for joining the union and thereafter a payment of monthly subscription of 2% of monthly basic through either checkoff or receipt.

4. Since the Trade Union has conceded it would not mind getting the Petitioners on board provided they comply with the Rules of the Union, it is clear the Petitioners would have to go beyond filling membership forms and checkoff form. Payment of the joining fee (Kshs.100/-) as well as the 2% basic are part and parcel of the requirement to be a member. In any event if only Kshs.100/- was paid, the member would not be in good standing of the union.

5. The orders that commend themselves for me to make is to grant in regard to the matters at hand, the following: The Petitioners shall have a window between today and Friday 22<sup>nd</sup> January 2021 3.00 pm to regularise their joinder by paying the joining fee and the monthly subscription of 2% of monthly basis in order to be placed on the Register. The members are reminded that Section 52 of the Labour Relations Act allows for direct payment meaning check off is not the only way they can pay their union dues.

6. As indicated earlier in this matter a full decision will be rendered on 26<sup>th</sup> January 2021 at 9.00 am.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JANUARY 2021**

**NZIOKI WA MAKAU**

**JUDGE**