



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO 31 OF 2020

BONUVE KEMEI TENAI.....CLAIMANT

VERSUS

WILSON K. KEMBOI (ACTING EXECUTE SECRETARY

KNUT NANDI EAST BRANCH.....1ST RESPONDENT

KNUT.....2ND RESPONDENT

REGISTRAR OF TRAD UNIONS.....3RD RESPONDENT

RULING

1. By a motion dated 12th August, 2020 the applicant sought orders that: -

- i. The Registrar of Trade Unions, be restrained from registering the purported changes of officials of the KENYA NATIONAL UNION OF TEACHERS (KNUT) NANDI EAST BRANCH, made by the Secretary General of KENYA NATIONAL UNION OF TEACHERS (KNUT) , Hon Wilson Sossion on or about 21/7/2020 in suspending the Branch Executive Secretary Mr. BONUVES KEMEI TENAI , and appointing Mr. Wilson K. Kemboi , the current Assistant Executive Secretary, of the branch , to act as the Branch Executive Secretary, pending the hearing and determination of this application.
- ii. The Registrar of Trade Unions by restrained from registering the purported changes of officials of the KENYA NATIONAL UNION OF TEACHERS (KNUT) NANDI EAST BRANCH, made by the Secretary General of KENYA NATIONAL UNION OF TEACHERS (KNUT), Hon. Wilson Sossion on or about 21/7/2020 , in suspending the Branch Executive Secretary Mr. BONUVES KEMEI TENAI and appointing MR. WILSON K. KEMBOI the current Assistant Executive Secretary of the branch to act as the Branch Executive Secretary, pending the hearing and determination of this claim.
- iii. Mr. WILSON K. KEMBOI, the purported acting Branch Executive Secretary, purportedly appointed by the Secretary General of KNUT, Hon. Wilson Sossion on 21/7/2020 be restrained from assuming and /or holding office and discharging his duties and functions as acting official of the said branch of the Union pending the hearing and determination of this claim.
- iv. The position and the status of the officials of KENYA NATIONAL UNION OF TEACHERS (KNUT) NANDI EAST BRANCH prior to the purported changes made on or about 21.7.2020 by the Secretary General of KENYA NATIONAL UNION OF TEACHERS (KNUT) , Hon Wilson Sossion he reverted to and maintained, pending the hearing and determination of this application and /or claim.
- v. A declaration that the decision of change of officials of the Union made on or about 21/7/2020 by the KNUT Secretary General. Hon Wilson Sossion , in suspending the Branch Executive Secretary Mr. Bonuves Kemei , and appointing Mr. WILSON K. KEMBOI, THE CURRENT Assistant Executive Secretary, of the branch to act as the Branch executive Secretary is unlawful and the same e nullified and /or quashed.

2. The application was supported by the affidavit of the applicant who deponed on the main that: -

- i. THAT I was elected as an Assistant Treasurer KNUT in 2007 and served until 2003 when I was elected as Branch Executive Secretary – Nandi East Branch. I was elected as a N.E.C member representing rift valley between 2006-2008. In 2011 I was elected as a first national trustee, a position I have served alongside the being the branch Executive Secretary to date.

ii. THAT as said I was duly elected and registered official of the KENYA NATIONAL UNION OF TEACHERS (KNUT) NANDI EAST BRANCH, (the Branch) on 5/2/2016 in the capacity of the Branch Executive Secretary.

iii. THAT I was also employed by the Branch full time employee by virtues of my election as the Branch Executive Secretary and my monthly gross salary is Kshs. 320,580/=.

iv. THAT on 21/7/2020, the Secretary General of KENYA NATIONAL UNION OF TEACHERS (KNUT) , HON Wilson Sossion purported to have suspended me but declined to serve me with the letter of suspension.

v. THAT on 21/7/2020, the Secretary General of KNUT, Wilson Sossion also purported to appoint Mr. Wilson K. Kemboi , the current Assistant Executive Secretary of the branch , the 1st Respondent herein to act as the Branch Executive Secretary.

vi. THAT the BEC is empowered under Article X-(c) (5) (L) and (D) (%) and (6) of the union constitution to suspend an officer and recommend such suspension to the Branch General meeting under Article X- B for a decision to either re-instate or dismiss. I am not aware of the BEC meeting and or resolution and or any recommendation by the BEC to the Branch General Meeting of the suspension of the claimant , as instead the suspension was unlawfully made by the Secretary General of KENYA NATIONAL UNION OF TEACHERS (KNUT) , Hon. Wilson Sossion himself and not by, and or has not been ratified by , any organ of the main union Constitution.

vii. THAT the suspended officer is allowed to defend himself /herself at the Branch General Meeting against the suspension before the final decision is made but the suspension officer would only be able to prepare and defend him/her if served with the charges leveled against him/her. I have not been served with any charges.

viii. THAT as per Article X- (D) (5) of the said constitution, the suspension of a branch official can only be done by a 2/3 majority decision of all members entitled to attend and vote at the branch executive committee. This means that every EEC member must receive the notice for the EEC meeting where the suspension of a branch official is as agenda. The composition of the EEC is under Article X- © (1) of the said constitution. I did not receive any such notice or agenda.

ix. THAT THE Secretary General of KENYA NATIONAL UNION OF TEACHERS (KNUT) , Hon Wilson Sossion had no capacity and or legal right suspend any elected and registered union official and or to appoint any union official to act on the place of a suspended union official and therefore his action taken on 21/7/2020, to suspend me and appoint the 1st Respondent to act in my place is null and void ab initio as it was in violation of Article VI (5) X-A(3) & (5), X-B, X-C,(5)(1) and X- (D) (1),(4),(5) & (6) and Article XVIII-© & (D) of the Union Constitution. There was therefore no EEC meeting to suspend me, no quorum to transact business and or the threshold aforesaid 2/3 majority vote was not met as there is no proof of voting by secret.

x. THAT it is manifest that the my purported suspension that took place on or about 21/7/2020 and any decisions made thereafter were unlawful for want of notice, agenda, and quorum and or resolution by any organ of the union and or branch and there should be a declaration that the said purported suspension by the Secretary General of KENYA NATIONAL UNION OF TEACHERS (KNUT) , Hon Wilson Sossion on 21/7/2020 was unlawful and any appointments of Mr. Wilson K. Kemboi , the current Assistant Executive Secretary, of the branch the 1st Respondent herein to act as the Branch Executive Secretary was unlawful and against the Unions Constitution and thus null and void ab initio and the same be nullified and or quashed.

3. In response to the application the 1st respondent filed a Replying Affidavit in which he deponed on the main that: -

i. THAT I am the Secretary General of Kenya National Union of Teachers, the Respondent Union herein (hereinafter referred to as "KNUT) and duly authorized and competent to swear this affidavit.

ii. THAT in response to the contents of paragraph 1 to 4 of the Application, the same are mere facts on the mode through which the Claimant acquired the position as the Branch Executive Secretary, Nandi East branch which facts are not in dispute save on the issue of suspension wherein I wish to state that

a. Indeed, the applicant was suspended vide a letter dated 21st, July,2020 and the same was done in my capacity as the Secretary General of KNUT and not my personal capacity upon convening a virtual special steering committee meeting that was held on 13th July, 2020 and minutes of what transpired were recorded and confirmed by the Chairman of the Union.

b. On the said date. The respondent committee considered the deliberations and recommendation made and on 21st July,2020 it issued the Applicant through me as the Secretary General of the Respondent Union with a letter of suspension setting out the grounds thereof and attached the memorandum that was issued to the CEO of TSC. The committee made observation that the Claimant actions amounted to gross insubordination.

c. It is on the said basis that it was unanimously decided that the Applicant be suspended from the Union with immediate effect until a decision binding on his conduct for breach of the union Constitution and superficially the violated provisions, Article 14(5) and Article X(A) 7 which amounted to gross insubordination are decided upon by the Annual Delegates Conference (ADC) of KNUT.

iii. THAT the KNUT Constitution under Article ix (b) provides that NEC meetings shall be convened when the chairman or Secretary General deems it fit that a meeting should be held and it is on the said basis that the special steering meeting was held on 13th July, 2020 to suspend the Claimant among other official of which some have been remorseful and tendered their apology letters seeking to be pardoned for having been part of the unauthorized meeting.

iv. THAT once the branch Executive Secretary is absent and /or out of office as in this case following a suspension, the Branch Assistant Secretary takes over the mandate of the Branch Executive Secretary, pending disciplinary procedures that are to be conducted.

v. THAT it is the basis of the actions of the Claimant that he was suspended as the said meeting and communication made to the Teachers Service Commission (TSC) was unprocedural and unlawfully done as the Claimant well aware that the same contravened provisions for the Respondent Constitution and specifically Article 14(5) and Article X(A) 7 following the meeting that was held in Nyeri on 10th and 11th June, 2020 which they were not authorized to hold and let alone directly write to TSC on national Policy matters connected with relationships between KNUT, its members, officials and on other national Institutions.

vi. THAT I have been advised by the Respondent's Advocate on record, whose advice I verily believe to be true as per the said acts, the Claimant violated the said provisions as branch Secretary have no right or mandate under the Respondent's Constitution to directly write to the Teachers Service Commission concerning the said issues and or matters or directly deal with the employer in any manner or style.

4. In the submissions in support of the application Mr. Rakoro for the applicant submitted on the main that it was common ground that the Claimant was suspended on 21st July, 2020 and that he was not served with the letter of suspension. The letter of suspension marked W2 in the respondent's bundle did not say which organ of the Union suspended the Claimant.

5. Counsel further submitted that whereas Mr. Sossion stated that the Claimant was suspended at a special steering committee (SSC) meeting, for violating article 14(5) and article X(A) 7 of the KNUT Constitution, the concern of the court should at this juncture be on the procedure adopted and the process of the suspension. Whether the same was lawful and as per the Union's Constitution.

6. According to the applicant, the suspension was unlawful and violated articles 10(A), (3) and 5, 10(C) 15) among others of the Unions Constitution.

7. The powers and duties to discipline and or suspend a branch official are donated under article 10 (c), (5) and 10(D) 5 & 6 of the Union's Constitution which provided that the Branch executive council may suspend any of its officers for negligence of duty, dishonesty, incompetence or failure to obey its decision or for other reasons it may deem fit and important in the interest of the branch and recommend such suspension to the Branch general meeting for a decision to either reinstate or dismiss.

8. According to Mr. Rakoro, when the issue or matter of the suspension of a branch official arises, the BEC through Branch Secretary convenes a BEC meeting through a notice and the agenda of the meeting to all members entitled to attend and vote. Once the meeting is convened members deliberate on the agenda of the suspension and then vote to suspend or not and if 2/3 majority resolve to suspend them the decision is adopted.

9. The BEC then recommends the suspension to the Branch General Meeting (BGM) which then deliberates on whether to reinstate the suspended official or dismiss him. The suspended officer is allowed to defend himself at the BGM against the suspension before the final decision is made.

10. According to Counsel, it was admitted by the 1st, 2nd and 3rd respondent that BEC did not meet to suspend the Claimant. Members of the BEC further issued a statement to that effect and added that they had total confidence in the Claimant's leadership. Counsel therefore submitted that any suspension of a branch official outside the BEC was unlawful, null and void.

11. Further, the SSC which the 1st respondent alleges suspended the Claimant was a strange organ not provided for under the Union's Constitution. Attempts by the 1st respondent to equate SSC to NEC and its deliberations of 13th July, 2020 could not succeed as SSC was not NEC. In any event a NEC cannot suspend a Branch official, the issue of suspension can only go to NEC as an appeal from the decision of the BGM as per article 10(c) (5) (L) of the Union's constitution. Even allowing that SSC is an organ of NEC still the meeting of 13.7.2020 was unlawful as the composition of NEC under article 9A comprises of 43 members. The meeting of 13/7/2020 had only eight members.

12. Ms Tusime for the respondent on her part submitted that the Claimant was under obligation as a member of the 2nd respondent union to uphold the Union's values, objectives and its constitution. According to Counsel, the Claimant filed the instant suit prematurely since the disciplinary process had not concluded.

13. The Claimant was notified in the suspension notice that he would be suspended until a decision that is binding on his conduct and behaviour was decided upon by the Annual Delegates Conference of KNUT.

14. Counsel further submitted that the Claimant's submissions that the respondent flouted disciplinary procedures is ill-advised and a misapprehension since nowhere in the respondent's constitution is it provided that suspension of a branch official can only be done by a 2/3 majority when the same is being undertaken by the National Executive Committee.

15. According to Counsel, if the Claimant sought to challenge the union's organ and the decision to suspend him, there was still a forum under which the same would be submitted and resolved as such the claim had been prematurely brought before the Court.

16. On the orders sought, Counsel submitted that the same were final in nature and if granted would dispose of the main claim.

17. The allegations against the Claimant herein is that by a memorandum issued on 11th June, 2020, he and twelve others made several

declarations which the respondent considered were in contravention of the Union's Constitution.

18. Some of the declarations included a scathing attack on the KNUT Secretary General Wilson Sossion. They accused him of embezzlement of teacher's strike funds amounting to Kshs. 399 million, borrowing money from leading Banks without knowledge and authorization from National Trustees and members of the NEC.

19. This memo prompted the convening of a virtual special steering committee (SSC) of the 2nd respondent to discuss the matter. The meeting was attended by among others, the 2nd respondent's National Chairman, 1st Vice National Chairman and the Secretary General Mr. Wilson Sossion (1st respondent). The issue was deliberated and at the conclusion thereof it was unanimously decided that the culprits be suspended from the Union with immediate effect until a decision that is binding on their conduct and behaviour is decided upon by the Annual Delegates Conference (ADC).

20. It is this suspension that the respondent has contested arguing that it contravened several articles of the Unions constitution more particularly article 10. According to the Claimant only the BEC can suspend a branch official who has a right of appeal to NEC.

21. The respondent on the other hand had contended that it does have power to suspend a member and report such suspension to ADC for ratification

22. Article 10(C (1) of the Union's Constitution provides in paraphrase that

“The Branch Executive Council may suspend any of its officers for negligence, dishonesty, incompetence, or other reason it may deem fit and important in the interest of the Branch and recommend such suspension to the Branch General meeting for a decision to either reinstate or dismiss. However, any officer of the Union who is dissatisfied with the decision can appeal to the National Executive Council”.

23. Article 9(C (4) of the Union's Constitution on the other hand provides that

“the functions of the National Executive Council shall be to enforce the Constitution rules and regulations of the Union and to take such steps as may be deemed necessary for such purposes whether by dissolution or suspension of a branch, suspension or expulsion of a member or members of the Union”.

24. The National executive Council consists of the National Chairman, 1st and 2nd Vice National Chairman, the Secretary General, the Deputy Secretary General, the Assistant Secretary General, The National Treasurer, Deputy National Treasurer, Assistant National Treasurer, two National Women Representatives and thirty-one members (two from rift Valley and one from each of the seven regions.

25. The NEC is conferred with power to act as the Supreme authority of the Union tasked with the responsibility to transact the Union's business between the Annual Delegates Conference.

26. The Claimant herein was suspended following a virtual meeting of a “special steering committee of the 2nd respondent. The steering committee members who attended the virtual meeting were eight.

27. The respondent did not exhibit any constitutive instrument of the Special Steering Committee (SSC) showing its powers and whether it had the necessary quorum for the meeting of 13th July.2020 where a resolution was passed to suspend the Claimant and others.

28. Branch Officials are elected by the Branches in accordance with article 10(A) of the Union's Constitution. They have as it were, their local constituents and supporters. Their removal by any other person apart from their constituents technically disenfranchises the constituencies they represent. This is the sense in which the BEC is empowered to take disciplinary action against any member or official at Branch level. If dissatisfied with the action, such member or official had the right of appeal to the NEC.

29. As observed earlier, the NEC is the supreme organ of the Union. Therefore, in a scenario where it purports to take the first action against infractions by a branch official or member it severely constrains the right of such official or member to appeal such a decision.

30. Besides from the minutes of the SSC or the documents filed nothing was exhibited to show that the Claimants were called upon to show cause before a decision was reached to suspend him as required by Union's Constitution or rules of natural justice generally.

31. Societies, Unions, Clubs and private organizations are bound by their own rules and constitutions where these are written and available. So where there is a clear breach of those rules or constitutions, the Court is bound to interfere.

32. This being an interlocutory application, the Court from the foregoing is persuaded that the Claimant has demonstrated a prime facie case with probability of success. The Court therefore grants prayers 3 of the Motion to the effect that the Registrar of Trade Union's is hereby restrained from registering the change of officials of KNUT Nandi East Branch pursuant to the decision of Hon. Wilson Sossion dated 21st July, 2020 pending hearing and determination of the suit. The Court further restrains Wilson K. Kemboi from acting as a Branch Executive Secretary following appointment by Hon. Wilson Sossion through a letter dated 21st July 2020, pending hearing and determination of the claim.

33. Costs in the cause.

34. It is so ordered.

Dated at Eldoret this 12th day of **January**, 2021

Abuodha Jorum Nelson

Judge

Delivered this 12th day of January ,2021

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge