



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E423 OF 2020

(Before Hon. Lady Justice Maureen Onyango)

MICHAEL NDUNGU MUTUA MUNA..... CLAIMANT

VERSUS

KENYA NATIONAL UNION OF TEACHERS..... RESPONDENT

RULING

The applicant filed an application by way of a notice of motion dated **21st August, 2020** supported by an affidavit sworn by **MICHAEL NDUNGU MUTUA MUNA**. The application seeks orders THAT:

1. Spent
2. Spent
3. The registrar of Trade Unions, be restrained from registering the purported changes of officials of **the KENYA NATIONAL UNION OF TEACHERS (KNUT) KIAMBU WEST BRANCH**, made by the secretary general of **KENYA NATIONAL UNION OF TEACHERS (KNUT), Hon William Sossion** on or about 21st July 2020, in suspending the branch executive secretary **MICHAEL NDUNGU MUTUAL MUNA**, pending hearing and determination of this application.
4. The registrar of Trade Unions, be restrained from registering the purported changes of officials of **the KENYA NATIONAL UNION OF TEACHERS (KNUT) KIAMBU WEST BRANCH**, made by the secretary general of **KENYA NATIONAL UNION OF TEACHERS (KNUT), Hon William Sossion** on or about 21st July 2020, in suspending the branch executive secretary **MICHAEL NDUNGU MUTUAL MUNA**, pending hearing and determination of this claim.
5. This Honourable court do issue a temporary injunction restraining **KENYA NATIONAL UNION OF TEACHERS** from suspending, stopping and or withholding the **KENYA NATIONAL UNION OF TEACHERS (KNUT) KIAMBU WEST BRANCH monthly commission of Kshs.493,489/=** pending the hearing and determination of this application.
6. This Honourable court do issue a temporary injunction restraining **KENYA NATIONAL UNION OF TEACHERS** from suspending, stopping and or withholding the **KENYA NATIONAL UNION OF TEACHERS (KNUT) KIAMBU WEST BRANCH monthly commission of Kshs.493,489/=** pending the hearing and determination of this claim
7. A declaration that the decision of the change of officials of the union made on or about 21st July 2020 by the KNUT Secretary General, Hon. Wilson Sossion in suspending the Branch Executive Secretary **MICHAEL NDUNGU MUTUA MUNA**, act as the Branch Executive Secretary is unlawful and the same be nullified and or quashed.
8. A declaration that the decision by **KENYA NATIONAL UNION OF TEACHERS** and or the KNUT Secretary General, Hon. Wilson Sossion, made on 21st July 2020 in suspending, stopping and or withholding the **KENYA NATIONAL UNION OF TEACHERS (KNUT) KIAMBU WEST BRANCH** monthly commission of Kshs 493,489/= is unlawful and the same be nullified and or quashed.
9. Cost of this application be provided for and met by the respondent's

The application is premised on the grounds that:

1. The applicant is a dully elected and registered official of KNUT Kiambu West branch in the capacity of the Branch Executive Secretary.

2. On or about 21st July, 2020, the Secretary General KNUT Hon. William Sossion purported to have suspended the Branch Executive Secretary the claimant on allegation of professional misconduct and indiscipline which letter has not been served on him.
3. The Secretary General KNUT on the aforementioned date purported to appoint **STEPHEN NGOTHO** who is the current Assistant Executive Secretary of the branch to act as the Branch Executive Secretary which he declined.
4. The Applicant has not been served with the said suspension letter and only became aware of it through when the bank informed him that the Secretary General KNUT had written to the bank purporting to replace bank signatories.
5. The applicant was not given such allegations to respond to and to defend himself before the union and or Branch executive committee or Branch General Meeting and or National Executive council thus he was condemned unheard.
6. The claimant contends that under union constitution Article X-(C)(5)(l) and (D) (5) and (6) the Branch Executive Committee (BEC) is empowered to suspend an officer and recommend such suspension to the BGM meeting under Article X-B for a decision to either re-instate or dismiss, the claimant is not aware of the BEC meeting and or any 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 Hon. Wilson session himself and not by, and or has not been ratified by any organ of the union
7. That under Article X-(E) (4) of the union constitution, it is the Branch Executive Secretary who issues notices of the meetings of the branch, attend the meeting, take minutes and vote. The applicant did not issue any notice of any BEC meeting held on or before 21st July, 2020 whose agenda was suspension of the claimant.
8. The applicant contends that as per Article X-(C) (4) of the union constitution The Branch Executive Committee shall meet once every School term and none had been convened before 21st July 2020.
9. The claimant has never been served with any charges that would enable him prepare to defend himself at the Branch General Meeting.
10. As per Article X(D) (5) of the union constitution the suspension of a Branch official can only be done by 2/3 majority decision of all members entitled to vote at the Branch Executive Committee.
11. The BEC members did actually meet on 27th July, 2020 and resolved inter-alia that they had total confidence in the leadership of the branch officials and the claimant and therefore did not adopt or ratify the said suspension as they termed it as against the union constitution.
12. That the secretary General Hon. Wilson Sossion has no capacity nor legal right to suspend any elected and registered union official and or to appoint any union official to act in place of a suspended official and the action taken on 21st July 2020 was null and void *abinitio* as it violated the union's constitution.
13. There is an apprehension that the registrar of trade unions may register the purported changes of officials of KNUT Kiambu West Branch made by Hon. Wilson Sossion on 21st July, 2020 in suspending the applicant, which registration would be unlawful.

The application is further supported by the affidavit of **MICHAEL NDUNGU MUTUA MUNA** the Applicant sworn on 21st August, 2020 in which he reiterates the grounds as set out on the face of the notice of motion.

Respondent's case

In response to the application, the respondent filed a replying affidavit sworn by Willson Sossion, the Secretary General of Kenya National Union of Teachers on 1st September 2020.

The affiant deposes that the applicant was suspended vide a letter dated 21st July, 2020 which was issued by the affiant in his capacity as the Secretary General of KNUT upon convening a virtual steering committee meeting that was held on 13th July, 2020 according to the Union's Constitution Article 1X(B). He further states that the letter of suspension set out the grounds of suspension and attached a Memorandum that was issued to the CEO of TSC which amounted to gross insubordination, as branch secretaries have no right or mandate to write to the Teachers Service Commission directly. Article XVIII(G) (2) of the union constitution provides that no member shall disclose, or permit to be disclosed to any person who is not a member any matter or things considered or in any way dealt with the union without authority. The affiant states that the decision to suspend the Claimant/Applicant was unanimously decided as the applicant had violated provisions of Article 14(5) and article X(A)7 which amounted to gross insubordination.

The affiant further contends that the claimant was served through registered post.

The affiant further contends that the allegation of misappropriation of funds are untrue as the respondent upon receipt of the union dues from employers always releases the same on pro-rata level for purposes of running the branch.

The affiant maintains that under Article IX(c) 7 of the union's constitution the National Executive Council has a legal right to suspend or dismiss or replace any officer of the union for negligence of duty, dishonesty, incompetence, failure to obey its decisions or for other reasons it may deem fit and important in the interest of the union subject to approval of the Annual Delegates Conference which position was held

and procedurally followed.

The affiant contends that this claim is pre-maturely before this court as the disciplinary process is on-going and the Applicant's letter of suspension clearly states that he will be invited for a hearing to defend himself which date shall be communicated.

The affiant maintains that the decision to suspend the claimant/applicant is lawful and the respondent ought to be allowed to rightfully carry out the internal disciplinary procedure.

The affiant contends that the claimant/applicant has not met the threshold for temporary interlocutory orders and that the declarations sought are final in nature.

The respondent prays that the application be dismissed in its entirety for reasons that the same was filed before exhaustion of internal disciplinary process.

Parties agreed to dispose of the Application by way of written submissions.

Applicants Submissions

The Applicant submits that he is the duly elected and registered Executive Secretary of KNUT Kiambu West Branch. He also states that he was never served with the suspension letter and he is not aware which organ of the union suspended him.

The claimant submits that the procedure and the process of suspension adopted was unlawful and violated **Articles 10(a), (3) & (5), 10(c) (5) (l), 10(d), 5 & 6, 9(c) (7), 5(5) 13, 18(c)and 18(d) of the union constitution.**

It is Claimant's submission that a properly convened NEC must be in compliance with Article 5(5) of the unions constitution which states as follows;

“Any National official of the union maybe suspended from office by a two thirds majority decision of all members entitled to attend and vote at the NEC. In the event of such a suspension, the NEC shall have power to appoint one of its members to act in such post pending the decision of the annual delegates conference whether or not such an office should be reinstate or dismissed”.

The suspended officer shall be allowed to defend himself at the annual delegates conference before the final decision is made.

Article 9(C)7 states the functions of NEC –

“The National Executive Council may suspend or dismiss or replace any officers of the union for negligence of duty, dishonesty, incompetency or failure to obey its decisions or for any other reasons it may deem fit and important in the interest of the union subject to the approval of the Annual delegates conference”

The Claimant/Applicant sets out the procedure for suspension as follows;

1. The NEC is convened through the Secretary General of the union through a notice and an agenda of the meeting to all the members of NEC entitled to attend and vote at the NEC meeting
2. Once the meeting is convened the members deliberate on the agenda of suspension and then vote on the reason for suspension and if the vote is by majority of the quorum then a resolution to suspend is adopted.

The claimant/applicant submits that the above procedure was not followed, as there is no proof that the resolution was moved, seconded and voted for which is in violation of Article 18(c)1 and 18(D) which provides

“Every resolution shall be moved and seconded before being

put to the meeting. The preceding rules shall apply to an amendment to a resolution as if were a resolution”

18(D) The taking of all decisions in respect of the election of the officers, amending of the rules, strikes, lock outs, dissolutions and any other matter affecting members of the union generally shall be by secret ballot”

3. The NEC recommends the suspension to the Annual Delegates Conference (ADC) which deliberates whether to reinstate or dismiss the suspended officer.
4. The ADC is convened by the NEC
5. The suspended officer is allowed to defend himself at the ADC whose decision is final.
6. The NEC has the power to appoint one of its members to act in the place of the suspended official pending the decision of

the ADC.

The Applicant submits that the procedure was not followed and the meeting held on 13th July, 2020 was not properly convened for want of Notice, composition, agenda resolution and voting.

The Applicant relies on the case of **Kenya National Union of Teachers & Another v Registrar of Trade Unions & 2 Others** where the court cited the provisions of Section 35 of Labour Relations Act as follows;

1. A trade union, employer's organisation or federation shall exhibit prominently:

a) In its registered office, a notice giving names

of all the officials and the title

b) In every branch office the notice specified in the paragraph (a) and in addition a notice giving the names and titles of officials of the branch

2. Notice of any changes of the officials or of the title of any official shall be submitted to the registrar in form Q set out in the second schedule, within 14 days after the change together with the prescribed fee, and the Registrar shall register the change subject to subsection 4 & 5.

3. Before registering any change of official or correcting

any registrar the registrar may require the production of any relevant evidence of the change

4. If after inquiry, the registrar is not satisfied as the validity of any appointment or the propriety of any proposed correction, the registrar may refuse to register the change of official or to correct the registrar

5. No change of officials shall have effect until its registered by the registrar

6. No person who is not registered by the Registrar in accordance with this section shall act or purport to act as an official of a trade union, employers' organisation, or federation or of any branch.

As provided in section 35(5) no change of officials shall have effect until registered by the registrar. Is a letter from the registrar prima facie evidence of registration? To my mind change of registration can only be proven by production of the register itself or an extract of the register...."

The Applicant submits that he was never given a chance to be heard and/or defend himself which is contrary to Article 47 and 50 of the Constitution, 2010

The Applicant relied in the case of **Vignia Kaluki Kalwe v Christopher Mutinda Mutua & 2 others (2018) Eklr**; where the court held that Applicant had established a prima facie case to warrant issuance of orders sought as the averments on her removal from office were not controverted and that there was also no proof of the contrary.

He submits that there is no ongoing internal KNUT disciplinary mechanism and if there is the same is flawed as the suspension of the claimant was flawed and such a process should be arrested by the court as being unlawful and against the union constitution.

The Applicant submits that he has established a prima facie case with chances of success and the balance of convenience lies with him. He submits that costs will not compensate him.

Respondent's submissions

The Respondent submits that the Applicant being a member of the union has an obligation to uphold the union values, objectives and its constitution and to comply with requirements provided in Article 14(5) and X(A)5.

The respondent submits that the applicant's suit is pre-mature before this court as it was filed before the disciplinary process was concluded. The respondent further submits that under Article IX(C)7 of the union's constitution the NEC has a legal right to suspend, dismiss or replace any officer of the union for negligence of duty, dishonesty, incompetency or for failure to obey its decisions or for any other reasons it may deem fit and important to the interest of the union.

The respondent relied on the case of **Rose W. Kiragu v Teachers Service commission (2016) eKLR** court held;

"I will from the onset indicate that courts should not interfere with the employers right to internally discipline an employee unless the process is lawful and outrightly flawed and this interference will be in this case limited to correcting wrong procedural internal mechanism."

The court held that the application was pre-mature and declined to not interfere with the on-going disciplinary process.

The respondent further relied on the case of **Corporal Thomas Othoo v National Police Service Commission & 3 Others (2016) eKLR** Where the court held that;

“The court is open to entertain any matter which it has jurisdiction to do. However, such jurisdiction is to be exercised in a way that is not seen to direct or control management discretion and policy on staff discipline. Where in an employment relationship provisions are made for disciplinary mechanisms, these must be followed and exhausted before resort to the court. The only point when the court can interfere mid-course is in cases where such process is in serious breach of natural justice or fundamental rights or freedoms protected by the constitution and international law.”

It further submits that the orders sought in the application are final in nature and are similar to those in the claim and if granted would dispose of the entire claim. The respondent submits that final orders should not be granted at interlocutory stage. The respondent relied on the case of **Rajput v Barclay Bank of Kenya Ltd and 3 others (2004) eKLR 393**.

“The plaintiff in the suit sought various orders in the plaint. Simultaneously with the plaint, the plaintiff filed an application seeking same orders. The court while addressing itself to the issue, held that the prayers could not be granted as it was in the nature of final orders.”

The respondent further submitted that the Applicant has not met the threshold to be granted the interlocutory orders sought. The respondent’s relied in the case of **Giella v Cassman Brown 1973 E.A 358** and the **Court of Appeal in Mrao v First American Limited and 2 others (2003) KLR** on the principles for grant of an interlocutory injunction.

It submits that the claimant applicant has not shown that he would suffer irreparable harm which cannot be compensated by way of damages. The respondent submits that the claimant has not established a *prima facie* case.

The respondent submits that the claimant will not suffer any prejudice should the orders sought not be granted and that on the contrary it is respondent who will greatly suffer an injustice and be prejudiced if the orders are enforced as its internal disciplinary procedure will be interfered with.

The respondent relied in the case of **Industrial Court Cause Number 1200 of 2012** between **Professor Gitile Naituli v University Council multimedia university college and Another**.

“The Employment Act does not intend that courts take away managerial prerogatives from employers. To give the interim order would have the effect of stifling the management prerogative in staff administration. It would mean the employer does not have any more say in the contract of employment Act, which seeks to merely protect the weaker of the bargaining partners, not deprive the employer the power to run its business altogether”

He further relied on **Alfred Nyungu Kimungui v Bomas of Kenya (2013) eKLR**. The court made a finding that:

“Grant of interim orders that have the effect of limiting genuine exercise by management of its rights at the work place, should be avoided. Termination of employment and initiation of disciplinary process at the work place are presumed to be prerogatives. The court should be slow in intervening particularly at the interlocutory stages, otherwise the court would be deemed to be directing the employers in regulation of their employees.”

The respondent submits that the intervention sought by the claimant/Applicant would result to unjust limitation of managerial prerogative as such prays that the application be dismissed with costs.

Analysis and Determination

I have considered the application, the parties’ arguments and the evidence adduced. I have further considered the submissions. I find that the issues for determination are: -

1. Whether the applicant has demonstrated grounds for grant of temporary injunctions as set out in the application

The principles for grant of an injunctive order were set out in **Giella v Cassman Brown case** where the Court held:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”

The applicant’s contention is that the procedure used to suspend him was unlawful and violated the Unions constitution. He further contends that the organ that purported to have suspended him is not indicated in the suspension letter.

The applicant states that he is a member of the National Executive Council and was not invited to the Special Steering Committee meeting held on 13th July, 2020. That the meeting was therefore not lawfully convened as it lacked notice, agenda, quorum, resolution and voting. He further states that the meeting had 8 members falling short of the quorum of 14 members. The applicant relies on Article 5(5) and 9(c)7 of

the union's constitution which deals with the power of NEC and states that-

“Any National official of the union may be suspended from office by a two thirds majority decision of all members entitled to attend and vote at the NEC. In the event of such a suspension, the NEC shall have power to appoint one of its members to act in such post pending the decision of the annual delegates conference whether or not such an office should be reinstated or dismissed”.

Article 9(C)7 states the functions of NEC

“The National Executive Council may suspend or dismiss or replace any officers of the union for negligence of duty, dishonesty, incompetency or failure to obey its decisions or for any other reasons it may deem fit and important in the interest of the union subject to the approval of the Annual delegates conference”

The respondent on its part avers that KNUT constitution article IX(B) provides that NEC meetings shall be convened when the chairman or the secretary general deems fit and it is on that basis the Special Steering Committee meeting was held on the 13th July, 2020.

In the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** the Court of Appeal defined a Prima facie case as follows:

“So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter...”

... prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”

The Applicant has relied on Article 10(D) of the Respondent's Constitution which provides that ***“Any branch officer of the union may be suspended from his/her office by a majority decision of all members entitled to attend and vote at the Branch Executive committee.”***

This section is not applicable as the claimant was not suspended by the Branch but by the National Office in his capacity as a NEC Member. The suspension as stated in the letter, was under Article 14(5) and X(A)7 of the Union's Constitution which provides as follows:-

ARTICLE X - BRANCHES OF THE UNION

(A) Branches:-

1. The Union shall consist of Branches organized, as far as possible, on District basis, whose membership shall be approved by the National Executive Council on application. Each Branch shall have at least one thousand (1,000) members.

2. Every Branch of the Union duly formed shall report the same to the Secretary General who will, upon approval by the National Executive Council, apply to the Registrar of Trade Unions for the Branch Registration Certificate.

3. Each Branch shall elect its own officers:

Chairman, Vice Chairman, Executive Secretary, Assistant Executive Secretary, Treasurer, Assistant Treasurer and Woman Representative, who shall form the members of the Branch Steering Committee, Post Primary Representative(s), Early Childhood Educators Representatives, Persons with Disabilities Representative(s), Kenya Secondary Schools Heads Association (KESSHA) and Kenya Primary Schools Heads Association (KEPSHA) representative(s) as members of the BEC.

4. The Branch Executive Council shall appoint a Branch Auditor and any other officers that may be deemed necessary. No one shall hold office in any Branch who has not paid the annual subscription (dues) for the preceding year and any other levies in full, and who does not show sufficient interest in the Union. The Branch officials shall be elected every five years. The outgoing officers shall be eligible for re-election.

5. Any Branch shall have power to employ an elected Executive Secretary full time and any other employees they deem necessary.

6. Every Branch shall forward to the Secretary General a copy of their by-laws, but those by-laws shall not be operative until they are sanctioned by the National Executive Council of the Union. Once the by-laws of a Branch are approved, no alteration of, or addition to the approved by-laws may be made without the prior sanction of the National Executive Council of the Union.

7. The National Executive Council may exclude from the Union any Branch which, in their opinion, has declined to comply with the Rules of the Union.

8. No Branch shall take action on any subject which commits the Union as a whole, without the sanction of the National Executive Council and no Branch shall publish views, or deal with any matter in a way that is detrimental to the Union as a whole.

9. Any Branch which shall fail to send to the Head Office the Balance Sheets or other returns within the time limit set shall be liable for sanctions by the National Executive Council.

10. The National Executive Council may exclude from the Union any Branch whose membership dues, levy or other dues, remain unpaid after the date of which they are due, provided that a full and clear notice and opportunity of exculpation shall have been given to the Branch concerned.

11. The funds of every Branch shall be the common property of the Union. Any such property held by any Union Branch which shall secede or be dissolved shall be sent at once to the Head Office by the Officers of the Branch seceding, together with a detailed statement of receipts and expenditure. Should any member of such a Branch wish to remain in the Union, he shall be the custodian of the Union in the same Branch.

“ARTICLE XIV-PROFESSIONAL CONDUCT AND DISCIPLINE

It shall be considered unprofessional for any member of the Union: -

1. *To do anything that would bring discredit to the Union, on his profession or his school.*
2. *To terminate his employment without notice according to agreement or according to professional custom, unless the employer consents to a variation.*
3. *To seek promotion or seek to attain the position of another teacher by unfair methods or to take up an appointment from which in the judgment of the Union member has been unjustly dismissed.*
4. *To make an adverse report upon another member, to the employer or his agent, or in the school log book, without first acquainting the member with the nature of the report. Every member shall treat his subordinates as he would desire to be treated by his superiors.*
5. ***To indulge in damaging personalities whether in Newspapers, correspondences or otherwise, or to give publicity to any statement detrimental to the interest of the union, or a fellow member.***
6. *To solicit to his school pupils already connected with another school, or to make statements in the presence of pupils or parents prejudicial to the interest of another member.*
7. *Not to abide by the decision of the Professional Standards Council, or the National Executive Council in any case or dispute between members of the union.*
8. *To impose upon another member out of the ordinary School hours, an excessive and unreasonable amount of work of any kind.*
9. *To ask or receive reward or any form of consideration in the admission of new pupils to his class or school, or in the giving of a testimonial to his pupil.*
10. *To form an alliance with pupils, members of the public or a fellow member against another member.*

[Emphasis added]

It is noteworthy that the Applicant has not denied the grounds for which he was suspended which are stated in the letter of suspension as set out below: -

“KNUT/KIAMBU W./852/2/2020

July 21 2020

Mr. Michael Ndung'u Muna,

Executive Secretary,

KNUT Kiambu West Branch,

P. O. Box 229,

UPLANDS.

Dear Colleague

1. *You violated the Constitution of the Kenya National Union of Teachers Article 14(5) and I quote “it shall be considered*

unprofessional for any member of the Union to indulge in damaging personalities whether in Newspaper, correspondences or otherwise, or to give publicity to any statement detrimental to the interest of the Union, or a fellow member” end of quote and Article X(A)7 and I quote “no branch shall take action on any subject which commits the Union as a whole, without the sanction of the National Executive Council (NEC) and no Branch shall publish views, or deal with any matter in a way that is detrimental to the union as a whole” end of quote.

Please, refer to a meeting held in Nyeri on 10th and 11th of June, 2020 which was **NOT** authorised and **you and 12 others** collectively wrote a damaging memorandum (**copy attached**) to the Teachers Service Commission whose content violates Articles 14 (5) and X(A)7. You are well aware that Executive Secretaries are not authorised to write directly to the Teachers Service Commission on National Policy Matters connected with relationships between KNUT and National Institutions.

2. The allegations raised therein are damaging, uncalled for and only serve to undermine the administration of the Union and the Industrial Relations between KNUT and TSC. It therefore constitutes gross insubordination.

It has therefore been **UNANIMOUSLY** decided that you be suspended from the Union with immediate effect until a decision that is binding on your conduct and behaviour is decided upon by the Annual Delegates Conference (ADC) of KNUT.

Kindly hand over the office to Mr. Stephen Ngotho - the Assistant Executive Secretary who has been appointed on acting capacity forthwith.

Be advised accordingly.

SIGNED

(HON. WILSON SOSSION)

SECRETARY GENERAL, **K.N.U.T.**”

The Respondent has demonstrated that the grounds for the suspension stem from a meeting held in Nyeri by several Branch Executive Secretaries, among them the claimant, against whom similar action was taken. Some of them presented themselves for disciplinary action before the Respondent’s disciplinary committee. The claimant was among those who, instead of repenting himself, opted to file suit.

It is further noted that instead of responding to the letter on suspension, the Applicant went and whipped up support from his branch to defy the decision of the Disciplinary Committee of the Respondent instead of using the machinery in the Respondent’s Constitution which he now relies on. Such rebellion cannot be sanctioned by the court, whose role is to bring order, not perpetuate defiance.

2. Whether the suit has been brought pre-maturely

As submitted by the Respondent in the case of **Rose W. Kiragu v Teachers Service Commission (2016) eKLR** the court observed that: -

“I will from the onset indicate that courts should not interfere with the employers right to internally discipline an employee unless the process is lawfully and out rightly flawed and its interference will be in this case limited to correcting wrong procedural mechanisms.”

The applicant avers there is no ongoing internal KNUT Disciplinary

Mechanism and if there is the same is flawed, unlawful and against the Union’s Constitution.

The respondent submits that the application is premature as the disciplinary process is ongoing and the applicant was notified in his suspension letter that he would be suspended until a decision that is binding on his conduct and behaviour is made by the Annual Delegates Conference.

From the evidence of minutes adduced by the Respondent, it is clear that there was a meeting of the Respondent’s Sub-Committee on Discipline held on 25th August 2020. The Agenda of the meeting was: -

(i) ...

(ii) Status of the suspended Executive Secretaries and other union officials.

At MIN/2/2020(1) is titled “Suspension of Executive Secretaries” MIN3/8/2020, item 2 is reference to the claimant’s case as follows: -

2. MICHAEL MUNA – Executive Secretary – KNUT KIAMBU WEST BRANCH

Has gone to court.”

It is therefore clear that the disciplinary process in respect of the Claimant/Applicant and other Executive Secretaries was started but the Applicant's case did not progress due to the pendency of this suit and other suits filed by some of the Executive Secretaries suspended together with the claimant for the same reasons.

It is clear that the claimant has not established a prima facie case with probability of success. It is further clear that the claimant has not established that the balance of convenience is in his favour.

From the forgoing reasons, I find the application not merited and accordingly dismiss the same with costs.

I have noted from the Respondent's annexure "WS-6" that several of the claimant's counterparts have gone to court. It is important that all the cases are heard together to avoid different decisions being made by different courts in respect of the said cases. The Respondent is directed to take steps to ensure the cases are heard together.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 19TH DAY OF FEBRUARY 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this+ court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE