



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU**

**COURT NAME: ELDORET LAW COURT**

**CASE NUMBER: ELRCPET/6/2020**

**CITATION: AGNES WANGECI MANDERU AND GEORGE SHIVEKA AND 4 OTHERS VS SETH PANYAKO THE GENERAL SECRETARY KNUN AND KNUN**

**RULING**

1. By a Notice of Motion filed on 29th October, 2020, the 2nd respondent sought orders among others that: -

i) THAT pending hearing and determination of this application this Honourable Court be pleased to stay the execution of the Court Orders of 27th October, 2020 that limit the transactions with respect to the 2nd Respondent's Bank Accounts held at Barclays, Queensway Branch, Account Number [...] and Cooperative Bank, Aga Khan Walk Branch, Account Number [...] to mandatory expenses which include and limited to employees' salaries, rent, office utilities and allowances to office bearers and further to stay the execution of the order directing that the 1st Petitioner to be a necessary signatory for the said transactions and further to stay the execution of the order directing that any other expenditure outside the defined parameters above shall require to be authorized by the Registrar of Trade Unions who is hereby appointed as a mandatory signatory for that purpose.

ii) THAT this Honourable Court be pleased to vary and/or set aside the Court Orders of 27th October, 2020 and restore the status quo ante which mandated the 2nd Respondent's Bank Accounts held at Barclays, Queensway Branch, Account Number 2927765079 and Cooperative Bank, Aga Khan Walk Branch, Account Number [...] to be operated and/or transacted without the involvement of the Registrar of Trade Unions as a mandatory signatory of the same and the 1st Petitioner who was expelled from the Union through the Special National Governing Council (SNGC) meeting of 23rd October, 2020.

2. The application was supported by the affidavit of the 1st respondent Mr. Seth Ambusini Panyako who deponed on the main that: -

(i) THAT I the General Secretary of the Claimant a Trade Union duly registered under the Labour Relations Act, I am fully conversant with the matters in the question and I have been duly authorized by law to swear this affidavit hence I am apt and competent to swear this affidavit.

(ii) This Honourable Court issued orders on 27.10.2020 and specifically directed as follows inter alia

a) In the meantime, the transactions related to accounts held at Barclays, Queensway Branch, Account Number [...] and Cooperative Bank, Aga Khan Walk Branch, Account Number [...] will be limited to mandatory expenses which include and limited to employees' salaries, rent, office utilities and allowances to office bearers as authorized by the Union's Constitution.

b) The 1st Petitioner as the Treasurer shall be a necessary signatory for the transactions referred to above.

c) Any other expenditure outside the defined parameters above shall require to be authorized by the Registrar of Trade Unions who is hereby appointed as a mandatory signatory for that purpose;

d) The disciplinary process and the decision to expel the 1st petitioner or any other official involved in the present Petition or related matters pending inquiry by the Registrar as ordered by Court in its ruling of 5th June, 2020 is hereby set aside.

(iii) There us now new material before this Honourable Court to necessitate the Court in urgently vary and /or set aside the said orders in view of the fact that the 2nd Respondent duly convened an independent Special National Governing Council (SNGC) meeting on 23rd October, 2020 at Isiolo County and unanimously resolved to expel the 1st Petitioner and other officials and the acting officials were mandated to continue working in those capacities until elections are held on 26th February, 2021.

(iv) The said SNGC meeting was held pursuant to the advice of this Honourable Court contained in the ruling of 5th June, 2020 and the recommendations of the Registrar of Trade Unions in the report of 29th June, 2020 for the Union to discuss and resolve its

internal affairs and activities.

(v) The Court in its ruling of 5th June, 2020 at paragraph 6 thereof specifically said that a time is ripe to call a Special Delegates Conference or any such supreme organ of the Union to discuss what is ailing the Union's leadership. At the same time, the Registrar of Trade Unions in her report recommended that the Court directs the General Secretary to call for a Special provided for under Chapter VI of the Union Constitution.

(vi) In strict conformity with the aforesaid advises and recommendations, the Union held its Special National Governing Council (SNGC) on 23rd October, 2020 and discussed a rat of issues inter alia what was ailing its leadership and it came to a conclusion of expelling the errant officials.

(vii) The 1st, 2nd and 3rd Petitioners were duly invited in the said meeting vide various notices of 1st October, 2020, 15th October, 2020 and 19th October, 2020 to which they categorically refused to attend vide a joint letter dated 20th October, 2020 thereby forcing the SNGC meeting to proceed and issue resolutions their absence notwithstanding.

(viii) Further the Registrar of Trade Unions had on 26th October, 2020 pursuant to Section 46(1) of the Labour Relations Act issued a notice to the Union's Acting National Treasurer, Purity Wanjiku Matu requiring production of Union Accounts to which she complied and the Registrar accordingly inspected the same in accordance with the law.

(ix) Therefore, in the wake of this new information, it becomes extremely necessary for the Court to vary and/or set aside its Orders of 27 October, 2020 to reflect the obtaining status on the ground.

(x) Allowing the ruling to stand would cause extreme prejudice and hardship to the Union as that would be tantamount to compelling parties to work together when clearly the supreme organ of the Union has taken a position of expelling the errant officials on account of gross misconduct and after following due procedure.

(xi) The SNGC meeting of 23rd October, 2020 was independent and the decision arrived thereof has not been challenged at all.

(xii) The Court's Orders of 27th October, 2020 are primarily pegged on the disciplinary exercise that culminated into the National Executive Council (NEC) meeting of 19th June, 2020 at Nakuru County which meeting has since been overtaken by events through the subsequent meeting of the SNGC of 23rd October 2020 which handled issues independently and made its own findings.

(xiii) The SNGC decision of 23rd October, 2020 did not arise during the pendency of any inquiry by the Court but on the advice of the Court contained in the ruling of 5th June, 2020 and the Report of the registrar of Trade Unions of 29th June, 2020.

(xiv) Further the Court Orders of 27th October, 2020 arise from the Petitioners assertion that the annual accounts for 2019 were rejected by the Registrar since they were not presented by the 1st Petitioner. The new information is that as at 26th October, 2020 the Registrar of Trade Unions duly issued a notice to the Union's Acting National Treasurer, Purity Wanjiku Matu requiring production of Union Accounts to which she complied and the Registrar accordingly inspected the same in accordance with the law.

(xv) The 1st Petitioner shall definitely abuse the court orders by refusing to attend to any of the roles as assigned by the Court as has been her norm whereby, she refused to work as from 4th January, 2020 to date. This is against public interest given that what is at stake is the nurses interest.

3. Mr. Panyako in a further affidavit sworn on 2nd November, 2020 further stated that: -

i) THAT the Petitioners are playing judicial lottery: on 22nd October, 2020 the Special National Governing Council (SNGC) meeting that was scheduled for 23rd October, 2020 at Isiolo County.

ii) THAT the matter was considered by Lady Justice Maureen Onyango in which she returned a finding that the prayers the Petitioners had sought had been overtaken by events as the SNGC meeting they intended to stop for 23rd October, 2020 had already happened and resolutions thereat effected.

iii) THAT the implication and effect of the Court orders of Lady Justice Maureen Onyango is that the resolution and directions of SNGC of 23rd October, 2020 stand.,

iv) THAT the Petitioners sole intention is to cripple the operations of the Union by all means considering that the SNGC of 23rd October, 2020 was held pursuant to the advice of this Honourable Court in its ruling of 5th June, 2020 and the report of the Registrar of Trade Unions of 29th June, 2020.

4. The 1st Petitioner filed a replying affidavit in which she deponed inter alia that: -

i) THAT I am the bona fide registered National Treasurer of the Kenya National Union of Nurses, KNUN and a member of the National Executive Council and therefore competent and duly authorized to swear this affidavit.

ii) THAT I have read and understood the 2nd Respondent's Application dated 29th October, 2020 as explained to me by my advocates on record and wish to respond as hereunder.

iii) THAT it is not true that 2nd Respondent duly convened an independent Special National Governing Council (SNGC) on 23rd October, 2020 at Daiichi Hotel in Isiolo County where it was allegedly unanimously resolved to expel other officials and I from office and further that the acting officials were allegedly mandated to continue working in our capacities until elections are held on 26th February, 2021. In response to these allegations, I state that: -

(a) The purported special National Governing Council meeting was hurriedly and unconstitutionally convened and it specifically failed to meet the threshold of 2nd Respondent's Constitution chapters VI (i) (3) V (XIII).

(b) The purported SNGC did not state the agenda of the meeting prior to the meeting. The Agenda was only circulated on handwritten papers on the morning of the meeting and therefore officials had no opportunity to brainstorm on matters before settling for the meeting to enable them prepare for any discussion and eventual informed resolutions.

(c) There is no signed list of attendees to the meeting produced by the Respondents. This only raises suspicion and I fear this could be a plot to conceal rampant irregularities in respect to composition

(d) The unilateral invitation of the attendees to the meeting without involving the branch secretaries as envisaged in Chapter VI. (3) compromised the credibility of the composition of membership to the meeting.

(e) Composition of the National/Special National Governing Council is defined in the meaning of Chapter V.xii and for credible transparent introduction purposes members should be registered per branch with their titles.

(f) In the list filed in court: Names of non-members to the Special National Governing Council appear on the list; there is also a notable absence of names of duly registered members to the Special National Governing Council; names of those absent including absent without apology are also missing on the list filed in court.

(g) While Chapter VI (i) envisages that there may only be two special National Governing Council meetings between two ordinary National Governing Council this particular meeting was the 4th meeting since 2016.

(h) Chapter VI. (3) of the 2nd Respondent's constitution dictates that Branch Secretaries shall send to the General Secretary the number of officials of the branch who are entitled to attend the Special National Governing Council 8 weeks before the date of the meeting. The Respondent has not demonstrated to this court that there was compliance with this requirement hence the composition of the meeting is invalid.

i) The expulsion of other officials and I which allegedly occurred during the meeting was marred with irregularities, hatred, malice and failed to adhere to the Union constitution in particular Chapters VII (7) and XXI (2).

j) I still strongly believe that the process of expelling the officials who include the 2nd, 3rd Petitioners and I was attributed to us filing this instant Petition. The Notices of Motions issued to me and 2 other Petitioners were inconsistent, malicious and erratic. The content of the Notice of Motion dated 14th May 2020 soon after we were granted the first Order was different from that of 21st May 2020 and so were the grounds table in the Isiolo SNGC on 23rd October, 2020.

k) The 1st Respondent had made up his mind to expel me and continued to refer to me as a former National Treasurer long before the National Executive Council meeting of 9th July 2020. The 1st Respondent has maintained all along that I am no longer an official of the 2nd Respondent even after the Registrar of Trade Unions declined to effect the changes following the meeting of 9th July 2020.

l) The 1st Respondent is being economical with the truth and in particular with his intentions for calling the meeting on 16th October 2020 thereafter moved to 23rd October, 2020 without first appreciating the inconveniences to the officials. His hidden intention was to have the 2 Petitioners and I expelled from the 2nd Respondent and to ratify the Constitution of the 2nd Respondent giving him undue advantage over other qualified contestants for the position of Secretary General in the upcoming elections.

(iv) THAT it is also not true that the SNOC was held pursuant to recommendations contained in the Report of the Registrar of the Trade Unions following the Ruling of the Court issued on of 5th June, 2020. The petitioners state as follows: -

i) The Honourable Judge has indeed decried the numerous wrangles in the 2nd Respondent and hoped for a lasting solution.

ii) The Report of the Registrar of the Trade Unions which was prepared pursuant to Court's Orders did not give the Respondents unfettered discretion and authority to expel members and officials at will. If anything, the expulsion of members and union officials only fuels the wrangles in the Union.

(v) THAT the Respondents have not demonstrated to this Honourable court the efforts they have made to resolve the issues ailing the union by bringing all union officials together. In paragraph 24 of the Ruling of 27th October, 2020, this Honorable Court observed that the wrangles within the union do not reflect well of the union and the members it represents and further advised members to take charge of their own union, the leaders having failed. I urge this Honorable court to step in and put an end to the 1st Respondent's conduct of removing persons from leadership positions when they fall out with him even on matters of policy and running the affairs of the Union.

(vi) THAT it is true the 2nd Petitioners and I were invited to SNGC and that we did not attend the same since the meeting was unconstitutionally convened and further the agenda of the meeting was to deliberate our alleged disciplinary matters.

(vii) THAT in all invitations of members to the Special National Governing Council of 16th October, 2020 and 23rd October, 2020 the 1st Respondent does not cite the Ruling of the Court of 5th June, 2020 or the report by the Registrar of Trade Union's report dated 29th July, 2020.

(viii) THAT the 1st Respondent is not attempting to hand on the Ruling of 5th June, 2020 and the report of the Registrar of Trade Unions which he had badly castigated as a desperate attempt to sanitize the ill and breaches of the Constitution he is committed.

(ix) THAT the said Special National Governing Council was a failed exercise composed of many strangers who do not qualify to attend the same but were there at the whims of the 1st Respondent Legitimate members in certain counties were deliberately not invited to the meeting. Moreover, some people never attended but their names are appearing on the attendance list. For example, 3 officials of Garissa are duly registered but are nowhere on the list, the Treasure Nyeri Branch is not listed and the Branch Secretary Kitui is also missing from the list. The Nonmembers appearing are the Trustee Nyeri Branch, the Deputy Secretary Isiolo Branch and the Organizing Secretary Machakos Branch.

(x) THAT the 1st Respondent is misleading this Honourable Court because the Registrar of Trade Union asked all Trade Unions to file their annual returns within the meaning of Section 43(1) of the Labour Relations Act. The prescribed form requiring officials to comply is not addressed to any official by name or title. Further, the Registrar of Trade Unions did not issue any notice to one Purity Wanjiku Matu as claimed.

(xi) THAT the annual returns of the 2nd Respondents were declined by the Registrar of Trade Unions through a signed letter addressed to the 1st Respondent expressly conveying the position of the office and grounds of decline. It is inaccurate and absurd to drag the name of the Registrar through the mud by imputing that she certified an Acting Treasurer, one Purity Wanjiku Matu, to the position held by myself.

(xii) THAT the convening and the resultant resolutions of the SNGC meeting of 23rd October, 2020 were not on the advice of the Court vide Court Ruling of 5th June, 2020. The Respondents independently convened the SNGC. The Respondents in any event could not attempt to remove the 2nd, 3rd Petitioners and I from office when clearly, we had challenged our removal from office and the matter was pending in court.

5. On 27th October, 2020 this Court delivered a ruling in which the Court stated among others that the issue of financial management of the union be subject of inquiry by the Registrar of Trade Unions in accordance with section 46(1) of the Labour Relations Act and a report of such inquiry be filed by the Registrar within 60 days from the date of the ruling.

6. The Court in the meantime ordered transactions relating to 2nd Respondents' accounts specified in that ruling be restricted to employees' salaries, rent, office utilities and allowances to office bearers as authorized by the Union's constitution.

7. The Court further ordered that the 1st Petitioner as the Treasurer be a necessary signatory for the above transactions and that any other expenditure outside the defined parameters above require authorization by the Registrar of Trade Unions.

8. Concerning the disciplinary process and decision to expel the 1st Petitioner or any official involved in the present petition the ordered stayed and or set aside such proceedings pending the hearing and the determination of the petition.

9. In that ruling the Court reiterated its previous observation that the wrangles in the union involving its top officials did not reflect well on the union and the members it represented.

10. The respondent seeks to review or setting aside the orders made in the ruling delivered 27th October, 2020 more particularly the requirement that the 1st Petitioner as National Treasurer be a mandatory signatory to the 2nd respondents accounts specified in the ruling. The respondent further sought the lifting of the requirement that the registrar becomes a necessary signatory to the 2nd respondent's specified accounts for expenditures outside the parameters set in the ruling of 27th October, 2020.

11. The basis upon which the respondents seek the review or setting aside of the court's order is mainly that the 2nd respondent duly convened a Special National Governing Council (SNGC) meeting on 23rd October, 2020 at Isiolo and unanimously resolved to expel the 1st Petitioner and other officials and that acting officials were mandated to continue serving in those capacities until the elections to be held on 26th February, 2021.

12. The Court in its ruling of 27th October, 2020 was very clear that the disciplinary process and decision to expel the 1st Petitioner or any official involved in the present Petition or related matter pending inquiry by the Registrar and as ordered by the Court by its ruling of 5th June, 2020 be set aside.

13. Further the court in its advisory contained in the ruling of 27th October, 2020 stated that a time had come when the union members ought to petition for a general meeting for the officials involved to show cause why they should not be removed from office for engaging in endless wrangles and bickering. The court in the ruling did not contemplate expulsion of any official. The court in fact prohibited expulsion of any official.

14. The 1st Respondent herein and indeed the members of the so called SNGC that purported to expel the 1st Petitioner and other officials was so conflicted that it could not be said the expulsion was an objective conclusion reached as the best way to deal with the wrangles bedeviling the union.

15. From the foregoing it would be unjust for the Court to entertain the present application coming from a party who has acted contrary to the

Court's order.

16. Regarding the issue of the Registrar of Trade Union being a necessary signatory for expenditure outside parameters contained in the ruling of 27th October, 2020, it's the court's view that this is a statutory duty conferred on the Registrar by Section 44 and 46 of the Labour Relations Act.

17. This court being persuaded that the wrangles between the Petitioners and 1st respondent centered around the use of unions finances, invoked the above provisions of the statute to ensure there is protection of union members' contributions from misuse.

18. This order cannot be varied or set aside until the respondent complies and a report filed by the Registrar before this Court assuring that the Unions funds are being put to use as authorized by the Union's constitution. If as the Court suspects, these orders are an inconvenience to the respondent they have the liberty to pursue the speedy conclusion of the report with the Registrar in order for the same to be lifted.

19. As I conclude, the Court has noted the Union's elections were due on 26th February, 2021. It is the Court's hope that they were held and a new team elected which would hopefully spend more time championing the rights of the Union members than on wrangles and supremacy wars.

20. In conclusion the application stands dismissed with costs and further although the court has made a finding that the expulsion of the 1st Petitioner and other officials by the alleged Isiolo SNGC was unlawful and in breach of the Court order, the Court notes that the term of office of the current officials has since lapsed and now officials may have been elected.

21. It is so ordered.

**Dated this 9th day of February, 2021**

**SIGNED BY: HON. JUSTICE J. N. ABUODHA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**