



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 26 OF 2020

IN THE MATTER OF ARTICLES 10, 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CONSTITUTION OF THE KENYA NATIONAL UNION OF TEACHERS

BETWEEN

LUCYFELLAH BWARI GETOI alias LUCY MACHUKI.....PETITIONER

v

KENYA NATIONAL UNION OF TEACHERS.....1st RESPONDENT

WILSON SOSSION.....2nd RESPONDENT

JOB SIRIBA OCHOKI.....3rd RESPONDENT

ESTHER NABAYO.....4th RESPONDENT

ALBERT OMBASO.....5th RESPONDENT

JUDGMENT

1. This Petition started with 3 Petitioners, but only 1 now remains, and the reason will become clear shortly.
2. Lucyfella Bwari Getoi was at all material times the Executive Secretary, Kenya National Union of Teachers, Gucha Branch (hereinafter the Petitioner) while Richard Omwoyo Maniga was the Treasurer and Ombongi Tinega Kennedy served as the Chairperson.
3. On 11 March 2020, the Kenya National Union of Teachers, Gucha branch met and resolved to have the 3 named persons suspended from their respective offices.
4. On 28 April 2020, an advocate acting on behalf of the Branch Executive Committee members wrote to the 3 named persons raising several allegations and demanding that they stop transactions/bank withdrawals from the branch bank account.
5. On 22 June 2020, the Secretary-General (the Secretary-General) of the Kenya National Union of Teachers (the Union) wrote to the Executive Secretary, Gucha branch confirming that the Petitioners (and others) had ceased being members of the Union.
6. On 26 June 2020, the acting Branch Executive Secretary of Gucha branch wrote to the Secretary-General to inform him that the Branch Executive Council meetings held on 11 March 2020, 12 May 2020 and 21 May 2020 had resolved to suspend the Petitioner(s) from being bank signatories and that some 3 named persons had been appointed to replace them in acting capacities.
7. The Secretary-General acted on the letter, and on 14 July 2020, he wrote to the Petitioner(s) informing them of their suspension from their respective offices pursuant to Article X(D)5 of the Union's Constitution.
8. The Petitioner(s) moved the Court on 20 July 2020, alleging that their suspension from their offices violated the Union's Constitution as well as Articles 10, 47 and 50 of the Constitution of Kenya because the Respondents had not them afforded an opportunity to make representations.

9. The Petitioner(s) also asserted that the Branch Executive Committee meeting, which purportedly recommended their suspensions were convened by a non-member of the Union.
10. The Petitioner(s) further contended that their suspensions breached Article IX(B)(6) of the Union's Constitution, which reserved the power to suspend officers of the Union to the National Executive Council.
11. The Petitioners sought the following remedies:
- (i) A declaration be and is hereby issued that the 3rd, 4th and 5th Respondents are unconstitutionally and illegally holding the positions of acting Executive Secretary, Chairperson and Treasurer of the 1st Respondent's Gucha Branch Executive Committee.
 - (ii) An order restraining the 3rd, 4th and 5th Respondents from taking over the duties of acting Executive Secretary, Chairperson and Treasurer of the 1st Respondent's Gucha Branch Executive Committee.
 - (iii) A declaration that the Branch Executive Committee meetings convened by the 3rd, 4th and 5th Respondents were unconstitutional and illegal.
 - (iv) A declaration the 2nd Respondent's decision to suspend the Petitioner(s) as members of the 1st Respondent's Gucha branch Executive Committee offends the Constitution of Kenya and the 1st Respondent's Constitution.
 - (v) An order that the Respondents do pay the costs of the Petition.
12. Filed at the same time was a Motion under a certificate of urgency seeking interim relief.
13. When the Motion was placed before the Court on 22 July 2020, it directed that it be served and further that the parties file and exchange affidavits and submissions and that Ruling would be on notice.
14. On 7 August 2020, the firm of Rakoro & Co. Advocates filed a Notice of Change of Advocate to come on record for the Petitioner(s).
15. However, on 18 August 2018, the 2nd and 3rd Petitioners filed affidavits disowning the Petition on the ground that the 1st Petitioner had not consulted them before including them as parties. The firm of SMS Advocates LLP also filed a Notice of Appointment to act on their behalf.
16. The Petitioner(s) filed their submissions on the Motion on 31 August 2020
17. The Secretary-General of the Union filed a replying affidavit in opposition to Motion and Petition on 28 August 2020.
18. When the Petition was placed before this Court on 16 November 2020, the Petitioner stated that she had filed submissions and, therefore, a Ruling could be delivered.
19. Since there appeared to be confusion on the representation of the 2nd and 3rd Petitioners, the Court directed that all the parties appear in Court on 2 December 2020 for further directions.
20. On 2 December 2020, the advocate for the Petitioner acknowledged that the 2nd and 3rd Petitioners had filed affidavits disowning the Petition, and the Court, therefore, expunged them from the Petition.
21. During the same appearance, the Court also issued an order lifting the Petitioner's suspension and reversing the change of bank signatories.
22. The Petitioner filed her submissions on the Petition 4 January 2021 (should have been filed and served on or before 30 December 2020) while the Respondents were to file and serve their submissions on or before 30 January 2021.
23. On 3 March 2021, the Respondents wrote to the Court indicating that they had failed to file submissions because of sentiments expressed by this Court sitting in Nairobi on 19 February 2021 that because similar Causes had been filed, the same should be handled centrally to avoid inconsistent decisions.
24. The Court agrees with the Court in Nairobi that action(s) based on the same facts should be heard together.
25. However, the Court finds that the Respondents failure to file submissions cannot be attributed to those sentiments simply because the submissions should have been filed and served before 30 January 2021 while the sentiments were expressed nearly 3 weeks later on 19 February 2021.
26. The Court is also concerned that the Respondents did not raise the issue of a multiplicity of suits based on the same facts earlier during the giving of directions when it was privy to the multiplicity of suits against it.

27. The Court will therefore proceed with the delivery of the judgment.

28. The Court has considered the Petition, affidavits and submissions from the Petitioner and come to the view that the orders sought should not be granted for the reasons set out hereunder.

29. First, the Petition was premature. Premature because under Article X(C)(1) of the Constitution of the Kenya National Union of Teachers, the Petitioner ought to have appealed against the lawfulness of the decision to suspend her by the Branch Executive Committee to the National Executive Council.

30. The Petitioner did not demonstrate that she followed and exhausted the internal dispute resolution mechanisms set out in the Constitution of the Union.

31. Two, the Court also takes judicial notice that the term of office of the Petitioner and all members of the Gucha branch is coming to an end (or has come to an end) by virtue of Article X(A)4 of the Union's Constitution. The Petitioner was registered as an official by the Registrar of Trade Unions around 19 February 2016.

32. For these reasons, the Court would be acting in futility in granting the remedies.

Conclusion and Orders

33. From the foregoing, the Court dismisses the Petition with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 17TH DAY OF MARCH 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioner Rakoro & Co. Advocates

For Respondents SMS Advocates LLP

Court Assistant Chrispo Aura