



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT KERICHO

CAUSE NO 19 OF 2020

STANLEY KIPKIRUI MUTAI.....1ST CLAIMANT

DAVID K. RONO.....2ND CLAIMANT

GEDION K. MUGUN.....3RD CLAIMANT

VERSUS

CHRISTOPHER K. LELGO (SUED AS THE PURPOTED

ACTING EXECUTIVE SECRETARY-KENYA NATIONAL

UNION OF TEACHERS (KNUT)

KERICHO BRANCH.....1ST RESPONDENT

PAUL K. KIBET (SUED AS THE PURPOTED ACTING CHAIRMAN -

KENYA NATIONAL UNION OF TEACHERS (KNUT) KERICHO BRANCH.....2ND RESPONDENT

SIMON K. SEREM (SUED AS THE PURPOTED ACTING EXECUTIVE SECRETARY -

KENYA NATIONAL UNION OF TEACHERS (KNUT) KERICHO BRANCH.....3RD RESPONDENT

KENYA NATIONAL UNION OF TEACHERS (KNUT) KERICHO BRANCH.....4TH RESPONDENT

KENYA NATIONAL UNION OF

TEACHERS (KNUT).....5TH RESPONDENT

REGISTRAR OF TRADE UNIONS.....6TH RESPONDENT

JUDGEMENT

1. The Claimants herein filed their Memorandum of Claim on 29th July 2020 through the firm of **Rakoro & Co Advocates** alleging unlawful suspension pursuant to a Branch executive meeting held on 20th July 2020 and the resolutions passed on even date. The Claimants therefore seeks the following reliefs:-

a) A declaration that the purported Kericho KNUT Branch Executive meeting(BEC) held on or about 20th July 2020 was unlawful and the resolutions passed thereon to suspend and any subsequent suspension of the Branch executive secretary Mr. Stanley K. Mutai, the Branch Chairman Mr. David K. Rono and the branch treasurer Mr. Gedion K. Mugun and the appointments made and or elections purportedly conducted therein of Mr. Christopher K. Lelgo as the acting branch Executive secretary, Mr. Paul K Bett as the acting Branch Chairman and Simon K Serem as the acting branch treasurer were unlawful and against the Union constitution and thus null and void ab initio and the same be nullified and or quashed.

b) a declaration that any decision of change of officials of the union made on or about 20th July 2020 by the registrar of trade unions and any extract of officials of the Kericho KNUT Branch , issued subsequently and as a consequence of the resolution of the purported Kericho KNUT Branch Executive meeting(BEC) held on 20th July 2020, to suspend the Branch Executive secretary Mr. Stanley K. Mutai, the Branch chairman, Mr. David K. Rono and the Branch Treasurer Mr. Gedion K. Mugun and the appointments made and or elections purportedly conducted therein of Mr. Christopher K. Lelgo as the acting Branch Executive secretary, Mr. Paul K Bett as the acting Branch Chairman and Mr. Simion K. Serem as the ACTIBG Branch Treasure, is unlawful and the same be nullified and or quashed.

c) A mandatory injunction restraining the registrar of the trade union from registering any purported changes of the officials of the said Knut Kericho Branch made on or about 20th July, 2020.

d) A mandatory injunction restraining Mr. Christopher K. Lelgo as the acting Branch executive secretary, Mr. Paul K Bett as the acting Branch Chairman and Mr. Simion K. Serem as the acting Branch Treasurer and or any other Branch officials(s) purportedly appointed and elected during the purported BEC Meeting of or about 20th July 2020 and or listed in any form "Q" generated on or about 20th July 2020 from assuming and or holding office and discharging their duties and functions as acting officials of the said KNUT Kericho Branch their duties and functions as acting officials of the said KNUT Kericho Branch.

e) Cost of this claim be paid by the Respondents.

Claimants' Case

2. The 2nd and 3rd Claimants gave the 1st Claimant authority dated 24th July 2020 to act on their behalf with regards to this cause. It is therefore the 1st claimant who gave his evidence on behalf of the other claimants vide his witness statement dated **28th July, 2020.**

3. The Claimants aver that they are the duly elected officials of the KENYA NATIONAL UNION OF TEACHERS (KNUT) KERICHO BRANCH, in the capacity of the Branch Executive secretary, Chairman and Treasure respectively.

4. They allege that on 20th July 2020, the Branch Executive Committee (BEC) purported to have convened a meeting and made a resolution and a request to the head office to suspend the three (3) top officials of the branch, the claimants herein, and not to allow them to transact any branch business including operating the branch account.

5. The claimants aver that BEC also resolved that the 1st Claimant be replaced by Mr.Christopher K. Lelgo, the 1st Respondent herein. The 2nd Claimant to be replaced by Mr. Paul K. Bett , the 2nd Respondent and the 3rd Claimant to be replaced by Mr. Simon K. Serem, the 3rd Respondent herein.

6. The Claimants aver that the purported letter/ resolution dated 20th July, 2020 ousting the claimants had several grievances against the Three (3) said officials/ Claimants. These grievances are:

i. The brunch KNUT bus was sold and no explanation on the use of funds availed to us (BECS)

ii. The Imarisha Sacco dividends were withdraw and spend without our knowledge.

iii. Branch Executive members have been going without remuneration for long despite money being received from the headquarters.

iv. There have been very few meetings since the term in office, the few meetings we have always been done hurriedly to avoid questions.

v. the Landlord is owed a huge sum of money on rent that has made the landlord sue the Branch

vi. The three officials have been inciting members to move away from KNUT membership claiming that KNUT is dead, utterances made at Kericho Primary during Sacco day by our executive secretary.

vii. The Three officials have been receiving BBF money and putting into their own use.

viii. The Three officials have been taking Bank loans on Branch's behalf.

7. The Claimants maintain that they were not aware of the said BEC meeting. They were not given the said allegation to respond to and or defend themselves before the BEC and or the head office, therefore, they affirm that they were condemned unheard contrary to the KNUT Constitution.

8. They further Contend that, **Article X-(C)(4)** OF Knut Constitution provides that, the Branch Executive committee(BEC) shall meet once every school term and if emergency arises as frequently as it may desire. Consequently, the Claimants opines that, the meeting held on 20th July 2020 was not one contemplated under this Article. Further that under Article X (E)(4) of the Union constitution, it is the Branch Executive Secretary who issues notices of all the Meetings of the branch, attend meeting and vote a fact that the 1st claimant asserts that he did not send notice and or attend the said meeting.

9. The Claimants avers that, Article X (E)(1) of the Union Constitution mandates the Chairman to chair the Branch meeting. However, since notices were never sent to the said chairman, he was not in attendance.

10. The Claimants states that, BEC is empowered under Article X (C)(5)(L) and (D)(5) (6) of the Union Constitution to suspend an officer and recommend such suspension to the Branch General meeting under Article X-B for decision to either reinstate or dismiss. The Claimants contends that they are not aware of the said recommendation to the Branch General meeting, but instead the request to suspend them was unlawfully made to the Head office.

11. The Claimants aver that the suspended officers are allowed by law to defend themselves at the Branch General meeting before final decision is made and that for a defence to be made they ought to be provided with documents and allegation levelled against them, which the Branch failed and or refused to serve.

12. The Claimants opines that Under **Article X(D) (5)** of the Union Constitution, the suspension of Branch official can only be done by 2/3 Majority decision of all members entitled to vote at the Branch executive committee. Consequently since no Notices were issued to the claimants, the Claimants allege that there was no quorum and or proof of voting.

13. The claimants allege that there is no duly signed list of all BEC Member who attended the meeting of 20th July 2020.

14. The Claimants further state that on 24th July 2020 they wrote a letter to TSC to conduct investigations on the conduct of the purported acting officials and their concerns were as follows:

i. Convening an unlawful meeting without notice.

ii. Convening a meeting when they didn't have authority to act having ceased being members of the Union pursuant to KNUT national office circular number KNUT/CIRC/122/9/2020 dated 22nd June 2020 as read with circular NUMBER KNUT/CIRC/122/8/2020.

iii. Preparing minutes and fraudulently endorsing marks against the names of the 2 member namely Betty Chepkwong, TSC No 472115 who was on maternity leave and Byegon K. Joseph TSC No. 41011 who had been employed with County Government of Bomet, purporting that the said marks were the two members signatures and that they were in attendance of the said meeting contrary to the fact an issue that was reported to Kericho DCI under O.B Number 35/22/7/20.

15. The Claimants aver that the below listed members who attended the purported meeting of 20th July 2020 ceased to be member of the union as per the letter of 22nd June, 2020 which took effect from 30th June, 2020.

a. Christopher K. Lelgo

b. Simon K. Serem

c. Ann Cheruiyot

d. Lucy C. Sang

e. Hellen N. Chepngeno

f. Paul kipngetch Langat

g. Byegon K. Joseph

h. betty C. Chepkwony

i. Judith C. Rop

j. Kiplimo Hillary Sang

k. Reuben tanui

l. Yegon N. Kiplimo

m. Samuel Kipsang

16. It's the claimants case that the above listed former BEC officials had no capacity to attend the said meeting and or act in way with regard to the functions of the Union therefore any action carried out by the above listed officials ought to be null and void as they violated **Article X (D) (2)** and **Article XVIII(C) and (D)** of the union constitution.

17. The claimants thus urged this Court to hold that the purported BEC Meeting held on 20th July 2020 and the resolutions passed therein

was unlawful for want of notices, agenda and Quorum and against the union constitution and proceed to quash the same.

THE 1ST, 2ND AND 3RD RESPONDENTS CASE

18. The 1st, 2nd and 3rd Respondent filed their reply to Memorandum of Claim dated **14th August, 2020** through the firm of Sang and Sang Advocates together with list of witnesses and list of documents but did not file their witness statements.

19. The 1st, 2nd and 3rd Respondents further filed a replying affidavit sworn on 14th August, 2020 by Christopher K. Lelgo the 1st Respondent who is the acting Branch Executive Secretary.

20. The 1-3rd Respondents opines that the claimants cause herein has been filed prematurely and state that the Claimants herein have not exhausted their internal dispute resolution mechanism provided by the Union Constitution.

21. The Respondents herein admits having convened a meeting on 20th July 2020 to deliberate on the conduct of the KNUT Kericho Branch Officials, the 1st, 2nd and 3rd Claimants and alleged to have notified the claimants who according to the respondents refused to attend the meeting.

22. The Respondents states that their action of convening the meeting of 20th July 2020 was informed by the actions of the suspended officials, the 1st -3rd Claimants herein, who had failed to convene Branch meeting since 2018 as contemplated under **Article X-(C)(4)** of KNUT Constitution which provides state The Branch Executive committee(BEC) shall meet once every school term and if emergency arises as frequently as it may desire.

23. The 1st to 3rd Respondent herein further state that they had authority to act on behalf of the branch as guided by **Article X (C) (5) (I) and X (D) (6)** of the Union Constitution which empowers BEC to meet, make decisions, resolutions and suspend any member for the best interest of the Union and further appoint one of its members to assume the said position in acting capacity.

24. Finally, the 1st to 3rd Respondents herein alleged that this Court lacks jurisdiction to entertain this cause and pray that the Claimants claim be dismissed with costs.

4TH RESPONDENTS CASE

25. The 4th Respondents filed a relying affidavit sworn by **Daniel Tirop**, the KNUT Branch vice chairman, on 13th August 2020 through the firm of Onesmus Langat and Company Advocates.

26. The 4th Respondent is in support of the claimants cause herein and states that due procedure was not followed when the claimants were suspended and avers that the suspension of the claimants was unlawful and that it flies in the face of express provisions of the Union Constitution, the Labour Relations Act no 14 of 2007 and the Constitution of Kenya.

27. The 4th Respondent states that the 1st, 2nd, 3rd and 5th Respondents' actions is inconsequential as the records held by the registrar of trade Union as at 5th August 2020 still indicates that the Claimant herein are still *bonafide* officers of the union and he annexed a copy of the registrar letter marked "DT1".

28. The 4th Respondent confirms that no notices were issued to him and therefore did not attend the meeting of 20th July 2020.

5TH RESPONDENTS CASE

29. The 5th Respondent filed a response to Memorandum of claim dated 17th August 2020 together with Replying Affidavit sworn by Honourable Wilson Sosion on even date, through the firm of J. A Guserwa and Company Advocates.

30. The 5th Respondent filed a witness statement signed by Honourable Wilson Sosion, the National General Secretary of KNUT.

31. The 5th Respondent denied all the contents of the memorandum of claim generally and put the claimants on strict proof.

32. The 5th respondent agrees with the reply by the 1st to 3rd Respondent and in addition avers that the resolution passed in the meeting of 20th July 2020 was procedural and conformed to the Union constitution.

33. It is the 5th Respondent reply that, it confirmed the suspension of the claimants from KNUT Kericho Branch and affirmed the appointing of the new acting officials who are the 1st to 3rd Respondent herein.

34. The 5th Respondent finally prayed that the claimant's suit be dismissed in its totality with costs.

6TH RESPONDENT'S CASE

35. The 6th Respondent filed its response to the memorandum of claim on 27th January 2021 through the Honourable Attorney General chambers. The Honourable Attorney General basically denied the entire claim by the Claimants herein and put the claimants to strict proof thereof.

THE CLAIMANTS SUBMISSIONS.

36. The Claimants submitted that the process in which the claimants were suspended was marred with procedural irregularities and contrary to their guiding law that is the KNUT Constitution.

37. They submitted that they were duly elected officials of the KNUT KERCHO BRANCH in their capacity of the Branch Executive Secretary, the Branch Chairman and the Branch Treasure respectively.

38. They submitted that the suspension of the claimants as per the resolution of the meeting allegedly held on 20th July 2020 culminated to endorsement of the said resolution by the National Office vide letter of suspension dated 21st July 2020 and 23rd July 2020.

39. The Claimants submitted that the procedure which the Union disciplinary organ ought to have followed is clearly elaborated in the Union Constitution under **Article 10(C)(5) L** and **Article 10 (D) 5 & 6** of the Union Constitution which provides that the Branch Executive Committee(BEC) may suspend any of its officers for negligence, dishonesty, incompetency, or failure to obey its decision or for any 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 re-instate or dismiss. Subsequently, the Union officer who is dissatisfied with the decision of the Branch General Meeting can appeal to the National Executive Council (NEC) for consideration whose decision shall be final either to uphold or rescind the decision of the Branch General Meeting.

40. They submitted that **Article 10 (D) 5 & 6** of the Union provides that the suspension of Branch Officer shall be done by 2/3 majority decision of all the members entitled to attend and vote at the Branch Executive Committee and in the event of such suspension, the Branch Executive Council shall have powers to appoint one of its members to act in such post pending the decision of the Branch General Meeting. The suspended officer shall be allowed to defend himself/ herself against the suspension of the Branch General Meeting before a decision is made.

41. The claimants submitted that, they were condemned unheard contrary to the Union Constitution and **Article 47(1) & (2) and Article 50 (1) and (2) (a), (b), (c) and (d)** of the Constitution of Kenya.

42. The Claimants argued that no Notice was issued to them by BEC of the meeting held on 20th July 2020 as provided for under Article X(E)(4) of the union Constitution which provides that **"...Branch Executive Secretary shall issue notices of all meetings"**. Further, that in the event that the Branch Executive Secretary does not call for a meeting then BEC should requisition for a meeting and convene after the requisition which the claimants allege that no evidence of requisition was provided.

43. The Claimants further submitted that, Six (6) Members of BEC namely, Alice Cherop Chepkwony, Cherotich Betty, Paul K Langat, Judith Chelang'at, Reuben Kirui and Kiprono Yegon Edwin have sworn affidavits on 14th August, 2020 disassociating themselves with the meeting held on 20th July, 2020 and or voting on the said meeting. These affidavits have not been recanted and or challenged by the Respondents.

44. The Claimants referenced the 1st Respondent Replying Affidavit sworn by the 1st Respondent one Mr. Christopher K. Lelgo, that conceded to not issuing Notices to the Claimants and indicates that the meeting proceeded without the Claimants. In Addition, the Claimants submitted that the official who convened the purported meeting lacked authority to convene the said meeting as per the Union Constitution.

45. The Claimants Further submitted that the meeting held on 20th July 2020 was convened by the 1st to 3rd Respondents pursuant to Article X(D)(7) of the Union Constitution which states that:

" in the event of more than three top officers of the Branch dying, resigning, being dismissed or otherwise ceasing to be branch officers during their five years term in office, a General meeting of the branch shall be convened to elected officer to fill the vacancies"

46. They therefore submitted that, the meeting of 20th July, 2020 was not one contemplated in the Article above and thus the meeting was unlawful.

47. The Claimants also submitted that the 5th Respondent contradicted the 1st to 3rd Respondents by alleging that the Branch assistant Executive Secretary issued notices to the Branch Executive Committee (BEC) members for convening the meeting of 20th July, 2020 when the 1st Respondent conceded to proceeding with the meeting in absence of the Claimants herein.

48. The claimants further submitted that some members of BEC convened another meeting on 14th August 2020 to ostensibly challenge the resolutions passed in the meeting of 20th July, 2020 and resolved to disassociate themselves with the decision of BEC OF 20th July 2020. They contend that the minutes of 14th August 2020 has not be challenged by any of the Respondents.

49. The Claimants relied on the case of **Bonuves Kemei Tenai versus Wilson K Kemboi& 3others ELRC Cause No 31 of 2020 (Unreported)** where the Learned Justice **Abuodha J.N** held that, disciplinary action including suspension of Branch Union member and or Officials ought to be done at the Branch level and Appeal preferred to National Executive Council(NEC). Further that in a scenario where

the NEC takes first action against a member or official, it severely constrains the right of such official to appeal such a decision.

50. The Claimants in affirming their arguments put their reliance in the case of **Republic Versus Wilson Sossion & 2 others Ex parte CAXTON MIUNGI ELRC JR No. 1 of 2020 MERU(Unreported)** The Learned Justice Nzioka wa Makau took issue with the way the ex parte applicant, a Nyeri Branch Executive Secretary, was removed from office and held that since there was no evidence to show that BEC met as provide for under Article X of the Union Constitution and deliberate on removal of the Ex parte Applicant from his position as the Executive Secretary by a vote of 2/3 Majority of the BEC. In addition the learned Judge observed that there was no evidence that the ex parte applicant was heard on his defence before the purported ouster. The removal of the Ex-Parte applicant by the 1st Respondent was contrary to the Union constitution as the 1st Respondent lacked power to remove the applicant.

51. In conclusion the Claimants prayed that their Claim be allowed by this Honourable Court.

52. All the Respondents have not filed any submissions.

53. I have examined the evidence and submissions of the parties herein. The issues for this court's determination are as follows;

a) Whether the respondent followed their constitutional procedure in disciplining the claimant.

b) If not whether the claimant is entitled to the prayers sought.

54. On the 1st issue the claimant has submitted that Article 10(8) 5 & 6 of the Union Constitution was not followed. He avers that this article provides that the Branch Executive Committee (BEC) may suspend any of the officers for negligence, dishonesty, incompetency or failure to obey its decision for any other reason.

55. The decision of the BCC however must be referred to the Branch General Meeting to either confirm or vary the BEC's decision. Anyone dissatisfied with the decision of the BGM can appeal to the National Executive Council (NEC).

56. The claimant further submitted that suspension of a branch officer shall be by 2/3rds majority decision of all members entitled to attend and vote at the BEC.

57. The respondents submitted that they followed due procedure in suspending the claimant.

58. The 1, 2 & 3rd respondents aver that the claim herein is also premature. The respondents indicated that they met on 20th July 2020 and made resolutions which led to the suspension of the claimant. The respondents referred to their Annexure CKL 9 Members of the meeting held on 20/7/2020 and it shows 13 members were present and 5 were absent.

59. The respondents have however not attached any duly signed attendance list of members who attended this meeting.

60. The claimants further submitted that 6 members of BCC namely Alice Chepkwony, Cherotich Betty, Paul K. Langat, Judith Chelangat, Reuben Kirui & Kiprono Yegon have sworn affidavits on 14/3/2020 disassociating themselves with the meeting held on 20/07/2020 and or voting on the said meeting. These affidavits have not been recanted and/or challenged by the respondents.

61. In view of these affidavits by the members who were said to have attended the meeting denying the same, it follows that any resolution passed therein fall short of the required standards for want of quorum.

62. Other than quorum the claimants indicated that they were not given any notice to attend the meeting and were thus condemned unheard.

63. There are no annexed notices served upon the claimant showing they were notified of the meeting to discuss their conduct. This shows that the claimants were condemned unheard and rule of natural justice flouted.

64. The 4th respondent filed a replying affidavit sworn by Daniel Turop KNUT Branch Vice Chairman on 13/8/2020 and indicated that no notices were issued to him and therefore he didn't attend the meeting of 20th July, 2020.

65. 5th & 6th respondent's defence was a mere denial.

66. Having considered the evidence and submissions herein, I find that indeed the suspension of the claimants was made unprocedurally and the claimants condemned unheard.

67. The decision is therefore annuity and I find it so. I therefore allow the claim as prayed as follows;

a) A declaration that the purported Kericho KNUT Branch Executive meeting(BEC) held on or about 20th July 2020 was unlawful and the resolutions passed thereon to suspend and any subsequent suspension of the Branch executive secretary Mr. Stanley K. Mutai, the Branch Chairman Mr. David K. Rono and the branch treasurer Mr. Gedion K. Mugun and the appointments made and or elections purportedly conducted therein of Mr. Christopher K. Lelgo as the acting branch Executive secretary, Mr. Paul K Bett as the acting Branch Chairman and Simon K Serem as the acting branch treasurer were unlawful and against the Union constitution and thus null and void ab initio and the same be nullified and or quashed.

b) A declaration that any decision of change of officials of the union made on or about 20th July 2020 by the registrar of trade unions and any extract of officials of the Kericho KNUT Branch , issued subsequently and as a consequence of the resolution of the purported Kericho KNUT Branch Executive meeting(BEC) held on 20th July 2020, to suspend the Branch Executive secretary Mr. Stanley K. Mutai, the Branch chairman, Mr. David K. Rono and the Branch Treasurer Mr. Gedion K. Mugun and the appointments made and or elections purportedly conducted therein of Mr. Christopher K. Lelgo as the acting Branch Executive secretary, Mr. Paul K Bett as the acting Branch Chairman and Mr. Simion K. Serem as the acting Branch Treasure, is unlawful and the same be nullified and or quashed.

c) A mandatory injunction restraining the registrar of the trade union from registering any purported changes of the officials of the said Knut Kericho Branch made on or about 20th July, 2020.

d) A mandatory injunction restraining Mr. Christopher K. Lelgo as the acting Branch executive secretary, Mr. Paul K Bett as the acting Branch Chairman and Mr. Simion K. Serem as the acting Branch Treasurer and or any other Branch officials(s) purportedly appointed and elected during the purported BEC Meeting of or about 20th July 2020 and or listed in any form “Q” generated on or about 20th July 2020 from assuming and or holding office and discharging their duties and functions as acting officials of the said KNUT Kericho Branch.

e) The respondents will pay costs of the suit.

Dated and delivered in open Court this 4th day of March, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Rakoro for the Claimants – present

Respondents - absent