



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO E001 OF 2021

STANLEY KIPKURUI MUTAI.....1ST CLAIMANT

CAXTON M. MIUNGI.....2ND CLAIMANT

TOM KITTU GWENGWELE.....3RD CLAIMANT

-VERSUS-

KENYA NATIONAL UNION OF TEACHERS.....RESPONDENT

RULING

1. Before this Court is the Claimants Application dated 18th January, 2021 filed through the firm of Rakoro and Company Advocates seeking the following Orders;-

- a) That this Application be certified as urgent, service be dispensed with and the application be heard ex parte in the first instance.
- b) The Clause of the circular from Kenya National Union Of Teachers (KNUT) dated 18th December, 2020, directing that the members and or officials of the union due to retire are not eligible to contest in the ongoing KNUT General Elections be suspended, pending hearing and determination of the application.
- c) The Clause of the circular from Kenya National Union Of Teachers (KNUT) dated 18th December, 2020, directing that the members and or officials of the union due to retire are not eligible to contest in the ongoing KNUT General Elections be suspended, pending hearing and determination of this suit.
- d) The KNUT Branch Elections for Kaloleni set for 6th February 2021, Meru central set for 13th February 2021 and Kericho set for 13th March 2021 and the National Elections to be held from 1st April 2021 to 31st June 2021 be suspended pending the hearing and determination of this Application.
- e) The KNUT Branch Elections for Kaloleni set for 6th February 2021, Meru central set for 13th February 2021 and Kericho set for 13th March 2021 and the National Elections to be held from 1st April 2021 to 31st June 2021 be suspended pending the hearing and determination of this Suit.
- f) A declaration that the KNUT circular dated 18th December 2020 and any letter from KNUT, directing that the members and or official of the union due to retire are not eligible to contest in the ongoing KNUT General elections is unlawful and against the Union's Constitution and thus null and void *ab initio* and the same be nullified and or quashed.
- g) The costs of this Application be provided for and be met by the Respondent.

2. The Claimants application is supported by the following grounds and the supporting affidavit of the 1st Claimant, Stanley Kipkurui Mutai who is the KNUT Executive Secretary Kericho Branch.

- i. The Claimants are the registered officials of the Kenya National Union of Teachers (KNUT) holding positions of Executive Secretaries of Kericho, Meru Central and Kaloleni Branches Respectively.

ii. The Claimants aver that they were employed by their Respective Branches as full time employees by virtue of their positions as the Branch Executive Secretaries as provided for under Article X(5) of KNUT Constitution.

iii. The claimants state that, the registrar of Trade Unions has announced the elections of all trade unions for 2021 vide their letter of 25th September 2020. Consequently KNUT has indicated that the branch and national elections would be held from 4th January, 2021 to 30th June 2021.

iv. The Claimants aver that they intend to defend their respective seats as per the provisions of section 4 and 34 of the Labour Relations Act and Article X (A), 3 & 4 (C) 1&3 (D), Article XVIII (E) of the KNUT Constitution 2015.

v. Article X (D) 1& 4 of the KNUT Constitution provides that except as otherwise herein expressly provided, all officers of the branches shall be elected after Five years by secret ballot at a branch general meeting. Every Branch officer of the union shall vacate his/ her office on the expiry of Five years, but shall be eligible for re-election.

vi. The KNUT Branch elections for Kaloleni are set for 6th February, 2021, Meru Central is set for 13th February, 2021 and Kericho is set for 13th March, 2021.

vii. The Claimants aver that on 18th December, 2020 the Respondent released a circular to all Knut Branch Executive Secretaries indicating that “The election to office is a five year term, hence those due to retire are NOT ELIGIBLE to contest and they shall be informed accordingly”.

viii. Subsequently, the Secretary General of KNUT, Hon Wilson Sossion wrote a letter on 14th December, 2020 addressed to the 2nd Claimant issuing him with a 2months Notice of compulsory retirement leave on grounds of age and indicated that the 2nd Claimant do proceed on terminal leave with effect from 1st January, 2021 to 13th February, 2021.

ix. On 6th January, 2021, The Secretary General of the Union wrote to the assistant Executive Secretary, Kericho Branch, instructing him to inform the 1st Claimant herein that he was not eligible to contest the KNUT Elections as he was due to retire and instructed he be given Notice of compulsory retirement of 6 Months.

x. The Claimants aver that they have not attained the age of 60 years as they are aged; 58 years, 59 years and 59 years respectively and have annexed their Identification documents. Further, that Article XVIII(E) of the Union Constitution provides that a Union officer shall cease to hold office at the age of 60 years.

xi. They allege that the secretary General of KNUT has no power or mandate to issue Notices of compulsory retirement on age grounds or otherwise and that such powers is vested upon the Branch chairman and notices is for a period of 6 Months as provided by the Union Constitution.

xii. Article VII (A) of the Union Constitution provides that there shall be convened annually in the month of December, at such date and place as may be fixed by the National Executive Council, an Annual Delegates Conference of the Union, the Supreme authority of the Union and its decisions shall be final and binding on all members.

xiii. The claimants aver that the Union Constitution does not bar any member due to retire from contesting for any Union position therefore contend that the circular intending to bar some members due to retire from contesting for the upcoming KNUT elections is null and void *ab initio*.

xiv. The Claimants further state that the letter of 6th January, 2021 indicated that the 1st Claimant herein was under suspension pursuant to a special resolution passed in a meeting held on 20th July, 2020, however, the meeting was rescinded by the resolution passed in a subsequent meeting held by Kericho Branch on 13th October, 2020.

xv. Finally the Claimants urged this Court to declare that the Circular and subsequent letters issued by the Secretary General of the Respondent allegedly barring the claimants from contesting their seat is unlawful, null and void.

3. The Respondent filed their memorandum of Appearance through the firm of Oraro & company advocates on 26th January, 2021 but has not challenged this application, neither have they filed any submissions as directed by this Court.

THE CLAIMANTS SUBMISSIONS.

4. The Claimants submitted that the Respondent acted without authority in issuing a circular dated 18th December, 2020 intended to bar them from contesting and or defending their seats in the upcoming KNUT election on the ground that they are about to retire.

5. The Claimants submitted that Section 4(2) of the Labour Relations Act provides for the rights of employees in a trade union which states that;-

Every member of a trade union has the right, subject to the constitution of that trade union to—

a) participate in its lawful activities;

b) participate in the election of its officials and representatives;

c) stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and

d) Stand for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the provisions of this Act or a collective agreement.

6. Section 34 (1) and (2) on the other hand provides that;

I. The election of officials of a trade union, employers' organisation or federation shall be conducted in accordance with their registered constitutions.

II. The constitution of a trade union, employers' organisation or federation shall—

a) Not contain a provision that discriminates unfairly between incumbents and other candidates in elections; and

b) Provide for the election, by secret ballot, of all officials of a trade union at least once every five years.

7. The Claimants submitted that they are eligible to contest and defend their seat as they are qualified under Article X (C)(3) of the Union Constitution by dint of being qualified teachers and registered KNUT members.

8. The Claimants submitted that Article X (A) 3& 4 of the KNUT Constitution mandates each branch to elect its own officers who shall be elected every five years by secret ballot and that the outgoing officers shall be eligible for re-election.

9. The Claimants submitted that Article III 1 and 9 of the KNUT Constitution provides for qualification of joining KNUT; that one has to be a registered teacher, pay entrance fees as provided for in the rules together with other levies stipulated by the various branches. Consequently, one ceases to be a member of the union upon resignation and or retirement.

10. Article XVIII (E) of the KNUT Constitution provides that any union official shall cease to hold office; upon attaining the age of 60 years, upon resignation by notice in writing to the National Executive Council (NEC) OR Branch Executive Committee (BEC), dies or is removed by a 2/3 majority vote at an annual general delegates conference (ADC) or special conference.

11. They submitted that on 14th December, 2020 the secretary General of the Respondent wrote to the 2nd Claimant and issued him with a 2 Months notice on Compulsory retirement leave on age grounds commencing 1st January, 2021 to 13th February, 2021.

12. Subsequently on 6th January, 2021 the Secretary General of the Respondent wrote another letter to the Assistant Executive Secretary Kericho branch stating that the 1st Claimant herein was not eligible to contest in the upcoming KNUT election on age basis and directed that he be issued with 6 months compulsory retirement leave.

13. The Claimants submitted that the purported blocking of the claimants from contesting the upcoming election is ill founded as the Secretary General of the Respondent who issued the said notices was not mandated in any way by the KNUT Constitution or any other law to issue the said letters blocking individual who are about to retire from contesting the upcoming elections.

14. The Claimants submitted that there is no provision in the KNUT Constitution or otherwise that bars members of a trade union from contesting for election when they are about to retire. Further that the Secretary Generals' decision is null and void for want of authority. Counsel indicates that it is only Annual General Conference (ADC), the Union supreme organ, which can make such decision and its decisions are final and binding on all members as provided for under Article VII (A) 1-2 of the KNUT Constitution.

15. The Claimants submitted in conclusion that, the Respondent acted contrary to Article 41 of the Constitution of Kenya by its decision to bar the claimants from contesting the upcoming Union Election and thus urged this Court to allow their application as prayed.

16. I have examined the averments of the parties herein. I note that this application is not contested by the respondents. I also note that on the face of it, the applicants have established that they have a prima facie case to warrant issuance of the orders sought herein for the reason that the respondent's actions are directly in contention of their constitution which indicates that the election shall be conducted fairly and without discrimination. There is no provision that those due to retire shall not participate in elections. There is no indication that the applicants have already reached their retirement age which would deter them from participating in the upcoming elections.

17. I therefore find the application by the applicants is merited and allow the application in terms of prayers No. (c), (e) and (f) as follows:-

a) The Clause of the circular from Kenya National Union Of Teachers (KNUT) dated 18th December, 2020, directing that the members and or officials of the union due to retire are not eligible to contest in the ongoing KNUT General Elections be suspended, pending hearing and determination of this suit.

b) The KNUT Branch Elections for Kaloleni set for 6th February 2021, Meru central set for 13th February 2021 and Kericho set for 13th March 2021 and the National Elections to be held from 1st April 2021 to 31st June 2021 be suspended pending the hearing and determination of this Suit.

c) A declaration that the KNUT circular dated 18th December 2020 and any letter from KNUT, directing that the members and or official of the union due to retire are not eligible to contest in the ongoing KNUT General elections is unlawful and against the Union's Constitution and thus null and *void ab initio* and the same be nullified and or quashed.

d) Costs of this application will be in the cause.

Ruling delivered virtually this 4th day of March, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Rakoro for the Claimants/Applicants - present