



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. E009 OF 2021

EMILY MITO BARASA.....CLAIMANT

v

ISAACK SHIMAKA (sued as the Treasurer

KENYA NATIONAL UNION OF TEACHERS

KAKAMEGA NORTH BRANCH.....1st RESPONDENT

KENYA NATIONAL UNION OF

TEACHERS, KAKAMEGA NORTH BRANCH.....2nd RESPONDENT

KENYA NATIONAL UNION OF TEACHERS.....3rd RESPONDENT

JUDGMENT

1. Emily Mito Barasa (the Claimant) instituted these proceedings against Isaac Shimaka, the Kenya National Union of Teachers, Kakamega North Branch and the Kenya National Union of Teachers (the Respondents) on 27 January 2021, alleging that her suspension as Branch Treasurer and the appointment of the 1st Respondent as Branch Treasurer by Hon. Wilson Sossion, the Secretary-General of the Kenya National Union of Teachers, on 14 August 2020 contravened the Union's Constitution.

2. The Claimant sought the following remedies:

(i) A declaration that the decision of change of officials of the Union made on or about 14/8/2020 by the KNUT Secretary-General Hon Wilson Sossion in suspending the Claimant and appointing the 1st Respondent ISAAC SHIMAKA to be the Branch Treasurer is unlawful and against the Union Constitution, and the same be nullified and or quashed.

(ii) A mandatory injunction restraining MR ISAAC SHIMAKA, the purported Branch Treasurer purportedly appointed by the Secretary-General of KNUT, Hon Wilson Sossion, on or about 14/8/2020 from assuming office and or holding office and discharging his duties and functions as an acting official of the said branch of the Union.

(iii) Costs of this Claim be paid by the Respondents.

3. On the same day, the Claimant filed a Motion under a certificate of urgency seeking interlocutory relief.

4. When the Motion came up for directions on 3 February 2021, the Court directed that it would be taken together with the Cause.

5. The Court gave comprehensive directions on the filing and exchange of pleadings and submissions ahead of the delivery of judgment today.

6. The Respondents did not file a Response on (should have been filed and served before 10 February 2021), and the Court will therefore treat the Cause as undefended.

7. The parties did not file submissions.

Evaluation

8. The Court has considered the record and identified one primary question for determination, whether the Secretary-General could lawfully suspend the Claimant and appoint an acting Branch Treasurer.
9. In purporting to suspend the Claimant on 14 August 2020, the Secretary-General invoked section 14(5) and Article 14(5) of the Union's Constitution. The suspension letter indicated that the decision was unanimous.
10. The Court has keenly perused the Constitution of the union. Article 14(5) does not vest any suspension powers on the Secretary-General. It establishes certain acts of professional misconduct and discipline.
11. The relevant provision on the suspension of branch officials is Article X(C)(5)(l) of the Union's Constitution.
12. Under the Article, the power to suspend a branch official is reposed to the Branch Executive Council. The decision is, however, subject to ratification by the Branch General Meeting. An appeal to the National Executive Council is provided for.
13. Absolutely no material was placed before the Court to suggest that the Branch Executive Council met and decided or recommended that the Claimant be suspended or be replaced.
14. The Court, therefore, has no hesitation in concluding that the Secretary-General exceeded or exercised a mandate he did not have.

Conclusion and Orders

15. It is in the public domain that it is the season for trade union elections currently and that the Claimant's term would have naturally come to an end at the elections.
16. In light of the foregoing, the order which recommends itself to the Court and which the Court hereby issues is that;

(i) A declaration be and is hereby issued that the suspension of the Claimant as Branch Treasurer and appointment of the 1st Respondent made on or about 14/8/2020 by the KNUT Secretary-General Hon. Wilson Sossion was/is unlawful and against the Union's Constitution, and the same is nullified

17. The parties did not file submissions. The Court makes no order on costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 3rd day of March 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Rakoro & Co. Advocates

For Respondents SMS Advocates, LLP

Court Assistant Chrispo Aura