



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE NO. E008 OF 2021

JUSTINE PENINA MUSUMBACLAIMANT

v

KENYA NATIONAL UNION OF TEACHERS

BUSIA BRANCH1st RESPONDENT

KENYA NATIONAL UNION OF

TEACHERS 2nd RESPONDENT

JUDGMENT

1. Justine Penina Musumba (the Claimant) instituted these proceedings against the Kenya National Union of Teachers, Busia Branch and the Kenya National Union of Teachers
2. (the Respondents) on 27 January 2021, alleging that her suspension as Branch Women Representative by Hon. Wilson Sossion, the Secretary-General of the Kenya National Union of Teachers, on 14 August 2020 contravened the Union's Constitution.
3. The Claimant sought the following remedies:
 - (i) A declaration that the decision of change of the Union's officials made on or about 14/8/2020 by the KNUT Secretary-General Hon Wilson Sossion in suspending the Claimant as the Women Representative, KNUT BUSIA Branch is unlawful and against the Union Constitution, and the same be nullified and or quashed.
 - (ii) Costs of this Claim be paid by the Respondents.
4. On the same day, the Claimant filed a Motion under a certificate of urgency seeking interlocutory relief.
5. When the Motion came up for directions on 3 February 2021, the Court directed that it would be taken together with the Cause.
6. The Court gave comprehensive directions on the filing and exchange of pleadings and submissions ahead of today's delivery of judgment.
7. The Respondents did not file a Response (should have been filed and served before 10 February 2021).
8. The parties did not file submissions.

Evaluation

9. The Court has considered the record and identified one primary question for determination, whether the Secretary-General could lawfully suspend the Claimant from her elective position of Women Representative.
10. 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.
11. 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.

12. The relevant provision on the suspension of branch officials is Article X(C)(5)(l) of the Constitution.
13. 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.
14. 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.
15. The Court, therefore, has no hesitation in concluding that the Secretary-General exceeded or exercised a mandate he did not have.

Conclusion and Orders

16. It is in the public domain that it is the season for trade union elections currently, and the Claimant's term would have naturally come to an end at the elections.
17. 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 Women Representative, Busia Branch 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.
18. No order on costs due to failure to comply with Court directions.

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