



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. E011 OF 2021

ALFRED OMONDI OUMA.....1st CLAIMANT

BEN OPIYO OBUDHO.....2nd CLAIMANT

v

KENYA UNION OF SUGARCANE

PLANTATION & ALLIED WORKERS.....1st RESPONDENT

FRANCIS B. WANGARA.....2nd RESPONDENT

MICHAEL OCHIENG GOMBE.....3rd RESPONDENT

COUNTY LABOUR OFFICER, KISUMU.....4th RESPONDENT

MICHAEL ABIERO OGALO.....5th RESPONDENT

BENARD OCHIENG ABUTO.....6th RESPONDENT

ALLOYCE OTIENO OWERE.....7th RESPONDENT

ELLY ONYANGO ODERO.....8th RESPONDENT

KIBOS SUGAR & ALLIED INDUSTRIES LIMITED.....9th RESPONDENT

REGISTRAR OF TRADE UNIONS.....10th RESPONDENT

HON ATTORNEY GENERAL.....11th RESPONDENT

RULING

1. Alfred Omondi Ouma and Ben Opiyo Obudho (the applicants) instituted these legal proceedings against the Respondents, alleging that the elections for officials of the Kenya Union of Sugar Plantation & Allied Workers, Kibos Factory branch held on 16 January 2021 were unlawful.

2. The applicants sought the following remedies:

(i) A declaration that the purported election of officials of the Kenya Union of Sugar Plantation & Allied Workers, with particular regard to Kibos Sugar & Allied Industries (KSAIL) factories branch, held on 16-01-2021, is unlawful, null, and void *ab initio*.

(ii) A permanent injunction barring the 1st, 2nd, 3rd, 4th, 9th and 11th Respondents from receiving, registering, recognising and/or in any way dealing with the 3rd, 5th, 6th, 7th and 8th Respondents as duly elected officials, officers and/or representatives of the 1st Respondent, with particular regard to Kibos Sugar & Allied Industries (KSAIL) factories branch or in any way whatsoever.

(iii) A permanent injunction barring the 3rd, 5th, 6th, 7th and 8th Respondents from holding themselves out as elected officials of the

1st Respondent with particular regard to Kibos Sugar & Allied Industries (KSAIL) factories branch or in any way whatsoever representing the 1st Respondent and its members in any negotiations.

(iv) A mandatory order compelling the 1st, 2nd, 3rd and 4th Respondents to convene a special general meeting of the members of the 1st Respondent with particular regard to Kibos Sugar & Allied Industries (KSAIL) factories branch, to consider the agenda on the existence, in fact, the operations and the subscription of members of the branch and to make decisions thereon through secret balloting for onward transmission and consideration by the 1st Respondents National Executive Board and the 4th, 9th and 11th Respondents.

(v) A mandatory order compelling the 1st, 2nd, 3rd and 4th Respondents to commence afresh the process of organising and conducting elections for officials of the 1st Respondents with particular regard to Kibos Sugar & Allied Industries (KSAIL) factories branch in strict adherence to the law and the 1st Respondents registered Constitution and Rules.

(vi) Costs be awarded in favour of the 1st and 2nd Claimants.

(vii) Any other reliefs as this Honourable Court may deem fit and expedient.

3. Filed at the same time was a Motion under a certificate of urgency seeking orders:

(i) ...

(ii) ...

(iii) **THAT** pending the hearing of this suit, a temporary injunction be and is hereby issued barring the 1st, 2nd, 3rd, 4th, 9th and 11th Respondents from receiving, registering, recognising and/or in any way dealing with the 5th, 6th, 7th and 8th Respondents as the duly elected officials, officers and/or representatives of the 1st Respondent with particular regard to Kibos Sugar & Allied Industries (KSAIL) factories branch or in any way whatsoever.

(iv) ...

(v) **THAT** pending the hearing of the main suit, a temporary injunction be and is hereby issued barring the 3rd, 5th, 6th, 7th and 8th Respondents from holding themselves out as elected officials of the 1st Respondent with particular regard to Kibos Sugar & Allied Industries (KSAIL) factories branch or in any way whatsoever representing the 1st Respondent and its members in any negotiations.

(vi) ...

(vii) **THAT** costs be awarded in favour of the 1st and 2nd Claimants.

(viii) **THAT** any other reliefs as this Honourable Court may deem fit and expedient be granted.

4. On 1 February 2021, the applicants filed an Amended Notice of Motion and Amended Statement of Claim.

5. The Court gave directions on the Motion on 4 February 2021, and as a result, the following was filed:

(i) Amended Statement of Claim on 1 February 2021.

(ii) Response to the Motion by the 1st, 2nd, 3rd, 5th, 6th, 7th and 8th Respondents on 16 February 2021.

(iii) Further affidavit by 1st Claimant on 26 February 2021.

(iv) Replying affidavit by Registrar of Trade Unions on 3 March 2021.

(v) Submissions and authorities by the applicants on 12 March 2021.

(vi) Further affidavit by 1st Claimant on 12 March 2021.

(vii) Submissions by the 1st, 2nd, 3rd, 5th, 6th, 7th and 8th Respondents on 22 March 2021.

(viii) Submissions by the 4th, 10th and 11th Respondents.

6. The Court has considered the amended Motion, affidavits and submissions.

7. The applicants were seeking temporary injunctive interdicts pending the hearing and determination of the Cause on the merits.

8. The test to be met in order to get a temporary injunctive relief was set out long ago in *Giella v Cassman Brown & Co Ltd* (1973) EA 358 as follows:

First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.

9. In paragraph 16 of the 1st applicant's supporting affidavit, he deposed

THAT I know of my own that members of the 1st Respondent, including the 2nd Claimant and myself, organised in the Branch within the 9th Respondent's factories in Kibos area on 12-02-2020 duly instructed the 9th Respondent to terminate forthwith any further check-off deductions from their salaries and wages as was previously made for the benefit of the Union (attached hereto marked D001 – D007 are copies of the duly signed instructions to the 9th Respondent).

10. Further, in paragraphs 22 and 23 of the affidavit, it was deposed:

22. THAT I know of my own knowledge that I, the 2nd Claimant and other members of the 1st Respondent raised with the 2nd and 3rd Respondents concern that the intended elections would be a violation of the law, especially section 33(c) of the Labour Relations Act, CAP 14 of 2007 which prescribes that no person shall be a voting member of a union if that persons 'subscriptions are more than thirteen weeks in arrears'' and section 34(1) of the said Act which provides that the election of the officials ' shall be conducted in accordance with their registered constitution'' (attached hereto marked H001 is a copy of a letter from a member of the Union to the 2nd Respondent dated 14-01-2021).

23. THAT I know of my own knowledge that I, the 2nd Claimant and other members of the 1st Respondent raised with the 2nd and 3rd Respondents concerns that the intended elections would be in violation of Rule 3(d) of the registered Kenya Union of Sugar Plantation and Allied Workers Constitution and Rules, as amended in 2011 which provides that "" no member shall be eligible for voting in any meeting of the union if arrears of his contribution to the union exceed (3) months.

11. The applicants own depositions, and the case suggests that they may not be members of the union whose elections they impugn since they had given instructions 1-year earlier to their employer to stop deduction of union subscriptions from their wages.

12. It is, therefore, open for debate if the applicants can competently challenge elections of the Union. The determination of that must, however, await the hearing on the merits.

13. The record also indicates that the officials the applicants want barred from holding themselves as officials of the Union were registered as such officials by the Registrar of Trade Unions on 16 January 2021, some 2-weeks before the applicants moved the Court, and there is no direct challenge to their registration.

14. The applicants did not take cognisance of this state of affairs when they filed the Amended Motion and Amended Statement of Claim on 1 February 2021.

15. Lastly, the applicants did not demonstrate any loss they stood to suffer if the orders sought were not granted.

16. In the view of the Court, the applicants have not met the threshold for the grant of the orders sought.

17. The Amended Motion is dismissed with costs to the Respondents.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 12TH DAY OF MAY 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicants Joshua Odhiambo Nyamori Advocate

For 1st, 2nd, 3rd, 5th, 6th, 7th & 8th Respondents Lincoln A Isagi, Industrial Relations Officer

For 4th, 10th & 11th Respondents Janet Langat, Deputy Chief Litigation Counsel

For 9th Respondent Onsongo & Co. Advocates

Court Assistant Chrispo Aura