



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. E210 OF 2021

KENYA PETROLEUM OIL WORKERS UNION.....1STCLAIMANT

RAPHAEL OLALA.....2NDCLAIMANT

VERSUS

REGISTRAR OF TRADE UNION.....RESPONDENT

JUDGEMENT

The claimant is seeking the following orders:

- a) The respondent be compelled to conduct and/or allow the 1st claimant to conduct fresh National Elections under strict adherence to the Unions Constitution and Labour Relations laws.*
- b) Permanent Order restraining the respondent from making any changes to the 1st claimant register as a result of the aborted National elections held on 6th March, 2021.*
- c) An order declaring a sham election that is; Nairobi Branch elections conducted on 20th February, 2021 and aborted National Elections of 6th March, 2021 a nullity.*
- d) Order compelling the respondent to conduct a fresh Nairobi Branch Elections in strict adherence to the 1st claimant constitution and Labour Relations Law.*
- e) Order compelling the respondent to deregister changes made to the 1st claimant Nairobi Branch register as a result of the elections conducted on 20th February, 2021.*
- f) An order as to costs.*

The claim

The 1st claimant is a registered trade union. The 2nd claimant is the national general secretary of the 1st claimant. The respondent is the tasked with regulation and registration of trade unions under the Labour Relations Act, 2007 (the Act).

The 1st claimant organised an Annual Delegates Conference (ADC) on 6th March, 2021 at Tom Mboya Labour College – Kisumu with the purpose of conducting a national elections as per the directives of the respondent. The national election was to be conducted upon conclusion of the branch elections and strict adherence to the 1st claimant’s constitution and under the supervisor of the respondent, who appointed a returning officer to supervise the national elections that were scheduled for 6th March, 2021.

On the material day, the national elections did not materialize as a result of omissions that were occasioned by the respondent’s agent, the returning officer who contrary to Rule 7.3 of the 1st claimant constitution declined to allow the claimant’s union organising secretaries to vote in the national elections without any justification and despite being delegates.

The returning officer further made a decision to allow non-delegates, candidate’s supporters and goons into the voting hall contrary to the law that only the delegates should be at the hall for the purpose of voting so as to ensure a free and fair elections. By the returning officer

allowing non-delegates, there was tension, Chaos and finally violence. This disrupted the elections before completion and the returning officer prematurely left the venue without the national elections being conducted and concluded.

The returning officer deliberately failed to allow eligible delegates/voters to register their details in the attendance list before voting to ensure accountability and fairness in the process. This commission was deliberate so as to allow stranger access the voting hall contrary to the law. The election was interrupted offering delegates at the ADC to abandon the meeting and despite the elections begin aborted the returning officer gave a report to the effect that only the National General Secretary election was conducted despite the disruptions during voting.

The 1st claimant elections include other officers/positions and which forms part of the national elections and it cannot have been held for one office. No election was conducted and the intention of the returning officer's report is with malice.

The claim is also that the respondent has acted unlawfully in effecting changes to the 1st claimant Nairobi branch official register despite numerous protests from the 1st claimant and its members. The register and list of members under to conduct the Nairobi branch elections were bloated to include non-members of the union in addition to members from other branches and hence irregular.

Members objected to the Nairobi branch elections but the respondent ignored and proceeded to allow them to attend at the national elections and despite notice dated 23rd February, 2021 and the change of register on 5th March, 2021 before the ADC and national elections on 6th March, 2021.

The respondent registered a total of 7 delegates from Nairobi branch contrary to the maximum of 5 as allowed under the union constitution and should therefore be ordered to stop the registration as such affects the national elections for the union. The respondent interfered with the union elections contrary to article 41(2) of the Constitution and the Act and should not be allowed to change the register.

Maurice Otieno and assistant national general secretary of the 1st claimant testified for the 1st claimant that he was invited to attend and participate in the ADC with the sole purpose of election national officials. Together with other union delegates they observed the returning officer misconduct self during the national union elections and who refused them to sign the register to confirm attendance as per procedure and followed to allow strangers into the election venue. The presence of strangers led to them being rowdy and disputed elections and it was not possible to ascertain who had won or lost due to violence.

Mr. Otieno also testified that he belongs to the Mombasa branch and the branch secretary Godfrey Kaimenyi among many other members from other branches appeared under Nairobi branch register thereby bloating Nairobi branch number of 5 delegates to 7. This was contested but the respondent ignored. His protests to the returning officers about the marred election process was not considered and the orders sought should issue.

The 2nd claimant, Mr. Olala testified that he is the national general secretary of the 1st claimant and for the elections he was the incumbent defending his position. During the national elections on 6th March, 2021 he raised objections with the returning officer with regard to the manner the election process was being undertaken but who failed to take heed.

The organizing secretaries were denied the right to vote while the union constitution at rule 7.3 the ADC comprises the persons who should attend and vote which includes the organising secretaries. They are eligible to vote but they were refused such right.

There is requirement that the attendance list should be signed by all those attending at the elections and the presiding officer did not allow such a process to be done. It became hard to confirm who voted.

Non-delegates were allowed access at the ADC and venue leading to access by strangers.

Mr. Olala also testified that due to violence he left the venue before the elections concluded and it was not possible to tell who the winner was as the election was not complete. There was actual violence which was witnessed by the returning officer.

Nairobi branch members raised objections with the respondent since they were entitled to 5 delegates and not 7 and following the members registered on 5th March, 2021 on the eve of the elections, this led to irregular elections results.

On the contested results, despite Mr. Olala defending his position, his name does not appear on the list of persons who voted or as a contestant and the number of votes here got. There is no tally save for those who won. The respondent got a report that there was violence at the elections and despite the obvious irregularities, this was not acted upon. The violence was reported at Kisumu County Labour Officer and the police were present who witnessed the violence but the returning officer proceeded to announce results which should be stopped and not registered. There should be a call for fresh elections.

Mr. Olala also testified that following the violence at the elections venue, no report was made to the police since they also witnessed the violence.

Mr. Olala also testified that the Nairobi Branch elections were a sham as non-members and members from other branches were allowed to participate and vote contrary to the union constitution. As a result, non-members of the branch were elected as officials to which Solomon Juma is a non-member and under agency fee was elected as treasurer. The respondent proceeded to register 7 instead of 5 officials for Nairobi contrary to the union constitution.

Response

There was no defence filed and the respondent relied on the Replying affidavit of E. N. Gicheha the Registrar of Trade Unions and who avers that the mandate of the respondent is to register and regulate trade union and employer organizations/federations.

On 25th September, 2020 the office issued a circular directing all trade unions to carry out elections between 4th January, and 31st June, 2021. On 3rd March, 2021 the respondent made decision on the eligibility of organizing secretaries and national educational officers in the voting exercise which decision is not challenged.

Ms. Gicheha also avers in reply that in compliance with the respondent's directive, the 1st claimant head office held its elections on 6th March, 2021 at Tom Mboya College, Kisumu and on 8th March, 2021 there were objections received from the 2nd claimant and others. The labour report from the presiding officer and a Notice of Change of Officers/officials (Form Q) for the 1st claimant was also received.

On 9th March, 2021 the respondent wrote to the presiding officer inquiring on the issues raised in the objection letters and on 10th March, 2021 there was a response denying the allegations and on the same date the respondent was served with a Court Order herein. By the time the Order was served, the respondent had not made any decision on the matter.

The election of the 1st claimant Nairobi branch were registered on 5th March, 2021 and any aggrieved person should lodge an appeal against the decision in accordance with section 30 of the Act. Upon ensuring from the presiding officer, the respondent found no justifiable cause to refuse registration of the election results. The claims made herein should be dismissed with costs.

At the close of the hearing, the parties filed written submissions.

The 1st claimant submitted that organising secretaries and director of organization were entitled to vote pursuant to section 34 of the Act as allowed under the union constitution and as held in the case of **Kenya National Union of Nurses v Registrar of Trade Unions & 8 others [2016] eKLR**. In conducting elections, a trade union is guided by its constitution. In the case of **Philip Mutua Misi & another v Joshua Kimeu & 3 others [2017] eKLR** the court held that section 34 of the Act is clear that the elections of trade union officials must be conducted in accordance with the union's constitution.

The 1st claimant constitution under Rule 7.3.1, 12.8.3, and 13.2 provides that organizing secretaries and director of organization are part of the national delegates. All national delegates are to participate in the ADC hence mandated to make decisions during the conference which includes the right to vote and the organizing secretaries and director of organizations are entitled to vote during the ADC. This has been the case in previous elections and the refusal by the returning officer to allow voting annulled the elections. In **Philip Mutua Nisi & another v Joshua Kimeu & 3 others [2017] eKLR** the court held that any trade union election done contrary to the registered union's constitution is null and void.

The 1st claimant should be allowed to conduct proper elections as per its constitution and without interference by the respondent. The elections held on 6th March, 2021 were unlawful and no changes should be effected by the respondent as there was failure to adhere to the law and the union constitution. In **Julius Macharia Maina v Kenya Building, Construction, Timber & Furniture Industries Employees Union & 3 others [2016] eKLR** the court held that elections should be democratic and trade union elections are regulated in law and under the Union's constitution.

In this case the attendance register of voters to verify the persons who attended the elections is lacking. Under Rule 7 of the constitution only national delegates are allowed to participate in election of national officials but the respondent through the returning officer allowed third parties to vote. Such register and list of participants has not been produced. The credibility of the elections is therefore in question and should be repeated.

The 1st claimant also submitted that delegates were locked out and denied the opportunity to vote as required under section 34 of the Act and the union constitution. Rule 7.3.1, rule 12.8.3 and rule 13.2 of the constitution provides that organising secretaries shall vote as part of the national delegates.

The voting process and announcement of results was challenged and it was not possible to tell who won or who lost. No results were announced by the returning officer.

The returning officer filed a contradictory report when the returning officer wrote in the report that all results were counted and various parties had photos of purported results. No photos have been filed and following violence witnessed at the venue, it is not possible that any announcement of winners or losers was done.

The allegations that the agents were present and they signed against the results but the returning officer failed to submit any report in this regard. Failure to produce such critical evidence is tantamount to admission that the same does not exist as held in **Robert Masese & 2 others v Tailors & Textiles Workers Union [2013] eKLR**. In this regard no national elections of the 1st claimant were held or announced. The Kisumu County Labour Officer confirmed that vote counting was disrupted and non-delegates were allowed at the venue disrupting the voting and counting process. And the orders sought should be issued as prayed with costs.

The 2nd claimant submitted that the elections of the 1st claimant conducted on 6th March, 2021 were not credible as held contrary to Article 81 of the Constitution, 2010. After the elections he wrote to the respondent and objected to the whole exercise with other objectors like Maurice Achoki and Maurice Otieno in protest over the elections on the grounds that the returning officer allowed non-delegates and third parties to access the voting hall which led to violence and disruption of elections.

The returning officer refused the organising secretaries to participate in the elections as required under the union constitution. This move was

deliberate to lock out voting delegates at the national elections. These matters were never resolved by the respondents and leading to an election that was not credible.

The allegations made by the returning officer in the letter dated 10th March, 2021 that the list of delegates used by the respondent was submitted by the 2nd claimant is not true as the list he provided did not contain any non-delegate and the list he submitted was pursuant to Rule 7.0 of the constitution. The ADC is well defined and the constitution of the delegates outlined. The Kisumu Labour Officer in his reported dated 12th March, 2021 confirmed there were strangers at the voting venue and who caused violence. Ineligible voters were allowed to vote hence nullifying the entire elections. Section 34 of the Act was not adhered to.

The 2nd claimant also submitted that there was a bloated register for the ADC. Apart from person allowed under Rule 7.3.0 of the constitution, each branch was allowed to send one delegate for every 100 members under Rule 7.3.2. The numbers of delegates from Nairobi were e7 instead of the 5 allowed and this led to a bloated register. Despite objections, the respondent failed to address and this led to aborted elections. The orders sought should issue with costs paid by the respondent.

The respondent submitted that the claimants have failed to exhaust all dispute resolution mechanisms before finding suit as required under section 34, 35 and 30 of the Act. The 2nd claimant moved to court on 10th March, 2021 without disclosing that he had made objections to the respondent and was pending determination and hence is without clean hands. To by-pass the respondent office is in bad faith and the claim should be dismissed as the claim is premature as held in **Cortec Mining Kenya Limited v Cabinet Secretary Ministry of Mining & 9 others [2015] eKLR**. In the case of **Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others [2015] eKLR** the court held that where a dispute resolution mechanism exists outside courts, the same should be exhausted before invoking the court jurisdiction.

The claimants have no *prima facie* case to warrant the orders sought and should be dismissed with costs.

Determination

On the pleading, evidence and written submissions, the issues which emerge for determination are;

Whether the 1st claimant should conduct fresh national elections;

Whether the respondent should be restrained from making any changes to the 1st claimant register following national elections held on 6th March, 2021;

Whether the Nairobi branch elections held on 20th February, 2021 should be conducted afresh and the respondent compelled to deregister changes thereof; and Who should pay costs.

The claimant's case is that upon the respondent calling for trade union elections, the 1st claimant and through the 2nd claimant national general secretary called for national elections for the 6th March, 2021. The respondent appointed a returning officer to supervise the elections but who failed to adhere to the rules and procedures and allowed non-delegates, candidate's supporters and third parties to access the venue and vote and which led to violence. That the returning officer did not allow eligible delegates and voters to register their details in the attendance list before voting to ensure accountability and eventually the elections aborted.

The claim is also that the respondent erroneously registered Nairobi branch delegates maliciously by having 7 instead of 5 contrary to the union constitution. Despite objections, the respondent has failed to address and the orders sought should issue.

The respondent relied on the Replying Affidavit of Ms. Gicheha the respondent and Registrar of Trade Unions whose case is that the claimants filed an objection with the office with regard to the registration of results following the 6th March, 2021 national elections and before this could be addressed a court order was served upon the office while aware that under section 34, 35 and 30 of the Act the law allow for cancellation of elections or decline to register the elections where there are valid reasons. Such facts were not disclosed to the court by the claimants who failed to exhaust the dispute resolution mechanisms available in law. The claim is premature and should be dismissed.

The defence is also that the elections of the 1st claimant Nairobi branch were registered on 5th March, 2021 and any aggrieved party should lodge an appeal against the decision of the respondent. The objections made are without justification and should be dismissed with costs and there exists no reason for the respondent to refuse registration of the election results.

By notice dated 25th September, 2020 the respondent as the legal supervisor and regulator of trade unions directed trade unions to conduct elections noting that;

RE: TRADE UNION ELECTIONS

- 1. As you are aware, section 34 of the Labour Relations Act, provides that elections for all registered trade unions, employers' organization and Federations shall be conducted at least once every five years, starting at branch level.*
- 2. Arising from the above, the term of office of officials for all trade unions, employer organization and federations is five (5) years.*
- 3. Pursuant to the provisions of the law, I would like to remind all trade unions ... last elections were held in the year 2016 and the next elections are due next year 2021. Consequently therefore, all trade unions,and their branches shall be required to carry out*

elections as follows;

· Branch elections shall be held from 4th January, 2021 to 31st March, 2021.

· National elections shall be held from 1st April, 2021 to 31st June, 2021.

4. It is imperative that all trade union, ... operate strictly within the provisions of their registered constitutions and more specifically, ensure conformity in terms of notice to all members of the date, time, ...

It was clear from the notice that the trade union elections were to adhere to the registered constitution and the law.

The respondent is the statutory office with mandate to register, regulate and manage trade unions under the Act. Upon the call for branch and national elections, this is the office that regulates the elections and filing of returns.

The 1st claimant held its national elections on 6th March, 2021 at Tom Mboya College, Kisumu and the Nairobi branch elections were held on 20th February, 2021.

From these elections there were objections made to the respondent.

With regard to the national elections, on 8th March, 2021 there were objections that;

...the returning officer failed and declined to register the attendants as usually the norm of all trade unions' elections. We protested the same but it all fell on deaf ear.

The officer allowed non voters into the elections hall where supporters of both camps became unruly and violence erupted before the elections were completed. Everyone rushed out of the hall thereby leaving the labour officers alone without agents neither contestant. They later sped off in their government registered vehicle.

*We hereby state that no elections were conducted to completion, no declaration of the winner was ever made in any contested posts.
...*

These objections are signed by 20 persons. Other objections were from Maurice Achoki and Maurice Otieno who also filed own complaints with the respondent over the same issues/matters with regard to elections held on 6th March, 2021.

The elections were presided over by Grace Mweresa, Assistant Labour Commissioner and who filed returns on 8th March, 2021 and which included the *Trade Union Elections Report* with regard to the 1st claimant.

The various positions filled included that previously held by the 2nd claimant, national General Secretary and now, George Okoth with number of votes at 23.

There is also Form Q attached with the previous office holder and the new office holder. For National General Secretary, the change noted is that Raphael Ouma Olala was replaced by George Okoth.

This is done in accordance with section 35(2) of the Act read together with the Second Schedule to the Act.

On these returns, noting the objections made, the respondent directed the Assistant Labour Commissioner and returning officer, Grace Mweresa to respond. The returning officer was particularly required to respond to the following;

... The gist of the objection is that there was violence which affected completion of election.

There are also allegations that there was no attendance register and nonvoters were allowed in the voting hall. ...

In reply made on 10th March, 2021 the returning officer noted as follows;

The allegations made by Raphael Olala are false.

The allegation No.2 that I allowed non delegates and even supporters of candidates to gain access to the voting hall is misleading as all those entering were vetted by representatives of both camps.

Mr. Raphael Olala provided the list of the delegates (App 1, a) and list of contestants (App 1) some of whom were not among the list of delegates.

There were three contestants who were not among the list of delegates but were allowed in and did not participate in voting exercise. Total number of delegates who casted their votes were 45.

There was no tension and un-rowdy behavior during the voting process. In fact m. Olala was the second person to vote. ...

The returning officer further set out the election agents for the candidates present. The 2nd claimant had James Maengwe present and he signed against the results issued.

This fact is not contested.

Further, during the hearing, upon cross-examination, the 2nd claimant testified that, during the elections, there were chaos and violence leading to disruption of election process but he did not report to anyone since the police were present. There is no report of the violence at any police station.

Violence is a serious criminal act. Where such happens in the public of private sphere and space, a report to the relevant authority is imperative. It is much more important in a case where during elections that is directed by the respondent that such conduct should occur and treated casually. There is no report to the police as the agency mandated under the constitution to ensure safety to persons and property.

The matter and allegation of violence is lost.

The above taken into account, even in the absence of the 2nd claimant as a candidate, his agent remained present and has signed against the results issued by the returning officer.

The report by the returning officer in response to the respondent upon the claimants' objections was copied to the claimants. There is no counter to the responses thereof.

The 2nd claimant in his Further Affidavit dated 30th March, 2021 has attached the report dated 12th March, 2021 by C. I. Gondosio, County Labour Officer, Kisumu and on the basis that the 1st claimant elections held on 6th March, 2021 presided over by Grace Mweresa, Assistant Labour Commissioner were marred with tension. That he had supervised another election involving Amalgamated Union of Metal Workers which was successful and he decided to attend the 1st claimant's election as an observer. That he witnessed chaos erupt and it took 30 minutes before the situation calmed down.

This officer was not the presiding officer over these elections. He happened to be a passerby. He had no business using his office to address an election he had no role over. The court takes it this was a simple busybody with nothing else to do but sought to interfere with an election the respondent had already allocated an officer to preside over, Grace Mweresa.

The official returns with regard to the 1st claimant's national elections are by the returning officer allocated. This is the officer who had authority to supervise and take note of events at the voting venue. There is a report by this officer and Form Q dully filled and filed with the respondent. Objections to the respondent were processed under the mandate of such office and there are responses.

The findings of the respondent as the statutory regulator are that the elections were conducted according to procedure. The office found no justifiable reason to refuse registration of the election results. Where the 2nd claimant lost in the elections, such should not be the sole cause that the elections were not credible. He had an agent present and who signed upon the election results. As his representative and agent, the respondent cannot be faulted.

On the returns by the returning officer on 8th March, 2021, the court finds no matter to order the respondent not to register the elections results with regard to the 1st claimant held on 6th March, 2021 pursuant to section 34 of the Act.

With regard to the attendance and participation of National organizing secretaries during the national elections, the claimants raised the matter with the respondent prior to the elections and there is an advisory, decision and directions of the respondent in this regard. The rationale of the respondent in removing such officers from voting is that these are employees and not members eligible to vote.

On 3rd March, 2021 the respondent made a decision on the eligibility of organising secretaries and national educations officer in the voting exercise. Such decision has not been challenged. The respondent noted that;

... In reference to your letter dated 26th February, 2021 in relation to the above captioned matter, I wish to inform you that under rule 12, (12.8) of the union constitution, organizing secretaries are appointed by the National Executive Council (NEC) and may be elected as full time employees. They are not eligible to vote at the Annual Delegates Conference (ADC). This effectively means that they do not necessarily have to be full time employees.

However under the provisions of Rule 11 (11.2), the constitution provides that one of the conditions for being a National official of the union is that a member must not be in arrears with their subscriptions. National officials are described under rule 12 and under sub-Section (12.8), organizing Secretaries are such national officials. The national officials must therefore be subscribing members of the union.

The only exception is where they are appointed by NEC as full time employees and where this happens, the permission to do so, must be obtained from the Registrar of Trade Unions.

The same criteria applies to the National Education Officer, the Director of Organization, being a National Official of the union, must also abide by the provisions of the Rule 12.8 aforesaid.

The presiding officer is therefore advised that the Organizing Secretaries and the national Educational officers produce evidence of either prove of membership. ...

The claimants stood directed by the respondent.

The decision of the respondent under the office is crucial. Such decision(s) on any matter is regulated in law. Section 30 of the Act requires that;

30. Appeals against decision of Registrar

Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial Court against that decision within thirty days of the decision.

Once a decision was taken on an important matter relating to the application of the 1st claimant constitution and persons/officers who could vote or not vote, such decision stood. It could only be challenged on the merits before this court in an appeal. The respondent as the regulator had addressed the facts of the matter and a decision taken. The decision cannot be circumvented and addressed after the elections where the 2nd claimant lost in the elections and challenges the same as not credible.

Far from it. A decision of the respondent exists with regard to who can vote during the 1st claimant national elections. Such decision relates to matters of fact. Only an appeal can address the decision of the respondent.

Voting of organizing secretaries and director of organization is addressed under the 1st claimant constitution. However this is a matter which was addressed with the respondent and a decision issued. There is no appeal lodged against such decision in accordance with section 30 of the Act.

To delve into such question of the respondent's advisory to the 1st claimant; this being the office legally mandated under the Act to regulate and supervise trade unions would be premature and go contrary to the rule of law. The court should be seized of all facts relating to such matter(s) as between the 1st claimant and the respondent based on the appropriate provisions of the law and the union constitution.

On the evidence before court, there is no sufficient cause to justify a fresh election of the 1st claimant. The background and cause leading to the advisory, decision and directions of the respondent on the persons who should vote at the national elections, addressed, the decision of the respondent stands.

On whether the Nairobi branch elections held on 20th February, 2021 should be conducted afresh and the respondent compelled to deregister changes thereof, the change has since been effected and new registration done on 5th March, 2021. The Nairobi branch stands as own entity pursuant to section 25 of the Act. Further, the entity of Nairobi branch of the 1st claimant union is not a party herein.

Section 25(5) of the Act requires that;

(5) No person shall act or purport to act as an official of a branch of a trade union, employers' organisation or federation if that branch is not registered or has had its registration cancelled.

Even where the 2nd claimant was the national general secretary as of 20th February, 2021 when the Nairobi branch held elections, upon the registration of the Nairobi branch on 5th March, 2021 the entity and responsibility to act was on the secretary and its officials thereof. Any dispute arising thereof cannot fall upon the 2nd claimant. To do so would be to interfere with an entity recognized and registered under the Act with rights thereof.

By returns dated 22nd February, 2021 to the respondent, the secretary for Nairobi branch is noted as;

Branch secretary, Fredrick M Machio; and Assistant secretary, Catherine Wanjihia.

Under the union constitution, Rule 22, 23 and 25 the branches are regulated.

This is the office/person defined under section 2 read together with section 25 of the Act as having the right to act for the branch. These are not enjoined as parties herein.

From the 2nd claimant's letter to the Nairobi branch secretary dated 23rd February, 2021 it is apparent to the court that the Nairobi branch elections are matters both officers addressed. Nothing was addressed with regard to how the branch secretary addressed the matter with the national general secretary, the 2nd claimant. To address the same matter herein is premature.

Where the Nairobi branch of the 1st claimant is aggrieved by the registration of branch returns following elections held on 20th February, 2021 section 30 of the Act apply. Recourse is not to urge this court to call for fresh elections. Such election has since been held and change of officials effected by the respondent. The justification for such registration cannot be challenged as the claimants have herein done.

The orders sought are found without good foundation. The 1st claimant members have exercised their democratic right and elections their

officials. There are returns filed with the respondent. The elected officials of the 1st claimant should be allowed to render service to the members. The respondent shall proceed and address the returns in accordance with the applicable law as from 6th March, 2021.

In this regard, each party should pay own costs.

Accordingly, the claim herein is found without merit and dismissed. The respondent shall proceed and register changes made to the 1st claimant pursuant to elections held on 6th March, 2021.

Delivered in open court at Nairobi this 6th day of May, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and