



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

PETITION NO 5 OF 2021

ATIE SWALEH RAMADHAN.....1ST PETITIONER

JANET MIROBI WAMAHIGA.....2ND PETITIONER

MWALIMU CHII HAMISI.....3RD PETITIONER

JOHN HUSSEIN ZAPA.....4TH PETITIONER

MATARI MWINYI MATARI.....5TH PETITIONER

OMAR MOHAMED MWADZENZE.....6TH PETITIONER

VERSUS

THE GENERAL SECRETARY,

SEAFARERS UNION OF KENYA.....1ST RESPONDENT

SEAFARERS UNION OF KENYA.....2ND RESPONDENT

THE REGISTRAR OF TRADE UNIONS.....3RD RESPONDENT

RULING

1. On 13th April 2021, the Petitioners filed a Petition challenging the election of the 1st Respondent as the 2nd Respondent's General Secretary.
2. Alongside the Petition, the Petitioners filed a Notice of Motion, under Certificate of Urgency seeking interim orders stopping elections slated for 14th April 2021 or any other date. The Petitioners also sought an order restraining the 3rd Respondent from effecting any change in the names of the registered officials of the 2nd Respondent.
3. The Motion was placed before me on 14th April 2021 and I directed the Petitioners to serve the Respondents for an *inter partes* hearing on 21st April 2021. On this date, Counsel for the Petitioners chose to abandon the Notice of Motion to pave way for hearing and determination of the main Petition. The parties were therefore directed to comply with pre-trial requirements and the matter set for mention on 25th May 2021.
4. In the meantime, the 1st and 2nd Respondents filed their own Notice of Motion dated 29th April 2021, seeking the following orders:
 - a) An order directing the Petitioners generally and severally, to hand over the office keys and office phone and/or sim card of +254743244832 belonging to the 2nd Respondent, to the 1st Respondent;
 - b) An order stopping the Petitioners from purporting to conduct the business of the 1st Respondent as its representatives, either within the Union or without.

5. The Motion is supported by an affidavit sworn by Stephen Odhiambo Owaki, who describes himself as the General Secretary of the 2nd Respondent and is based on the following grounds:

- a) That the Union offices are located in Mombasa County, in a building owned by the 2nd Petitioner;
- b) That the Union conducted its elections on 14th April 2021 and now has duly elected officials, including the 1st Respondent who is the General Secretary;
- c) That all the Petitioners do not currently hold any official position in the Union;
- d) That the Petitioners have refused to hand over the office keys and the official phone and/or sim card number +254743244832 to the 1st Respondent;
- e) That the Union has rented office space in a building owned by the 2nd Petitioner, who now acts as if she, together with the other Petitioners, own the office;
- f) That members of the Union usually pay their union dues in the office in cash and currently there is a threat of the monies being misused or entirely not being captured in the records;
- g) That the Union is required to pay their dues, including affiliation fees and rent but is unable to do so owing to its officials being kept off the office by the Petitioners;
- h) That the Petitioners have continued to hold out as officials of the Union, when in fact, their term ended when notice calling for elections was circulated on 11th March 2021;
- i) That all receipt books, cash books and other sensitive records are in the office where the Union has no control;
- j) That the Petitioners may continue to mislead the public, donors and well-wishers by duping them to the detriment of the Union;
- k) That there is a risk to the business of the Union if the *status quo* continues;
- l) That the Union is at a risk if its business fails to continue or worse still, continues to be illegally run by the Petitioners.

6. The 3rd Respondent chose not to participate in the Motion.

7. The Petitioners' response to the Motion is contained in a Replying Affidavit sworn by the 1st Petitioner, Atie Swaleh Ramadhan, on 5th May 2021.

8. Ramadhan depones that at an Executive Board meeting held on 30th March 2021, at which she was present, the 3rd Petitioner asked the 2nd Respondent why he had failed to convene a National Conference to enable members of the Union to elect an Elections Board.

9. Ramadhan further depones that the 2nd Respondent reacted violently, destroyed the office wall unit and ran away with the members' register. Ramadhan adds that she had not seen the 2nd Respondent since the abortive meeting of 30th March 2021.

10. According to Ramadhan, the 1st Respondent had been using the official phone sim card number + 254743244832 and laptop as his personal property.

11. Ramadhan accuses the 1st Respondent of withdrawing funds from the Union account number 1135767149 held at KCB, without any budget prepared, presented and adopted by the Board, contrary to the Union Constitution.

12. Ramadhan further accuses the 1st Respondent of receiving monies from different bodies and using the same without the authority of the Board, contrary to the Union Constitution.

13. Looking at the parties' pleadings in this Motion, it is evident that there are many issues of fact that are seriously contested. In fact, the issues raised in the Motion are an extension of the dispute in the Petition filed by the Petitioners on 13th April 2021.

14. The issues in dispute cannot be determined by way of an interlocutory Motion and it is for this reason that the Court issued directions towards merit disposal of the Petition.

15. The only thing I will say therefore is that the Respondents' Motion dated 21st April 2021 is disallowed with costs in the Petition. The parties are directed to take steps towards setting down the main Petition for hearing on priority basis.

16. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 15TH DAY JULY 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Miss Katu for the Petitioners

Miss Mukoya for the 1st and 2nd Respondents

No appearance for the 3rd Respondent