



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

ELRC CAUSE NO. E014 OF 2021

SIMON MAINA KAIRU.....CLAIMANT

VERSUS

KENYA NATIONAL UNION OF TEACHERS.....1ST RESPONDENT

REGISTRAR OF TRADE UNION.....2ND RESPONDENT

NDUNGU J ALIAS JOHANA KARU NDUNGU.....3RD RESPONDENT

JUDGMENT

1. The Claimant sued the Respondents seeking to nullify the 1st Respondent's Branch Elections of the executive secretary position of Nyandarua branch that was conducted on 6th March, 2021 for allegedly being unlawful and unconstitutional.
2. The claimant states that the Registrar of trade Unions called for National elections of trade Unions by its letter of 25.09.2020 and the 1st Respondent issue circulars dated 10.11.2020 and 6.1.2021 on the conduct of branch elections, with Nyandarua branch election slated for 6th March, 2021.
3. He stated that he defended his seat as the incumbent KNUT executive Secretary, Nyandarua North branch and the 3rd Respondent was his competitor.
4. The claimant avers that he was in charge of communicating the election dates and the requirements needed for a teacher to qualify to be nominated and to vote. He stated that nominations were to be conducted at least 3 days before elections and one had to produce evidence of membership which included pay slips to affirm that one was a Union paid up member and also that one had to be in the voters' register.
5. He contended that the 3rd Respondent failed to produce his pay slips therefore indicating that he was not a paid up KNUT member who in effect was not eligible to vote. Subsequently that he notified the 3rd Respondent of the qualification and informed him of the missing information on 4th March, 2021 to enable him furnish the Union with the said documents failure to which his name was to be struck out.
6. He stated that the 3rd Respondent did not respond to his letter and his name remained in the ballot despite the claimant's complaint to the 1st Respondent and the 2nd Respondent that the 3rd Respondent was not a teacher and was not qualified to be voted for as Union executive secretary.
7. The clamant contends that the 3rd Respondent failed to meet the qualification for election, since he is not a registered teacher with Teachers Service Commission, neither has he taught for 5 continuous year or is even been a KNUT member.
8. He therefore wants the Court to declare him elected unopposed since there was no other contestant in the said election, the claimant in effect prays for:-

a) A declaration that the election of the 3rd Respondent, Ndungu J Alias Johana Karu Ndungu as the KNUT Nyandarua Brach executive secretary on 6.3.2021 and or registered as a KNUT Official was against the KNUT Constitution and unlawful.

b) An order declaring 3rd Respondent election as the KNUT Nyandarua branch executive secretary on 6.3.2021, a nullity quashing and or nullifying the same.

c) An order compelling the Registrar of Trade Unions to deregister changes made to the position of Executive secretary, KNUT Nyandarua Branch Register as a result of election conducted on 6th March, 2021.

d) A declaration that the Claimant Simon Maina Kairu was validly elected KNUT Nyandarua Branch Executive Secretary on 6.3.2021 unopposed.

e) Cost of this claim be paid by the Respondents.

9. The 1st and 3rd Respondent filed a replying affidavit deposed upon by Hon. Wilson Sossion, the secretary General of the 1st Respondent on the 30th April, 2021.

10. The Respondent herein stated that the 2nd Respondent announced election for all trade Unions all over the Country by its circular dated 25th September, 2020. Subsequently the 1st Respondent issued circular dated 10th November, 2020 and 6th January, 2021 providing guidelines on how elections were to be conducted.

11. The Respondent contends that the 1st Respondent issue prerequisite for members either contesting for seat or voting and stated that for a contestant the only requirement needed was for them to be a paid up member of the Union for a continuous period of 5 years.

12. It is stated that it was a requirement of a voter to produce evidence of membership in form of pay slips not more than previous 13 weeks and not necessarily their latest pay slips.

13. It is averred that the 3rd Respondent is a registered teacher with teachers service commission under TSC number 337282 had met the necessary requirement as per Article III of the Union Constitution a fact that was confirmed by the Claimant by its letter dated 4th March, 2021.

14. That the actions of the claimant seeking to nullify election of Nyandarua branch executive Secretary for not indicating the school he taught is an act of bad faith, malice and without any backing of the 1st Respondent's constitution and election regulations.

15. The Respondent therefore stated that the 3rd Respondent was duly elected as executive secretary of KNUT Nyandarua branch having garnered 184 votes against the claimant's 74 votes.

16. They therefore sought for the Claim to be dismissed.

17. The 2nd Respondent filed a response to the claim by a relying affidavit deposed upon by the Registrar of Trade Union, Elizabeth Gicheha on 6th May, 2021, stating that she issued circulars dated 25th September, 2020 and referenced ML&SP/TU/ELECTION/2021 directing all trade unions and federations to conduct elections between 4th January, 2021 and 31st March 2021 for branch elections and 1st April, 2021 and 31st June 2021 for national elections.

18. That the 1st Respondent scheduled its Nyandarua North Branch election on 6th March 2021. However on 13th March, 2021 they received an objection from the claimant claiming that the person elected to the position of executive secretary Nyandarua Branch was not qualified and that he was not a teacher employed by TSC rather that he was an employee of the public service at Nyandarua Institute of science and technology.

19. That on 9th April, 2021 her office received a notice of change of names of office in form Q from the 1st Respondent however in light of the objection raised by the Claimant she wrote a letter to the County Labour Office seeking for response to complaint, however that before her office could receive a response this suit was filed in Court.

20. The Claimant filed a further affidavit dated 10th June, 2021 stating that all candidates must be voters and must be members of the Union in accordance with Article XC(3) of the KNUT Constitution.

21. He stated that all nomination papers of all qualified candidates were stamped by the returning officer except for the 3rd Respondent who did not possess the necessary qualifications. Further that the 3rd Respondent commitment deed and those of his agents were not stamped after elections on 6.3.2021.

22. He stated that the 3rd Respondent was not in the members register that required him to identify the school he was teaching at prior to the elections.

23. That the Returning officer illegally allowed him to participate in elections and declared him a winner contrary to the law. Also that the 3rd Respondent was not a paid up Union member during elections as his last check off was in August, 2018 showing that he was not a member of the Union for 5 continuous years.

24. That form Q was submitted on 9th April 2021 way out of the statutory 14 days without the Respondents seeking for extension of time to submit the said form.

25. The matter herein proceeded by way of written submissions with the Claimant filling on 15th June, 2021 and the 1st and 3rd Respondent

filed on 24th May, 2021. The 2nd Respondent did not file any submissions.

CLAIMANT'S SUBMISSIONS.

26. The claimant submitted that section 4(2) (c) of the Labour Relations Act provides for the right of every member of a trade Union to stand for election and be eligible for appointment as an officer or official. However that according to section 34(1) of the said Act, the said election must be carried out in line with the Constitution of the specific trade Union, He thus argued that Article X(c) (3) of KNUT constitution provides for qualification to be elected as an official for the Union and the requirements are that one ought to be a trained and qualified teacher who is a member of KNUT and has taught as a teacher for at least 5 continuous years.

27. He argued that as much as the qualification for a contestants according to the 1st Respondents circular of 10th November, 2020 was for one to be a paid up member of the Union for a continuous 5 years, the same is not reflective of the 3rd Respondent who ceased paying up union dues in June 2018 only to pay the arrears in lump sum on 27th January, 2021 as such is not in compliance with the requirement of continuity of payment of Union dues. Further that the 3rd Respondent was not a voter as per the 2019 register used in the said election.

28. He argued that there is nowhere in KNUT constitution that has provisions for contestants and for voters rather that the rules and requirements for voters are similar to the requirements needed for contestants of an election.

29. It was submitted that the fact that the 3rd Respondent is not a registered teacher by TSC, was not up to date with the payment of Union dues, neither was he registered in the 2019 register used in the election confirms that he was not qualified to vote and be voted for.

30. The Claimant thus submitted that he has made out a case on a balance of probability and prayed that the claim be allowed as prayed.

1ST & 3RD RESPONDENTS SUBMISSIONS.

31. The Respondents submitted that the 3rd Respondent was participating in the KNUT election as a contestant not as a voter and that the only requirement of him was to be a paid up member of KNUT dues for a continuous period of 5 years. Accordingly, he argues that the 3rd Respondent is a registered teacher of TSC Number 337282 and a member of KNUT having paid Union dues for over 10 years as such qualified to contest for the said KNUT branch elections.

32. It was submitted that there is no requirement as per KNUT Constitution for a contestant to produce pay slips indicating the school they a teaching to qualify to contest for an election.

33. He reiterated that the 3rd Respondent was qualified to be elected as an executive secretary for Nyandarua KNUT Branch and indeed he won the said election by garnering 284 votes against the claimant's 74 votes and that was duly register as the executive secretary Nyandarua KNUT branch elect.

34. The Respondent therefore urged this Court to dismiss the Claim for lacking merit and costs be awarded to the 1st and 3rd Respondents.

35. I have examined the evidence and submissions of the parties herein. The main issue for determination by this court is whether the 3rd respondent was qualified to contest the KNUT Nyandarua Branch election and if he indeed won the said election.

36. To guide this court in reaching its determination is the KNUT Constitution and regulation and circulars issued to assist in the election.

37. Section 4(2)(c) of the Labour Relation Act provides for the rights of employees in a Trade Union which states as follows;-

“Every member of a Trade Union has the right, subject to the constitution of that Union to- (c) Stand for election and be eligible for appointment as an officer or official and if elected or appointed to hold office”.

38. Section 34(1) of the Labour Relations Act 2007 also states as follows:-

“34(1) the election of officials of a Trade Union, employers organization or federation shall be conducted in accordance with their registered constitution.”

39. Under the KNUT Constitution Article X(c)(3), the precondition for eligibility for election provides as follows;-

“A trained and qualified teacher shall be eligible for election as a KNUT Branch Official after 5 years continuous service as a teacher and as a member of KNUT”.

40. On 10th November 2020, the 1st respondent sent out a circular setting out the parameter for all members taking part in the intended branch elections for both contestants and voters. The conditions were as follows;-

“In line with the above and in accordance with the KNUT constitution, you are hereby informed that;

1. In order to contest in the upcoming KNUT General Elections, you must be a paid up member of the Union for a continuous period of 5 years without arrears.

2. In order to vote, you must produce evidence of membership with a payslip of not more than the previous 13 weeks and your name must be in the membership register. The BEC is hereby directed to ensure regularization of the members register and submitted to us for onward transmission to the commissioner for labour/The Registrar of Trade Union.”

41. From the above circular, indeed there were 2 different eligibility conditions to be met by the voter and the contestant.

42. The 3rd respondent was participating as a contestant vying for the position of Executive Secretary. The condition precedent to him was that he must be a paid up member of the union for a continuous period of 5 years without arrears.

43. What the 3rd respondent needs to demonstrate therefore is that he is a paid up member of the union for 5 years and has no arrears unpaid.

44. In Appendix WS-5 produced by the 1st respondent, the claimant writing as Executive Secretary, KNUT Nyandarua Branch acknowledges that the 3rd Respondent is a paid up Union member having paid up all Union dues.

45. The claimant was writing that the 3rd respondent produces his payslip for the TSC which was not a precondition set out in the circular released by KNUT (1st respondent).

46. I have also considered the constitution of KNUT at Article Xc(3) Appendix SMK6 produced by the claimant. It states as follows;-

“A trained and qualified teacher shall be eligible for elections as a KNUT branch official after 5 years continuous service as a teacher and as a member of the KNUT.”

47. Indeed the 3rd respondent meets these qualifications and the insistence that he was not qualified to contest in the elections by the claimant is not based on the Labour Relations Act, nor the Union constitution and even circulars released to aid in conducting the elections.

48. I therefore find the claim by the claimant is not merited.

49. I accordingly dismiss this claim with costs to the respondents.

Dated and delivered virtually this 23RD day of SEPTEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Rakoro for claimant – present

Tusime holding brief Sigei for 1st & 3rd Respondents – present

Ondieki for 2nd Respondent – present

Court Assistant - present