



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2261 OF 2016

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

FRANCIS WANDERI & OTHERS.....CLAIMANTS

VERSUS

ALBERT NJERU (Sued as General Secretary and Authorized Representative

OF KENYA UNION OF DOMESTIC, HOTELS EDUCATIONAL

INSTITUTIONS, AND

ALLIED WORKERS (KUDHEIHA)1ST RESPONDENT

REGISTRAR OF TRADE UNIONS.....2ND RESPONDENT

RULING

1. Claimants are employees of Kenyatta National Hospital and members of KUDHEIHA Nairobi branch.
2. They state that on 6th July, 2016 they were summoned by the 1st respondent Albert Njeru the General Secretary of KUDHEIHA to attend a training at the Marble Arch Hotel.
3. They state that on arrival at the venue, they found there was no training but instead was a front for an irregular secret election in violation of Kudheiha Constitution.
4. They say that several of the breaches committed were inter-alia;-
 - (a) Failure to give notice of election date.
 - (b) Elections were not carried out at general meeting but at a training event.
 - (c) Elections were not carried out at the place of work
 - (d) Paid up members were denied opportunity to participate in the elections.
 - (e) 2 women were elected whereas it is provided for one woman.
5. The employees of Kenyatta National Hospital who were members of KUDHEIHA allege they have been discriminated against and the works committee which is elected was elected in breach of the constitution.
6. The claimants by their memorandum of claim dated 4th November, 2016 pray for the following:-
 - (a) Election of executive works committee of Kenyatta National Hospital elected on 6th July, 2016 be declared unlawful and nullified forthwith.
 - (b) All activities of Executive works committee for Kenyatta National Hospital be declared void.

(c) A general meeting be called within 1 month and elections of Executive Works Committee for Kenyatta National Hospital be carried out in accordance with KUDHEIHA constitution and be supervised by an independent body.

(d) Kenyatta National Hospital be declared a branch.

(e) General damages

(f) Costs of the suit with interest on the above.

7. On 4th November, claimant made an application by Notice of Motion seeking the following orders:-

(a) That all activities or decisions of the Executive Works Committee or Kenyatta National Hospital elected on 6th June, 2016 be suspended.

(b) That the election of the committed be nullified.

(c) That general meeting be called with one (1) month and election of committee be carried out in accordance with KUDHEIHA Constitution under supervision of an independent body.

8. The trial Judge in her ruling on 25th August, 2017 dismissed the claimant's application with costs to the respondents. She observed that the courts must not interfere with the running of trade unions and their organs without a justifiable cause. She observed that the claimants were disgruntled members out to ruin the operations of the union for their own selfish ends and so the court would not assist them.

9. The court is in agreement with the respondent that the prayers sought in the memorandum of claim are all spent.

10. The committee that was elected on 6th July, 2016 must have long served their term.

There is no questions therefore of repeating the elections.

11. Indeed to attempt to proceed with this case would be a waste of time for all parties. I can confidentially say this case is res judicata because all issues in this suit were raised in the claimant's application vide the notice of motion dated 4th November, 2016 and filed on 7th November, 2016. The comprehensive ruling delivered on 25th August, 2017 renders this suit res judicata.

12. The claimant alleges that the issue of whether the election conducted on 6th June, 2016 were conducted in accordance to the KUDHEIHA Constitution was not dealt with. On the contrary, I am convinced the learned judge dealt with all the issues raised in the claimant's application and prayers.

To be specific the Judge observed that the claimant did not attempt to access the constitution and furthermore they brought their application four months after elections. Some of the claimants' participated in the elections while still claiming they were not conducted in accordance with the constitution.

13. I find this matter was substantially dealt with by Justice Linnet Ndolo in her ruling and it would be a waste of time and resources to entertain it again in court.

I therefore mark the suit as settled and I proceed to close the file.

I will not make any orders on costs.

Claimants were ordered to pay respondents costs in the application referred hereto dated 4th November, 2017.

DELIVERED, DATED AND SIGNED IN NAIROBI 21ST DAY OF OCTOBER, 2021.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to

facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE