



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

JUDICIAL REVIEW APPLICATION NO. E012 OF 2021

CLEMENT BULALE ETALE.....APPLICANT

VERSUS

THE REGISTRAR OF TRADE UNION.....RESPONDENT

ZABLON AWANGE OLIECH

THE EXECUTIVE SECRETARY

KUPPET KISUMU COUNTY.....INTERESTED PARTY

JUDGMENT

1. This judgment relates to a Chamber Summons application dated 27th August, 2021, expressed to be pursuant to Order 53 Rules 1 and 2 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act.

2. The Applicant seeks orders that:

i. Spent.

ii. Leave be granted to enable the applicant to seek an order of Judicial Review by way of Certiorari directed at the Respondent herein to quash the registration of the Ten KUPPET Kisumu Branch Officials registered on 23rd March, 2021.

iii. An order of Judicial Review do issue by way of mandamus directed to the Respondent to order fresh elections in the Kisumu Branch

iv. The leave so granted does operate as a stay of the purported registration dated 3rd March, 2021

3. The application is premised on the grounds on the face of the application and a supporting Affidavit sworn by the Applicant herein.

4. The application was placed before the duty Judge on 30th August, 2021, who certified the application urgent and fixed the same for interparties hearing on 22nd September, 2021.

5. On the hearing date, the Applicant proceeded to urge his application for Judicial Review Orders. There is no previous order granting leave to the applicant to file for judicial review. Nonetheless, the applicant urged his application and relied on the grounds in his chamber summons application of 27th August, 2021.

6. The Applicant states that the interested party herein held Union elections on 3rd March, 2021. It is his submissions that the Kenya Union of Post Primary Education Teachers (KUPPET) constitution requires at its Clause 8.12, that three women are nominated by the branch executive committee in their first meeting.

7. The applicant argues that the said constitution requires that a further seven members are co-opted, one each from the county constituencies to form the branch's governing council. He states that the two nominations did not take place as is required.

8. It is the applicant's position that the Respondent did not legally register the branch officials.

9. The Respondent did not file a reply to the application and was absent on the hearing date.

10. The Interested Party filed a reply to the application vide a Replying Affidavit sworn by one **Zablon Awange Oliech**, the Executive Secretary of the Union. He deposes that indeed elections were held on 3rd March, 2021.

11. The Interested Party argues that since the impugned elections, the branch executive committee has held a series of meetings in respect of the nominations subject of this application. He states that the branch executive committee finally agreed on the nominations in its third meeting and confirms that the nominations took place on 11th September, 2021.

12. The Interested Party states that the application herein is mischievous as the Applicant is aware of the meetings and knows for a fact that the nomination process was on. It is his position that the application herein has been overtaken by events as the nominations subject of this application have taken place.

13. The Applicant in his response during the hearing, confirmed to the court that the nominations subject of the application took place on the 11th of September, 2021. It is his position that it is the instant application that triggered the nominations.

Determination

14. The Applicant's prayers are that the court quashes the registration of the Ten (10) KUPPET Kisumu Branch Officials registered on 23rd March, 2021 and further direct that the Respondent orders fresh elections in the Kisumu Branch.

15. The grounds upon which the prayers herein are premised, is that the elected officials have failed to conduct nominations of both the representatives of Women and representatives of all the constituencies in the County.

16. The Interested Party's evidence is that the nominations subject of the application took place on the 11th of September, 2021. The Applicant confirmed to the court during the hearing, that indeed the nominations were conducted on the said dates and further added that the nominations were triggered by this application.

17. It then follows that this application is overtaken by events by dint of the Applicant's admission that indeed the nominations subject of the instant application did happen. The applicant is spent and is hereby dismissed.

18. Parties shall bear their own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 4TH DAY OF NOVEMBER, 2021.

CHRISTINE N. BAARI

JUDGE

Appearance:

Clement Bulali Etale Applicant in Person

N/A for the Respondent

Ms. Imbaya h/d for Mr. Odeny for the Interested Party

Chrispo/Christine Omollo – C/A