



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

PETITION NO. 18 OF 2020

IN THE MATTER OF INFRINGEMENT OF THE PROVISIONS OF ARTICLES 2(1), (2) & (4), 3(1), 10, 41, 47(1), AND 50 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 4(2) (D), 8 (B) & 25 OF THE LABOUR RELATIONS ACT NO. 14 OF 2007

AND

IN THE MATIER OF INFRINGEMENT OF PROVISIONS OF ARTICLES III (9), VI (5), IX (C), (3) (4) & (7), X (A) (3) & (4), X (B) & X(C) 5(I), X (D) 5 & 6, XII(2) AND XVIII(E) OF THE KENYA NATIONAL UNION OF TEACHERS CONSTITUTION

BETWEEN

PATRICK KARINGA MUNUHE.....1ST PETITIONER

ZACHARY MATHENGE WANJAU.....2ND PETITIONER

JOHN KING'ORI KAMAU.....3RD PETITIONER

VERSUS

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

WILSON SOSSION.....2ND RESPONDENT

EUTYCUS NGATIA GATHERI.....3RD RESPONDENT

TITUS NDIRANGU GITONGA.....4TH RESPONDENT

JOSEPH KANJA MWANGLI.....5TH RESPONDENT

RULING

1. The Petitioners' Notice of Motion application under certificate of urgency dated 30th July 2020 seeks orders aimed at halting the actions of the 1st and 2nd Respondents. The Notice of Motion Application is supported by the affidavit of Mr. Zachary Mathenge Wanjau who asserts that the 1st Respondent had on 6th July 2020, purported to unlawfully and unilaterally instruct the Manager, Kenya Commercial Bank, Nyeri Branch, to change the signatories of the Kenya National Union of Teachers – Nyeri Branch and to introduce the 3rd and 4th Respondents as signatories to the bank account of the Kenya National Union of Teachers – Nyeri Branch. The Petitioners' further asserted that vide letters dated 7th July 2020 and one dated 21st July 2020 respectively, the 1st and 2nd Respondents purported to unilaterally and unlawfully appoint the 3rd, 4th and 5th Respondents respectively as the Acting Chairperson, Acting Treasurer and Acting Executive Secretary of Kenya National Union of Teachers, Nyeri Branch in total disregard of the provisions of the Kenya National Union of Teachers constitution and the laid down laws and procedures. The Petitioners' assert that the alleged changes are illegal and unlawful as the Petitioners are the lawfully elected officials of the Kenya National Union of Teachers Nyeri Branch, duly elected in an election held on 5th February 2016 and a by-election conducted on 10th February 2018 at D.E.B. Muslim Primary School, and their term in office has not lapsed. The

Petitioners assert that owing to the unlawful changes effected by the 1st and 2nd Respondents, the administrative and financial operations at the KNUT Nyeri Branch will be stifled for an indefinite period and that further, the lawfully elected officials, the Petitioners herein, will be highly prejudiced by being illegally ousted from office. The Petitioners assert that the activities of the said Branch will be thrown into chaos and disarray. They thus seek the grant of conservatory orders pending the hearing and determination of the Petition.

2. The Respondents were opposed and filed a Replying Affidavit sworn by the 2nd Respondent for and on behalf of the Respondents. He deponed that he was aware that the Petitioners had been elected to serve as officials of the Kenya National Union of Teachers (KNUT) Nyeri Branch in the year 2016. He deponed that sometimes in July 2019 the elected Treasurer of the KNUT Nyeri Branch attained the mandatory age of 60 years meaning he could not continue serving as the Branch Treasurer by virtue of retirement until such a time as elections are held to replace him. The 2nd Respondent deponed that to ensure that operations at the branch continue without any disturbance, the 1st and 2nd Respondents on 7th July 2020 in exercise of powers to oversee the branch activities appointed the 4th Respondent as the Treasurer in an acting capacity until such time as when a by-election would be held to fill the vacancy. The 2nd Respondent deponed that the 1st and 2nd Respondent are justified to make such appointment by virtue of the 1st Respondent's constitution and that accordingly, the Branch Executive Committee meeting held on 10th July 2020 was done after the 1st and 2nd Respondents had already effected the changes and that the resolutions therefore cannot override the earlier decisions of the 1st Respondent. The 2nd Respondent asserted that the appointment of the 3rd Respondent as the acting Chairman was occasioned as a result of the delocalization of the 1st Petitioner which led to the consequent invalidation of his KNUT membership and inability to serve the interests of the Branch. The 2nd Respondent deponed that regarding the 2nd Petitioner's suspension, it is a requirement that upon election to the office of Executive Secretary, the 2nd Petitioner had an obligation to always maintain a high level of integrity and adhere to the provisions of the KNUT constitution in discharging their duties failing which disciplinary action would be commenced against him. He deponed that the 2nd Respondent sometimes on or about 10th and 11th June 2020 in the company of other branch executive secretaries held a meeting at Nyeri and caused a memorandum to be written to the Teachers Service Commission accusing the 2nd Respondent of embezzlement of Union funds, misappropriation of donor funds and failing to account for the Union expenditure among other unfounded allegations. He deponed that the meeting was without the authority of the head office and the actions amounted to insubordination and lack of respect to the Union leadership and hence warranted disciplinary action against the officials who took part in it. He further deponed that arising from the said insubordination, the 1st Respondent convened a virtual special steering committee on 13th July 2020 wherein it was unanimously resolved that the concerned officials including the 2nd Petitioner herein be suspended from the Union with immediate effect until a decision that is binding on their conduct and behavior is decided upon by the Annual Delegates Conference. He deponed that the 1st Respondent's disciplinary sub-committee met on 25th August 2020 and upheld the decision to suspend the 2nd Petitioner for violating the provisions of the 1st Respondent's constitution. The 2nd Respondent further deponed that the National Executive Council NEC met virtually on 3rd September 2020 wherein it deliberated on the issues regarding discipline and order in the Union and resolved to suspend concerned branch executive secretaries. He deponed that the Applicants at the opportune time will be invited to a hearing by an impartial body or disciplinary committee which will deliberate on the issues against the 2nd Petitioner of which he will be fully informed of allegations against him and supplied with the relevant materials. He deponed that the Petitioners have prematurely approached the Court whereas the disciplinary hearings have not been finalized and the Court should thus allow the internal mechanisms of the Union to be exhausted. He deponed the Court should not allow the Petitioners to bypass avenues set out by the Union constitution. He urged the dismissal of the application in its entirety with costs for reasons that the same was filed before the exhaustion of the internal disciplinary process.

3. The application by the Petitioners was presented to Court on 11th August 2020 through the certificate of urgency attached to the motion on 30th July 2020. Upon considering the application ex parte, the Court granted conservatory orders as follows:-

1. THAT Application certified urgent to be served for inter parties hearing on 21st September 2020 VIA TEAMS.

2. THAT the court grants prayer number 2 and 3 pending hearing inter parties on 21st September 2020.

a) THAT service of this Application be dispensed with in the first instance due to its urgency and this Honourable court be pleased to grant, ex parte, a temporary injunction restraining the 1st and 2nd Respondent, their servants and/or agents, their officers or any other person from effecting any changes of the lawfully elected officials of the Kenya National Union of Teachers, Nyeri Branch, or in any other manner interfering with the running of the branch secretariat of the Kenya National Union of Teachers Nyeri Branch, pending the hearing and determination of this Application.

b) THAT this Honourable court be pleased to issue, ex-parte, temporary injunction restraining the branch manager, Kenya Commercial Bank Limited, Nyeri Branch, the 1st and 2nd Respondent, their servants and/or agents, their offices or any other persons from effecting any changes of the signatories of Account Number 11200452 or any other accounts in the name of Kenya National Union of Teachers, Nyeri Branch domiciled at Kenya Commercial Bank Limited, Nyeri Branch pending the hearing and determination of this Application.

4. From a reading of the order issued, there was a restraint against the Respondents from taking any steps as indicated in the 2nd Respondent's replying affidavit and in particular the actions on 25th August and 3rd September 2020. In the application before me it is clear there is *prima facie* grounds to intervene in favour of the Petitioners for the alleged breach of the Union constitution by the Respondents and particularly by the 1st and 2nd Respondents. The Petitioners have demonstrated in their motion that there is reason for the grant of the relief sought and I hereby order as follows:--

a. A permanent injunction do and is hereby issued restraining the Respondents, their servants and/or agents, their officers or any other person from effecting any changes of the lawfully elected officials of the Kenya National Union of teachers, Nyeri Branch, or in any other manner interfering with the running of the branch secretariat of the Kenya National Union of Teachers Nyeri Branch, pending the hearing and determination of this Petition.

b. A permanent injunction do and is hereby issued restraining the Branch Manager, Kenya Commercial Bank Limited, Nyeri Branch, the Respondents, their servants and/or agents, their offices or any other persons from effecting any changes of the signatories of Account Number 11200452 or any other accounts in the name of Kenya National Union of Teachers, Nyeri Branch domiciled at Kenya Commercial Bank Limited, Nyeri Branch pending the hearing and determination of this Petition.

c. Orders be served forthwith on the Kenya Commercial Bank Manager for compliance as well as to the Respondents in person where possible or via email where personal service is impossible due to Covid 19.

It is so ordered.

Dated and delivered at Nyeri this 5th day of November 2020

Nzioki wa Makau

JUDGE