



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 60 OF 2020

JOHN WESONGA LUTTA.....CLAIMANT

VERSUS

WESA P.M. MALACK (SUED AS THE PURPOTED ACTING EXECUTIVE SECRETARY – KENYA

NATIONAL UNION OF TEACHERS (KNUT) MUMIAS BRANCH.....1ST RESPONDENT

KENYA NATIONAL UNION OF TEACHERS (KNUT) MUMIAS BRANCH.....2ND RESPONDENT

KENYA NATIONAL UNION OF TEACHERS.....3RD RESPONDENT

REGISTRAR OF TRADE UNIONS.....4TH RESPONDENT

RULING

1. Application dated 14/8/2020 seeks an Order in the following terms:-

(a) The Registrar of Trade Unions be restrained from registering the purported changes of officials of the Kenya National Union of Teachers (KNUT) Mumias branch made by the Secretary General of Kenya National Union of Teachers Hon. Wilson Sossion or about 27/7/2020 in suspending the Branch Executive Secretary Mr. John Wesonga Lutta and appointing Mr. WESA P.M. MAGAK the current Assistant Executive Secretary of the branch, the 1ST Respondent herein to act as the Branch Executive Secretary, pending the hearing and determination of the claim.

2. The application is supported on grounds set out on the Notice of Motion marked (i) to (Xiii) the gravamen of which may be summarized that due process was not followed in the said suspension and the same is therefore contrary to the union constitution and the rules of natural justice and is unlawful and unfair. That suspension of a branch official may only be done by a 2/3 majority decision of all members attending a duly called Branch General meeting. That this did not happen in the present case.

3. That the respondents were duly served with the application and have not filed a replying affidavit. That the application is unopposed and it be granted with costs.

4. The applicant filed an affidavit of Service dated 22/8/2020 by a duly Qualified Process Server Daniel Kombo Omukoko who depones that he had on 24/8/2020 visited the office of the 2nd respondent and served summons, Memorandum of Claim and this application on one Mr. Edward Maloba Omondi, the vice Chairperson of the 2nd respondent.

5. The applicant has since filed written submissions as per directions of the Court given on 17/8/2020.

6. The Court has duly considered the application and finds same to be mentioned and have allowed the application and granted an Order in terms of prayer 3, 5 and 6 of the Notice of Motion.

7. Accordingly,

(i) The positions and status of the officials of Kenya National Union of Teachers (KNUT) Mumias Branch prior to the purported changes made on or about 21/7/2020 by the Secretary General of Kenya National Union of Teachers (KNUT) Hon. Wilson Sossion be reverted to and maintained pending hearing and determination of this claim.

(ii) The registrar of Trade Unions not to effect any changes on the register of trade unions in respect of the position of Branch Executive Secretary, KNUT, Mumias Branch pending the hearing of this Claim and to maintain status quo before 21/7/2020.

(iii) Costs in the cause.

Dated and delivered at Nairobi this 17th day of December, 2020.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 of the Civil 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Rakoro for the Claimant/Applicant

Chrispo: Court clerk