



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

APPEAL NO. 2 OF 2017

KENYA UNION OF COMMERCIAL, FOOD

AND ALLIED WORKERS.....APPELLANT

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

JUDGMENT

1. On 24 January 2017, the Registrar of Trade Unions (the Registrar) wrote to the Kenya Union of Commercial, Food and Allied Workers (the Union) that she had declined to register officials elected during repeat elections for the Union's Kisii branch because there was no evidence that the County Labour Officer had been appointed to conduct the elections by the Chief Industrial Relations Officer; because the notice of elections dated 3 October 2016 was not clear on the venue of the elections and because some of those reportedly elected had denied participating in the elections.

2. The Union was aggrieved by the decision of the Registrar and on 16 February 2017, it filed a Memorandum of Appeal asserting that repeat elections had been held on 22 October 2016 under the supervision of Mr Charles I. Gondosio, County Labour Officer, Kisii who filed the appropriate returns paving way for the Union to seek the registration of the elected branch officials as required under the Labour Relations Act but the Registrar declined to register the branch officials.

3. When the Appeal was placed before the Court on 10 July 2017, it directed the Union to join the persons who had complained about the elections as Interested Parties.

4. When the Appeal was next mentioned before the Court on 19 September 2017, the Court ordered that the Appeal would not be set down for hearing until the orders on joinder had been complied with.

5. The Appeal went cold until the Court on its own motion scheduled it for directions on 2 November 2020.

6. During the session, the Court directed the Registrar to file and serve a response to the Appeal on or before 13 November 2020 and thereafter the parties to file and exchange submissions.

7. The Registrar's replying affidavit was only filed on 20 November 2020.

8. Submissions were not on record by the set agreed dates.

9. The Court has however considered the record and identified the following as material Issues for its consideration.

Venue of election

10. The Court has looked at the notice notifying the Union's Kisii branch members of an annual general meeting. It stated that the meeting would be held at Monarch grounds.

11. There is evidence on record that due to the vagueness of the venue, some of the members went to Monarch Hotel grounds and therefore did not have an opportunity to participate in the annual general meeting and the elections.

12. The Court agrees with the Registrar that the notice was vague as to the venue thus locking out some members from participating.

Election of persons not offering themselves for election

13. Another reason given by the Registrar in declining to register officials purportedly elected on 22 October 2016 was that Form Q had names of persons (Jared Momanyi, Maurice Kawa and Jane Ngeno) who had not offered themselves for the election being indicated as having been elected as committee members.

14. The record indicates that these 3 persons wrote to the Registrar denying having participated in the elections.

15. These are the same persons the Court directed the Union to join to the proceedings.

16. With the evidence on record, the Court also agrees with the Registrar that any elections held on 22 October 2016 were a sham and that Form Q was a fabrication.

Failure to join Interested Parties

17. The Court in clear language directed the Union on 10 July 2017 to join some named Interested Parties to the proceedings. The Court reiterated the orders on 19 September 2017.

18. The Union, without offering any explanation disregarded the orders. With the disobedience, the Union would not have been entitled to this Court's exercise of discretion regardless of the merit of its case.

Conclusion and Orders

19. For the above reasons, the Court has no option but to dismiss the Appeal herein.

20. The Registrar did not file a Response to the Appeal within the prescribed time. No order on costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 11th day of December 2020.

Radido Stephen

Judge

Appearances

For Union Mr. Nyumba, Industrial Relations Officer

For Registrar Ms Esendi, Litigation Counsel, Office of the Attorney General

Court Assistant Chrispo Aura