



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MALINDI**

**CAUSE NUMBER 29 OF 2017**

**BETWEEN**

**KIRAGO CIDIN GISEBE.....CLAIMANT**

**VERSUS**

**1. CHARLES MAGUNDA KATUNGO**

**2. BARAZA JOHNSTONE [OFFICIALS KILIFI KUPPET BRANCH]**

**3. KENYA NATIONAL UNION OF POST-PRIMARY**

**EDUCATION TEACHERS.....RESPONDENTS**

**AND**

**KOI KAFADZI MBITHA.....INTERESTED PARTY**

**RULING**

1. On 24<sup>th</sup> July 2017, the Claimant herein initiated these proceedings against the Respondents, claiming that he applied for the position of Executive Secretary of Kilifi KUPPET Branch, following the demise of the previous office-holder; he was the sole Applicant for the position; and expected to sail through at the by-election, to be held on 15<sup>th</sup> July 2017.

2. However, the Interested Party sought and obtained an order in Kilifi Magistrate's Court, stopping the by-election. It is alleged by the Claimant that the Respondents and the Interested Party connived to have the Claim before the Magistrate's Court withdrawn, without the knowledge of the Claimant.

3. The Claimant therefore filed the present Claim, asking the Court to grant the following Orders:-

a. Declaration that the entire proceedings before the Magistrate's Court were null and void regardless of the withdrawal of the Claim.

b. Declaration that the Respondents misrepresented to the Membership and to the Claimant that there was a Court Order barring election on 15<sup>th</sup> July 2017.

c. 2<sup>nd</sup> Respondent is compelled to call fresh election for the position.

d. Declaration that Members who applied and paid nomination fees for the position, as at 15<sup>th</sup> July 2017, are deemed as the legitimate Applicants.

e. Damages and compensation.

f. Costs of the suit.

4. The Claimant sought and obtained Orders in the present Claim, restraining the Respondents from conducting the by-elections. The Orders issued on 18<sup>th</sup> October 2017.

5. The Respondents filed an Amended Notice of Motion on 18<sup>th</sup> December 2017. Amendment was done on 11<sup>th</sup> December 2017. The orders sought are:-

- a. Ruling and orders granted to the Claimant on 18<sup>th</sup> October 2017 are stayed pending hearing of the Application.
- b. Further proceedings are stayed.
- c. The entire Claim is struck out

6. The Claimant filed his Replying Affidavit sworn on 16<sup>th</sup> January 2018.

7. Parties agreed on 16<sup>th</sup> July 2018, to have Respondents' Application considered and determined on the strength of their Affidavits, Pleadings and Submissions.

**The Court Finds: -**

8. There is an extract from the Register of Trade Unions, Officers and Committee Members and Trustees, exhibited in the Respondents' Application, which is marked as CMK-12.

9. The extract shows that the 1<sup>st</sup> Respondent is the Secretary, Kilifi KUPPET Branch. He was registered after election held on 15<sup>th</sup> July 2017.

10. Exhibit CMK-11, is a letter from the Kilifi County Labour Officer, to the Registrar of Trade Unions, confirming that by-election took place on 15<sup>th</sup> July 2017. The Labour Officer supervised by- election. The results were forwarded by the Labour Officer to the Registrar, and the 1<sup>st</sup> Respondent registered as the Executive Secretary.

11. Once the Registrar of Trade Unions registered the 1<sup>st</sup> Respondent after the by-election the only recourse open to the Claimant, if aggrieved by such registration, is to appeal the decision in the Employment and Labour Relations Court, under Sections 30 of the Labour Relations Act, 2007. Registration of an Official is a decision made by the Registrar of Trade Unions, after receiving form Q from the Trade Union under Section 35[1] of the Labour Relations Act. Section 30 of the Act states that any person aggrieved by the decision of the Registrar made under the Act, shall appeal to the Employment and Labour Relations Court against the decision within 30 days. Disputes relating to elections, particularly before registration is concluded, may be referred to this Court under Section 34 of the Labour Relations Act. Once the Registrar has acted and registered an Official, the decision is appealable to the Court, but not challengeable in Court, as an ordinary Claim. It would not be possible for this Court to call the by-election again, and declare the Claimant as the only candidate who was validly nominated, while the records from the Registrar of Trade Unions, who is not a party to the proceedings, confirms that the 1<sup>st</sup> Respondent was validly elected and is registered as the Executive Secretary, Kilifi KUPPET Branch. The Registrar of Trade Unions made a decision to register the 1<sup>st</sup> Respondent, upon examining form Q submitted by the Trade Union, and relevant evidence of change submitted by the Labour Officer. She took into account the matters provided for under Section 35 of the Labour Relations Act, before making her decision to accept registration of the 1<sup>st</sup> Respondent. This is a decision made under the Labour Relations Act, which may be appealed against in this Court, within 30 days of its being made, under Section 30 of the Labour Relations Act.

12. The Court is of the view that the orders sought by the Claimant in his Statement of Claim on record, were made in misapprehension of the full facts. By-election took place. The exercise was supervised by the Labour Officer. The 1<sup>st</sup> Respondent was elected as Secretary, and registered as such. The Court cannot overturn registration of an Official through a Statement of Claim. The Claimant would have to file an Appeal, in which the Registrar of Trade Unions is joined as a Co-Respondent.

13. The Application filed by the Respondents on 18<sup>th</sup> December 2017 has merit. It is granted on the following terms:-

- a. **The Claim filed on 24<sup>th</sup> July 2017 is hereby struck out.**
- b. **No order on the costs.**
- c. **This file shall be marked as closed.**

**Dated and delivered at Malindi this 28<sup>th</sup> day of February 2019.**

**James Rika**

**Judge**