



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 177 OF 2019

(Before Hon. Justice Hellen S. Wasilwa on 26th June, 2019)

KENYA UNION OF PRE-PRIMARY

EDUCATION TEACHERS.....APPLICANT/CLAIMANT

VERSUS

JANE LITUNYA.....1ST RESPONDENT

MARK AMBITHO.....2ND RESPONDENT

RULING

1. The Claimant/Applicant, Kenya Union of Pre-Primary Education Teachers filed a Notice of Motion application dated 18/03/2019 against Jane Litunya, the 1st Respondent and Mark Ambitho, the 2nd Respondent for refusing to surrender union properties.

2. The Applicant seeks to be heard for orders that the 1st Respondent be compelled to immediately surrender the union's cheque book and a receipt book to the authorized union representative; while the 2nd Respondent be also compelled to immediately surrender all the union's receipt books, individual membership forms for members he recruited including monies collected thereat.

3. The Application is premised on the grounds that:

1. The 1st Respondent is the founder of the union's National Treasurer but lost her position in the 19th March 2016 union elections.

2. The 2nd Respondent is the founder of the union's National Chairman but lost his position in the aforementioned elections.

3. The Respondents have jointly refused to heed to our plea to have them surrender union's properties in their possession after leaving office in 2016.

4. The Respondents have and continue holding the union hostage by holding the union cheque book against the law thereby making it difficult for the union to operate its account effectively.

5. The union is at risk of losing money by having its cheque book in the hands of non-officials of the union.

6. The actions of the Respondents are a clear violation of the union's right to determine its own administration, programmes and activities as granted by Article 41(4) (a) of the Constitution of Kenya.

7. This Honourable Court has inherent powers to compel the Respondents to surrender the union properties in their possession.

4. The Applicant filed a Supporting Affidavit dated 18/03/2019 sworn by its General Secretary Samuel Opiyo who avers that the Registrar of Trade Unions issued the union with a certificate of change of officials dated 14/04/2016 after the Respondents lost elections. That he engaged the Respondents at a personal level trying to persuade them to surrender the said union properties but did not succeed including writing them a letter dated 03/06/2016.

5. He states that the union is forced to pay Kshs.700 for every bank transaction which would have been remedied by a cheque book and that the Respondents have not communicated to the union why they cannot surrender the said properties.

6. The 1st Respondent filed a Responding Affidavit dated 24/04/2019 averring that the Registrar of Trade Unions issued a Notice No. MLSSS/TU/elections 2015 on 25/11/2015 with orders that all unions/employer organisations should operate with properly constituted committees during grass root and national elections in accordance with their constitutions.

7. Further, that their names should be filled with the Registrar in accordance with Section 35(2) of the Labour Relations Act. She states that other orders included unions not changing their constitutions from the date of the notice and avers that the Applicant Union had temporarily no national office or paid up members with arrears not less than 13 months at that time. That the union had also not been gazetted for deduction of union member dues as required in its constitution and the law and she relies on her attached documents marked **JA1, JA2** and **JA3**.

8. The 2nd Respondent filed his Replying Affidavit dated 23/04/2019 averring that the Claimant/Applicant forged a letter purporting to be a resolution of the National Governing Council and pasted his name and signature requesting to hold an election.

9. That he (Mr. Samuel Opiyo) secretly received applications from 6 of his cronies and that they all went in unopposed without any proposers or seconders. That they lodged a complaint to the Registrar on 21/03/2016 and requested for information to file a case against the sham election but that to date, they have never been given the requested report.

10. That they further approached the office of the Commission of Administrative Justice under Article 35 of the Constitution to get the said document but all was in vain. That they thereafter lodged a **Cause No. 1630/2018** in the ELRC at Milimani Law Courts Nairobi under a certificate of urgency and contends that the items so required by the Claimants are to be used as evidence in the election fraud. That the Applicant should instead put its request in the on-going case and that this case should be dismissed with costs. He relies on his attached documents marked **MA1** and **MA2**.

11. The Claimant/Applicant responded that the Respondents' refusal to surrender union properties is an outright violation of **Section 42(6) of the Labour Relations Act** and that the Respondents have not demonstrated to this Court that the said properties are capable of being evidence/exhibits in the election dispute. Further, that there is no Court order issued in the said election dispute restraining them from demanding for contested properties.

12. When the matter came before Court on 06/05/2019, the Respondents were absent and Mr. Samuel for the Claimant submitted that they seek a ruling date as the Respondents had admitted to having the documents.

13. I have considered the averments of the Parties. I note that the orders sought in this application are similar to those being sought in the main claim.

14. By determining this application at this stage, I would have determined the main claim without listening to any evidence. I therefore decline to issue any orders at this time and direct that the Applicants proceed with the main claim. In the alternative, the Applicants should seek interim orders in the already filed case No.1630/2018.

15. Costs in the cause.

Dated and delivered in open Court this 26th day of June, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

2nd Respondent – Present

1st Respondent – Present

Applicant – Absent