



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 649 OF 2018**

(Before Hon. Lady Justice Maureen Onyango)

**KENYA PETROLEUM OIL WORKERS UNION.....CLAIMANT**

**VERSUS**

**NATIONAL CHAIRMAN, KENYA PETROLEUM OIL**

**WORKERS UNION.....1<sup>ST</sup> RESPONDENT**

**CHARLES OKOK.....2<sup>ND</sup> RESPONDENT**

**STANDARD CHARTERED BANK (K) LIMITED.....3<sup>RD</sup> RESPONDENT**

**RULING**

Before this Court for determination are two application. The one dated 3<sup>rd</sup> May 2018 filed by the claimant and the other by the 2<sup>nd</sup> Respondent dated 8<sup>th</sup> May 2018. The Claimant in its Application seeks the following orders-

- a. Spent.
- b. That *ex parte* orders be issued declaring that 1<sup>st</sup> and 2<sup>nd</sup> Respondent's letters to the 3<sup>rd</sup> Respondent dated 12<sup>th</sup> March and 8<sup>th</sup> April stopping the introduction of the new mandatory signatory as illegal, unlawful and constitutionally unenforceable.
- c. That *ex parte* order be issued directing the 3<sup>rd</sup> Respondent to immediately introduce the new General Secretary, Mr. Raphael Olala as the mandatory signatory to the Claimant's bank account therein.
- d. That, order be issued barring the 1<sup>st</sup> and 2<sup>nd</sup> Respondent from using outdated letter heads and any or any other Claimant's letter heads in communications with the 3<sup>rd</sup> Respondent and the 3<sup>rd</sup> Respondent be stopped from receiving and or acting on further instructions from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents while using the letter heads bearing the name of the late Gilbert Amolo as the General Secretary.
- e. Any other orders deemed favourable by the Honourable Court to the Claimant Union.
- f. Order on costs be borne by the Respondents.

The second application by, the 2<sup>nd</sup> Respondent seeks the following orders-

- a. Spent.
- b. Pending the hearing and determination of this application *inter partes*, the Orders issued by this Court *ex parte* on 3<sup>rd</sup> May 2018 be set aside.
- c. Upon *inter partes* hearing and determination of this application the 3<sup>rd</sup> Respondent be restrained from introducing the name of one Mr. Raphael Ouma Olala as a mandatory signatory to the Union's bank account until all the law, the Union Constitution have been

complied with.

d. Any other further orders as this Honourable Court may deem fit to grant in the interest of justice.

e. Costs of the Application to be in the cause.

The Claimant's Application is supported by the grounds set out therein and the Supporting Affidavits of Roy Masila and Francis Omolo. The Claimant avers that the General Secretary Raphael Olala was elected after the demise of the former General Secretary. As such, rule 18.2 of the Union's Constitution requires him to be a signatory to the bank account but the 3<sup>rd</sup> Respondent has blatantly refused to comply despite having been issued with the requisite documents and having been issued with an introduction letter from the Registrar to trade unions. The Claimant avers that the 3<sup>rd</sup> Respondent refused to act on these instructions but acted upon the 2<sup>nd</sup> Respondent's instructions.

Further, that the 3<sup>rd</sup> Respondent has refused to honour its cheques thereby halting the union's activities such as payment of staff salaries, rent and CBA negotiations. Further that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have refused to attend meetings or sign cheques.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondent's Application is based on the grounds set out on the motion and the Affidavit of the 2<sup>nd</sup> Respondent sworn on 8<sup>th</sup> May 2018.

The 2<sup>nd</sup> Respondent avers that no person can be made a signatory to a bank account without the resolution of the National Executive Council (NEC) passed at a duly convened meeting. The same must be approved by the Trustees of the Claimant pursuant to rule 15 of the Union's Constitution. That there was no resolution passed as there was no such meeting.

The 2<sup>nd</sup> Respondent's position is that the averment by Mr. Olala that there was a meeting held on 7<sup>th</sup> April 2018 is untrue. Further, that the introduction letter purportedly written to the 3<sup>rd</sup> Respondent by Mr. Tom Sika was a forgery. That the Registrar was misled into writing an introductory letter to the 3<sup>rd</sup> Respondent.

It was the position of the 2<sup>nd</sup> respondent that the claim herein is an abuse of the court process as there was no resolution authorizing the filing of the same.

The Claimant opposed the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's Application through the Replying Affidavit of Raphael Ouma Olala sworn on 25<sup>th</sup> May 2018. The affiant contends that unless the Applicants challenge the extract and letter of introduction of the Registrar under section 30 of the Employment Act, then the orders issued on 3<sup>rd</sup> May 2018 cannot be set aside.

The affiant avers that the NEC meeting of 7<sup>th</sup> April 2018 had quorum and was procedurally convened. He contends that Tom Sika's allegations of forgery are contradictory because the claims come 25 days after he signed the impugned document and after allegedly receiving a call from the bank; yet he has never revoked his signature. He also puts to task the bank's mode of operations regarding the matter and their laxity in addressing the issue of forgery.

It is the Claimant's case that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to prove the allegations of financial misappropriation.

Both Applications were disposed of by way of written submissions. The Claimant filed its submissions on 20<sup>th</sup> December 2018 while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed theirs on 30<sup>th</sup> May 2019.

### **Determination**

Having considered the pleadings, affidavits filed and parties' submissions, I find that the following are issues for determination-

- a. Who the signatories of the union accounts should be.
- b. Whether the applicants are entitled to the orders sought.
- c. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have met the threshold for issuance of the orders sought.

Rule 18.2 of the Unions Constitution provides for bank account of the union as follows –

The National Treasurer shall cause a bank account to be opened and maintained in the name of the Union and shall ensure that all the money belonging to the Union received by him is paid to the said account within seven days of receipt of such money, provided that the treasurer shall be permitted to retain in cash a sum not exceeding twenty thousand shillings to pay minor expenses. All cheques for withdrawals of money shall be signed by the chairman, National General Secretary, Treasurer, Assistant Treasurer and Trustee. In the event of the Treasurer being incapacitated or out of the country, the Assistant Treasurer shall sign all the Union cheques. The National General Secretary Signature shall be mandatory.”

According to the respondent, the office of the Secretary General is vacant following the demise of Mr. Gilbert Amolo and the National Executive Council (NEC) of the Union is yet to meet to elect a Secretary General. The claimant has however filed an extract from the office of the Registrar of Trade Unions which indicates that on 9<sup>th</sup> March 2018 Raphael Ouma Olala was registered as General Secretary of the

Union. He has further submitted a letter from the Registrar of Trade Unions dated 23<sup>rd</sup> March 2018 addressed to the 3<sup>rd</sup> respondent in which the Registrar informs the 3<sup>rd</sup> respondent as follows –

“Ref: MEACL&SP/TU/46/14/82 23<sup>rd</sup> March, 2018

The Bank Manager

Standard Bank

Moi Avenue Branch

NAIROBI

Dear Sir/Madam

**RE: KENYA PETROLEUM OIL WORKERS UNION – INTRODUCTORY LETTER**

I wish to inform you that upon request by the General Secretary of the above union vide letter Ref. KPOWU/01/RTU/03/19/2018 dated 19<sup>th</sup> March, 2018, and copied to you, trade union held elections on 9<sup>th</sup> March, 2018, whereby MR. RAPHAEL OLALA was led as the National General Secretary. His appointment has been duly registered in our office. Attached, please find an extract of the union for your reference.

You may therefore accord the officials the necessary assistance.

Yours Faithfully

SIGNED

E. N. GICHEHA (MRS)

REGISTRAR OF TRADE UNIONS

Encl.

Copy to:

The General Secretary

Kenya Petroleum Oil Workers Union”

The claimant further attached minutes of the NEC meeting held on 7<sup>th</sup> April 2018 at the claimant’s Coast Branch offices at Sir Yusufali Trust Building, 1<sup>st</sup> Floor, Door 5, Moi Avenue, Mombasa at which a resolution was passed under Minute 3/7/4/2018 that –

**a. Financial Management of the Union:**

General Secretary opened by saying the union must re-invent a way to a more transparent and accountable mode of using union funds.

Bro. Fondo wondered why General Secretary has not become the mandatory signatory in the banking system pursuant to Rule 18:2 of the union’s constitution and bro. Roy Masila explained the stringent requirement of the Standard Chartered Bank over the matter.

After lengthy discussions by the members; Bro. Ruttoh proposed that bro. Raphael Olala's signature be introduced to the bank as soon as possible; he was seconded by Bro. Walter Abidha.

It was finally agreed and unanimously resolved by the council that:-

- i. Signature of Bro. Olala, the National General Secretary be immediately introduced to the system of our national Bank account at the Standard Chartered Bank' Moi Avenue branch, Nairobi.
- ii. Any three (3) signatures i.e. National General Secretary's and two (2) others shall be permitted to conduct transactions in the bank account from today onwards until otherwise changed by NEC.

Bro. Masila said Mpesa transactions is now a legally recognized tool of money transfer and he promised to be keeping the transaction numbers in the vouchers clearance and signing by the recipients whenever in contact with them.”

The minutes are signed on 7<sup>th</sup> April 2018 by Raphael Olala as National General Secretary and Philip K. Fondo as Vice Chairman and Chairman of the day.

The 3<sup>rd</sup> respondent confirmed at paragraph 13 of the replying affidavit of ANDREW MUTHIE that it had complied with the court orders made on 3<sup>rd</sup> May 2018 directing it to introduce Mr. Raphael Ouma Olala as a mandatory signatory to the account.

In his replying affidavit sworn on 8<sup>th</sup> May 2018 and filed on 9<sup>th</sup> May 2018, the 2<sup>nd</sup> respondent Mr. Charles Okok confirms that Raphael Ouma Olala is the General Secretary of the claimant at paragraphs 2 and 3 where he deposes as follows –

“That the current General Secretary (GS) of the Union, one Mr. Raphael Ouma Olala was purportedly s/elected on 9<sup>th</sup> March 2018 in an exercise that Mr. Olala intentionally ensured that all the potential candidates for the position of GS were kept in the dark about, excluded and prevented from participating in.

That it false and outright misrepresentation of facts for one to allege as it is in paragraph 2 of the background to the Memorandum of Claim that Mr. Olala beat any candidate during the purported elections since he was competing against himself without any other competitor.”

Section 35 of the Labour Relations Act provides for registration of union officials as follows –

### **35. Notification of officials**

#### **1. A trade union, employers’ organization or federation shall exhibit prominently —**

**a. in its registered office, a notice giving the names of all officials and their titles;**

**b. in every branch office the notice specified in paragraph (a) and in addition, a notice giving the names and titles of the officials of the branch.**

**2. Notice of any changes of officials or of the title of any officials shall be submitted to the Registrar in Form Q set out in the Second Schedule, within fourteen days after the change, together with the prescribed fee, and the Registrar shall register the change, subject to subsection (4) and subsection (5).**

**3. Before registering any change of officials or correcting any register, the Registrar may require the production of any relevant evidence of the change.**

**4. If, after inquiry, the Registrar is not satisfied as to the validity of any appointment or the propriety of any proposed correction, the Registrar may refuse to register the change of officials or to correct the register.**

**5. No change of officials shall have effect until it is registered by the Registrar.**

**6. No person who is not registered by the Registrar in accordance with this section shall act or purport to act as an official of a trade union, employers’ organization, or federation or of any branch.**

From the provisions of Section 35, the register of union officials kept by the Registrar is the authentic and official record of officers of trade unions.

There is no dispute that Raphael Ouma Olala is the registered General Secretary of the claimant union. The respondents have not in their application or response to the claimant’s application asked this court to declare the registration of the Raphael Ouma Olala as General Secretary of the Union unlawful or raised objection on the extract of the Registrar. They have further not denied the provisions of the union’s constitution that the National General Secretary is a mandatory signatory of the claimant’s bank accounts.

For the foregoing reasons I find the application dated 8<sup>th</sup> May 2018 without merit and dismiss the same.

I further find that Raphael Ouma Olala is the registered National General Secretary of the claimant union and therefore by virtue of Clause 18.2 of the claimant’s constitution a mandatory signatory to its accounts. I further find that at a NEC meeting held on 17<sup>th</sup> April 2018 there was passed a resolution that he becomes a signatory to the claimant’s bank account.

**I therefore confirm orders made on 3<sup>rd</sup> May 2018 directing the 3<sup>rd</sup> respondent to introduce the name of Raphael Ouma Olala as this as mandatory signatory of the bank account of Kenya Petroleum Oil Workers Union held in Standard Chartered Bank Account Number 0102004941500 pursuant to the extract and letter of introduction from the Registrar of Trade Unions.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 29<sup>TH</sup> DAY OF NOVEMBER 2019**

**MAUREEN ONYANGO**

**JUDGE**