



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR COURT AT NAIROBI

CAUSE NO 773 OF 2017

RICHARD BOSIRE AND 4 OTHERSCLAIMANT

VERSUS

UNIVERSITIES ACADEMIC STAAFF UNION.....RESPONDENT

R U L I N G

1. By a Notice of Motion dated 11th October, 2018 the applicant sought Orders among others that there be a stay of proceedings and orders issued by the Court on 1st December,2007 and that these orders be set aside. The applicants further sought to be joined in the suit.
2. The application was based on the main grounds that that applicants were bonafide officials of the University of Nairobi Chapter of the respondent and the have learnt that the Claimant have laid claim to the Chapter assets subject of the claim without their knowledge which claim of actualized will result to massive loss of assets due to the Chapter in fraudulent circumstances. The application further alleged that there was urgent need to stay the release of the Chapter funds to the Claimants since the claim has been filed and lodged under fraudulent circumstances without sanction was resolution of Chapter officials.
3. The applicants also alleged that the University of Nairobi Chapter has 19 officials comprising the executive committee and of these only the 4 Claimants have clandestinely lodged a claim on the assets/money due to the Chapter in total disregard to the interest of members of the Chapter and its duly elected officials.
4. In submissions in support of the application, Ruto for the interested parties submitted that funds due to the Chapter are vested in the Custody of the Chapter officials to facilitate them in their discharge of Union affairs. Such facilitation is made pursuant to Chapter resolutions as and when necessary. Such payments where made would then be disbursed to Chapter Officials as requested.
5. Mr. Ruto further submitted that the current application begs the question whether these Chapter officials have an interest in the management of the funds belonging to the Chapter and whether their participation in the proceedings will enable the Court to appreciate all aspects of the claim and further whether the Claimants obtained the orders without full disclosure on the interest of the other Chapter officials hence the orders are liable for setting aside.
6. Mr. Ruto further submitted that the law is now settled that for a party to be enjoined in proceedings the party must show hat he has a legal interest in the subject matter and that his participation in the proceedings would be necessary to enable the Court arrive at a just conclusion of the dispute.
7. According to Counsel it had been shown in the Supporting Affidavit of the applicants that they were officials of the Chapter and that the Chapter relied on the respondent for funds to facilitate the discharge of their functions. Any determination on how he Chapter funds would be spent or dealt with as sought in the claim would definitely affect the interest of the interested parties/applicants. They therefore have a legal interest in the out come of the subject of the claim.
8. On setting a side the orders counsel submitted that the orders obtained by the Claimants affected the interest of the other Chapter officials in that it related to the discharge of their duties.
9. Out of 19 Chapter officials only 5 have gone to Court laying claim to the Chapter funds. In their claim they failed to notify the Court that their claim had the effects of disenfranchiacing the other Chapter Officials nor did they inform the Court that there are other interested portion who may be affected by the Orders sought. The interested parties submitted that they had not authorized the Claimant to file this suit.
10. Ogembo for the Claimant submitted that the interested parties had not made the present application in good faith and it was a belated attempt pushed by the respondent to evade compliance with the Court's order of 1st December,2017 and at the same time evade order for reconciliation of accounts which was to be supervised by the Court.

11. Contrary to the averment by the proposed interested party the claim was properly instituted on behalf of the entire Chapter of UASU having been instituted purely by members of Executive Committee of UASU, Nairobi Chapter. The 5 Claimants were members of the Executive Committee and constitute majority in the said committee. Under article 19 (f) of the respondents Constitution, they are in control of the entire a Chapter activity and for avoidance of doubt it provides that the Chapter Executive Committee shall be responsible for each Chapter subject to control of the National Executive Committee. It was therefore clear that the claim was commenced and was being proceeded with by persons who by of the Constitution are directly responsible for managing the affairs of the Chapter.

12. The applicants not being members of the Executive Committee with a direct mandate to be responsible for the Chapter, cannot have an identifiable stake brought out by the respondent constitution to have other persons not members of the Executive Committee to proceed to be added purposely to advance a different position and agenda from the Executive Committee.

13. Mr. Ogembo further submitted that the only basis for seeking to be joined in the suit was fear that the respondent may proceed and pay the sums claimed by the Claimants directly and not to the Chapter account and which issue has been fully addressed in the suit and does not require enjoinder of a party to have the same addressed.

14. Having sued as officials and members of the UASU, University of Nairobi Chapter, the remedies sought are all made in the best interest of the Chapter. There exists no order sought to seek to compel the respondent to release funds into the individual pockets of the officials who have sued the respondent. The Chapter has an official bank account and since the investigation of the case all fund have been remitted directly into the Chapter account by the respondent.

15. Joining a suit as an interested party is usually intended to introduce a perspective to the suit which could easily be overlooked yet important. For instance, the final determination might indirectly affect the Class of persons seeking to be joined hence the need to factor in their input while reaching the determination of a dispute, mere support or association with a certain position already taken in the suit is not enough ground to be joined in the suit.

16. The claim as filed seeks a declaration that the respondent's action in withholding the Chapter Funds of the UASU, University of Nairobi Chapter is illegal and contravenes the right of the Claimant ends and the Chapter to freedom and rights of association. The Claimant's further sought a declaration that UASU, University of Nairobi Chapter was entitled to retain 60% of the monthly remission of trade union and agency fees from the members of the Chapter.

17. The notice of motion dated 25th April, 2007 sought interlocutory orders directing the respondent through National Treasurer to remit the Chapter funds amounting to Kshs. 6,684,669.20 to enable the Chapter conduct its activities. The Court has not seen any prayer seeking to have any funds personally paid to the Claimants.

18. The Claimant's Counsel has submitted that the Claimants are members of the executive committee hence the only person mandated by the Chapter constitution to be responsible for its affairs. This is correct since in any organization or association, there must be a person or persons charged with running day to day affairs of the organization. They are the ones with the mandate to sue or be sued on behalf of the organization. This is for convenience of management and avoiding unnecessarily numerous parties to a suit. The only occasion when a person in the organization may independently join a suit is where it is ably demonstrated that the person has an interest not already represented in the suit and which is necessary in deciding the dispute.

19. The applicants seem to agitate a different interest from the one the Claimants are pursuing on their behalf. They fear that of the funds are released as sought by the Claimants they will end up in the Claimants packets. The Claimant as officials of the Chapter are subject to regulations of the Chapter including regulations regarding financial transactions.

20. Nothing has been shown by the applicants that if the orders sought are granted the funds would end up in the Claimant's pockets. Mere fear is not enough and in any event of that occurs it would constitute a difficult cause of action which has nothing to do with the respondent.

21. In conclusion the Court has not been persuaded that there is a new interest in the suit which the applicants seek to represent different from what the Claimants have placed before the Court. The application is therefore dismissed with costs.

22. It is so ordered.

Dated at Nairobi this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

Delivered this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge