



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
APPEAL NUMBER 20 OF 2016

SAMUEL KITHOME (MEMBER).....1ST APPELLANT
ALFRED MUKALO (MEMBER).....2ND APPELLANT
AMOS NANDWA (MEMBER).....3RD APPELLANT
TITUS W. KHAEMBA.....4TH APPELLANT
EDWARD S. MUKORO.....5TH APPELLANT

(Suing in their names and on behalf of the dissolved

Airport Branch of the interested party)

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

AND

TRANSPORT WORKERS UNION KENYA.....INTERESTED PARTY

RULING

1. By a Notice of Motion dated 16th September, 2016 the Appellant sought orders among others that:

a. That pending the hearing and determination of this Application there be stay of the decision by the respondent to dissolve the airport branch of the interested party vide letter dated 18th August, 2016.

b. That pending hearing and determination of this application the airport branch of the interested party and its officials as per the registrar of trade union's extract as at 20th July, 2016 be reinstated.

2. The application was based on the main grounds that:

a. That unless appropriate orders are issued the appeal herein may be rendered nugatory and the applicants may be unfairly dismissed from office of the airport branch as a result of the illegal conduct of the respondent in collusion with some officials of the interested party after the applicants had been validly elected on 23.4.2016.

b. That the respondent in collusion with some officials of the interested party has illegally sanctioned the disbandment vide letter dated 18.8.2016 of the airport branch of the interested party aimed at illegally removing the appellants/applicants who were elected as officials of the then airport branch from office.

c. That in the purported disbandment, which is not provided under the law or the union's constitution the respondent made a variety of allegations touching on failure to keep proper records and failed to invite the applicants to clarify or defend themselves on the allegations levelled against the airport branch contrary to section 35 of the Labour Relations Act, 2007.

3. In his submissions in support of the application, Mr Musungu submitted that it was not in dispute that prior to the letter of disbandment dated 18th August, 2016 the airport had conducted its branch elections on 23rd April, 2016 meaning prior to allowing the airport branch to conduct its elections the respondent and interested party had confirmed that the airport branch had complied with the constitutional provisions of the interested party and the Labour Relations Act. It was however the appellants contention that the grounds used by the respondent to disband the airport branch were malicious as the branch had complied with all the cited reasons in the disbandment letter.
4. Mr Musungu further submitted that apart from the rules of the union which had been cited, the interested party's constitution does not explain what decision of the Delegates Conference, Special Delegates Conference, Central Council, National Executive Committee and Financial Committee may trigger disbandment of a branch. Similarly the interested party has not demonstrated whether such decision was made and if so when.
5. According to Mr Musungu, the interested party's constitution only empowers the interested party to disband the airport branch on account of membership of the branch falling below 200. The reasons for disbandment do not extend to officials of the interested party not operating a bank account for the branch, not keeping a wage book for the employees of the airport branch, not presenting a collector's receipt book and not keeping a record of receipt book.
6. Counsel further submitted that no evidence had been provided by the respondent to confirm that the membership of the airport branch had fallen short of 200 for the three months. Further, no evidence of correspondence had been provided by the respondent and interested party to prove that the airport branch had fallen below 200 and if more recruitment was not done before expiry of 3 months the branch would be disbanded.
7. According to Mr Musungu the branch of a trade union is not allowed to operate a bank account.
8. Mr Odukenya for the respondent on the other hand submitted that it was the mandate of the interested party to establish and disband branches in accordance with the constitution. According to the annual returns filed by the interested party and records held in the respondent's office, the branch had no members and or the membership could not be established and that the dissolution of the branch was because it had no members and or the members had gone below 50 as provided in the union's constitution.
9. Mr Odukenya submitted further that the respondent followed the law, the union's constitution and the resolution of the union to register the dissolution. The respondent was never required to give the appellants a hearing before registering the dissolution as the union's constitution does not envisage the same.
10. Mr Rakoro for the interested party submitted that the union held a central council meeting on 27th July, 2016 at its National Offices and the agenda number 2 was the disbandment of the union's airport branch. The central council was composed of 17 members and the 4th appellant was one of those present.
11. By a vote of 16 to 1 a decision was made to dissolve the branch. According to counsel, the central council exercised powers provided for under rule 21(a) and (b) of the union's constitution.
12. Mr Rakoro further submitted that on 27th July, 2016 the 4th appellant objected to the said decision by the central council after which the Registrar on 3rd August, 2016 got more information on the same. The General Secretary of the union on 15th August, 2016 supplied further and better information to the Registrar to enable her respond to the objection and make a correct decision.
13. Mr Rakoro further submitted that although the appellants contend that the branch had done recruitment and was representing employees in seven companies no exhibition of the branch register was made or even the check off form for members of the said branch employed at the alleged companies. Further, the appellants did not challenge the annual returns for 2013 and 2014 which indicated the branch had no members.
14. This is an interlocutory application and all the court needs to be satisfied about in this particular case is whether the applicant has demonstrated a prima facie case with probability of success and if in doubt whether the balance of convenience is weighted in favour of the applicant. The applicants contest the dissolution of the interested parties airport branch and sought that in the interim, the court interdicts the resolution by the interested party to dissolve its airport branch where the applicants were officials.
15. The applicants further sought that the court declare them valid officials of the airport branch. These appear to be the same prayers sought in the appeal. The respondent and the interested party have vehemently opposed the application and sought to demonstrate that they fully complied with the law and the interested party's constitution in carrying out the disbandment.
16. Whereas the ultimate position will be decided after the hearing of the appeal it would be disincentivising to the appellants to pursue the appeal if the orders in the nature sought were to be granted at the interlocutory stage. The court must at all times refrain from granting interlocutory orders whose effect would create less motivation to pursue the main claim.
17. The court will in the circumstances not grant any interlocutory order but direct that the parties file submissions in respect of the main appeal within 30 days of this order for the court to finally decide the dispute.
18. The matter will be mentioned on 5th March, 2018 for allocation of a date for the Judgement on the appeal.
19. It is so ordered.

Dated at Nairobi this 9th day of February, 2018

Abuodha J. N.

Judge

Delivered this 9th day of February, 2018

In the presence of:-

..... for the claimant

..... for the Respondent

Abuodha J. N.

Judge