



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 781 OF 2017**

(Before Hon. Justice Hellen S. Wasilwa on 9<sup>th</sup> March, 2018)

**VIRGINIA KALUKI KALWE.....CLAIMANT/APPLICANT**

**-VERSUS-**

**CHRISTOPHER MUTINDA MUTUA.....1<sup>ST</sup> RESPONDENT**

**KENYA COUNTY GOVERNMENT WORKERS**

**UNION MACHAKOS BRANCH.....2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA COUNTY GOVERNMENT**

**WORKERS UNION.....INTERESTED PARTY**

**RULING**

1. The Application before Court is the one dated 26/4/2017 filed by the Applicant Claimant herein under Certificate of Urgency through the firm of Katunga Mbuvi & Company Advocates.

2. The Application was brought under Section 12 and Section 20 of Employment and Labour Relations Court Act, Section 3A of Civil Procedure Act and all other enabling provisions of the law.

3. The Applicant seeks orders as follows:-

**a) That the application herein be certified as urgent and service thereof dispensed with.**

**b) That pending the hearing and determination of the application herein, the Applicant be reinstated to her position of the union branch women representative of the 2<sup>nd</sup> Respondent.**

**c) That the 1<sup>st</sup> Respondent be restrained from harassing, interfering or in any manner frustrating the position, activities and duties of the Applicant/Claimant.**

**d) That costs of the application be provided for.**

4. The Application is supported by the affidavit of Virginia Kaluki Kalwe, the Applicant herein sworn on 26/4/2017 and is based on the following grounds:-

**1. That the act of dismissing the Applicant herein from her position as the Women Representative of the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent was unlawful, unprocedural and contrary to the law.**

**2. That the 1<sup>st</sup> Respondent has replaced the Applicant with another lady as the Women representative of the 2<sup>nd</sup> Respondent yet**

*the said lady was never elected by the member of the Interested Party.*

**3. That the claim against the Respondents is substantive and with all probable chances of success.**

**4. That the Applicant has suffered and is still suffering in the hands of the 1<sup>st</sup> Respondent. He has stopped her allowance since last year and denied her access or opportunity to attend meetings of the 2<sup>nd</sup> Respondent yet he has no capacity to stop and interfere with an elected member, the right belongs of the members of the Interested Party.**

**5. That it is fair and just that the orders herein be granted.**

5. The Applicant has deponed that she was elected the National Executive Committee Member Representing Eastern Region of the Interested Party herein as per Appendix VKK1 following election held on 7/5/2016. This election results were duly registered by the Registrar of Trade Unions on 13/5/2016 as per the letter from the Registrar Trade Unions Appendix VKK3.

6. That on or about 4/8/2016, she received a letter from 1<sup>st</sup> Respondent suspending her from the branch as Women Representative of the 2<sup>nd</sup> Respondent (VKK4). She avers that the said suspension was illegal and contrary to the provision of the Constitution of Kenya, County Government Workers Union, and this was affirmed by the Secretary General of the Interested Party (Appendix VKK5). That the 1<sup>st</sup> Respondent has since ignored the advice of the Interested Party.

7. The Applicant seeks orders therefore to restrain the 1<sup>st</sup> Respondent from harassing, frustrating the position, activities and duties of the Applicant herein.

8. The Interested Party filed their Replying affidavit to this application deponed to on 28/7/2017. The affidavit was sworn by one Raphael Angore the Deputy National General Secretary of the Interested Party. The Interested Party supported the application averring that the suspension of the Applicant was unprocedural and unfair for want of fair procedure. They also filed submissions in support of the application averring that there were no investigations conducted into the Claimant's alleged misconduct. They aver that the 1<sup>st</sup> Respondent lacks the mandate to remove the Applicant from office.

9. They cited the Respondent's Constitution which states the process to be followed in case of misconduct and which can lead to removal of a member of the Executive Committee.

10. The Respondents filed their submissions in opposition to this application on 29.11.2017. They admit that the Applicant was elected as the Branch Women Representative of the 2<sup>nd</sup> Respondent to the Interested Party.

11. They contend that the Applicant was lawfully suspended. The Respondent submitted that on 10/9/2016, the 2<sup>nd</sup> Respondent held its congress and the members in attendance ratified the decision made on 3/8/2016 by the branch Executive Committee to suspend the Claimant. That the Claimant was present on the 10/9/2016 and was accorded a chance to defend herself in line with the provisions of the Interested Party's Constitution.

12. The Respondents referred Court to Article 4(g) Section 5(1) of their Constitution, which stipulates that a member may be suspended or recommended to the National Delegates Council for expulsion of the National Executive Council if the member breaches any of the provisions of the Constitution. They aver that the Claimant was suspended properly and they want this application dismissed accordingly.

13. I have examined the averments of both parties. The Applicant has explained the processes leading to her suspension by the Respondent. The Respondent on the other hand avers that they followed the correct process and had valid reasons to suspend the Applicant from her office.

14. The Respondent has made averments that they followed due process before the Applicant was removed from office. At this point, I wish to point out that the Respondent never filed any response to this Application. The submissions made are not evidence and neither are they supported by evidence.

15. The Respondent for instance submits that the Applicant was given an opportunity to be heard before her suspension. The minutes of any disciplinary hearing are not submitted to Court. There is also an averment that the decision of the branch was ratified by the 2<sup>nd</sup> Respondent's Congress. The minutes of this meeting were also not brought to the Court's attention.

16. As the application stands, the averments by the Applicant are not controverted and there is no proof to the contrary. I find that the Applicant has established a prima facie case to warrant issuance of orders sought. I therefore allow this application as follows:-

**1) That the Applicant be reinstated to her position as Union Branch Women Representative of the 2<sup>nd</sup> Respondent pending hearing and determination of this claim.**

**2) That the 1<sup>st</sup> Respondent be restrained from harassing, interfering or in any manner frustrating the position, activities and duties of the Applicant pending hearing and determination of this claim.**

**3) Costs to the Applicant.**

**Dated and delivered in open Court this 9<sup>th</sup> day of March, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Miss Wafula holding brief for Mbuvi for Claimant – Present

Githome holding brief for Otieno for Interested Party – Present

Respondent – Absent