



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

PETITION NO.54 OF 2016

IN THE MATTER OF:

1. **THE CONSTITUTION OF KENYA, 2010 ARTICLES 36(1), (2) AND 47(1), (2),**
2. **THE LABOUR RELATIONS ACT, 2007 SECTION 34(1) AND 33(C),**
3. **THE CONSTITUTION OF KUPRIPUPA RULE 9(b)(ii), 16(d) and 22(d)**

STEPHEN SADIA ONYANGO.....PETITIONER

VERSUS

**KENYA UNION OF PRINTING, PUBLISHING, PAPER MANUFACTURERS, PULP AND
PACKAGING INDUSTRIES (KUPRIPUPA).....1ST RESPONDENT**

**KENYA UNION OF PRINTING, PUBLISHING, PAPER MANUFACTURERS, PULP AND
PACKAGING INDUSTRIES (KUPRIPUPA) NAIROBI BRANCH.....2ND RESPONDENT**

THE REGISTRAR OF TRADE UNIONS.....3RD RESPONDENT

JUDGEMENT

1. The petitioner filed the petition on 16th april, 2016 together with a Notice of Motion seeking urgent orders and the court directed parties to proceed and address the main petition where the petitioner is seeking for the following prayers;

- a) *A mandatory injunction restraining the respondents from proceeding to conduct the affairs of the union until a repeat election is held in accordance with Rule 16(d) of the constitution.*
- b) *A mandatory order that the election of the 2nd respondent on 28th of February was unconstitutional, null and void.*
- c) *The court be pleased to issue such orders and give such directions as it may deem fit and just to meet the ends of justice.*
- d) *Costs be in the cause.*

2. The petition is premised on the grounds that the petitioner is a member of the 1st respondent while the 1st and 2nd respondents have a duty to adhere to the union constitution. The constitution of Kenya Union of Printing, Publishing, Paper Manufacturers, Pulp and packaging Industries (KUPRIPUPA) Rule 16(d) requires that the quorum of the branch general meeting be one third of the membership to conduct an election. On 28th February, the union held its elections for Nairobi branch without quorum.

3. The petition is that the respondents allowed Maurice Obumba to contest in the elections but had never applied for any position but was allowed to contest contrary to Rule 9(f) of the union constitution. three persons, Peter Yator, Fredrick Juna, Gabriel Olala and Tom Ochier from De La Rue Currency & Security Print were not members at the time of the elections but were allowed to vote and to vie contrary to section 33(c) and 34(1) of the Labour Relations Act, 2007.

4. With the branch office not having properly conducted its elections, such was unconstitutional and this should also have the national elections nullified. The failure to adhere to the constitution by the 1st and 2nd respondents renders the entire elections a nullity.

5. The 3rd respondent had a duty to take control of such irregularities within the law and the petitioner sent a letter to the office with regard to dissatisfaction with the elections. The petitioner had legitimate interests in the 2nd respondent elections and for failure to abide the law, the petition should be allowed.
6. In reply to the petition, the 1st and 2nd respondents filed a Replying Affidavit sworn by Rajab Wellington Mwondi the General Secretary of KUPRIPUPA. This was in reply to the Notice of Motion filed together with the petition.
7. Mr Mwondi response is that KUPRIPUPA held elections and the 1st respondent elected national officials on 20th February, 2016 and filed Form Q with the 3rd respondent and a Certificate of Registration was issued on 23rd February, 2016. With regard to the ELECTIONS of 2nd respondent, this was done on 28th February, 2016 and Form Q filed during the second elections and certificate issued by the 3rd respondent on 22nd March, 2016.
8. Mr Mwondi also avers that the first elections of the 2nd respondent aborted on 31st January, 2016 due to reasons he had communicated to the Labour Commissioner vide letter dated 1st February, 2016. The elections were held with the required quorum. As the elections held on 28th February, 2016 were a second election the first having failed on 31st January, 2016 there was no requirement for the one third quorum as under Rule 16(d) of the union constitution.
9. As the first elections could not conclude, a second election notice was issued and held on 28th February, 2016. There were no constitutional rights violated and the petition should be dismissed with costs.
10. The Petitioner filed a Supplementary Affidavit on 16th May, 2016 and avers that the officials of the 1st and 2nd respondents are in office illegally as the officials were appointed and not elected contrary to Rule 5(f) of the union constitution. branch level communications as supposed to be done by the branch secretary and not the General Secretary and where Mr Mwondi wrote to the labour commissioner with regard to the elections of the 2nd respondent that amounted to interference with branch affairs. There was no quorum for the elections held on 28th February, 2016 which supports the petitioner's petition which should be allowed.
11. The parties filed written submissions.
12. The petitioner submits that the union elections held for Nairobi branch on 28th February, 2016 were unconstitutional as they went against the union constitution.

Rule 16(d) required quorum atone thirds of membership which the 1st respondent general secretary has confirmed was not the case and hence the resulting election was by appointment and not by election and thus a nullity. By allowing non-members to vote and vie for elections, such was contrary to the union constitution and the elections null and void.
13. The petitioner also submits that the first elections of the 2nd respondent on 31st January, 2016 aborted for the reasons other than the quorum as communicated on 1st February, 2016 by the branch following interfere by non-members and another union using the same venue for their elections. The subsequent elections on 28th February, 216 were conducted contrary to the Labour Relations Act and contrary to the union constitution as there was no quorum.
14. By the 3rd respondent registering the new officials, such was in utter disregard of complaints filed with the office. Several persons had been allowed to vie and be voted for as officials without following due process and at the time they when to members of the union. Peter Yator was not a member of the union in December, 2015. The check off forms presented in court by the respondents for January, 2016 is a forgery. Such persons should not have been allowed to vote or vie for office. The entire elections was a nullity.
15. The presiding officer allowed persons not fully paid up in the 2nd respondent to participate in elections. Gabriel Olola and Tom Ochiel were not paid up members. Their names are not on the check off lists for January, 2016.
16. The petitioner also submits that Maurice Obuba did not apply for the position of 2nd respondent's chairman as he was not eligible to apply. The union constitution does not allow for proposal and secondment of candidates in the elections. Too do so for Mr Obuba was irregular and the resulting elections a nullity.
17. The 1st and 2nd respondents submits that the 1st and 2nd respondents organised elections for the 31st January, 2016 but aborted for reasons communication to the Labour Commissioner via letter dated 1st February, 2016. A second election was called in accordance with the union constitution Rule 16 for 28th February, 2016 and in accordance with section 34 of the Labour Relations Act, 2007.
18. The first elections had been characterised by chaos and violence forcing the elections to abort. This necessitated a second election. A notice was issued to the members. The second election did not require a two thirds quorum in accordance with Rule 16(d) of the union constitution. the elections were supervised by an officer of the government. Form Q as filed and admitted by the 3rd respondents in accordance with the law.
19. Mr Peter Yator was elected as the 2nd respondent Branch treasurer. He is a member of the union and fully paid up. Gabriel Olola was not eligible to participate in the election and he did not vie for any position as he was a manager at De La Rue Currency and Security Company. He was also directed by the Labour Commissioner not to attend elections as he was already a manager with his employer. Mr Olala filed Petition No.7 of 2016 seeking to contest elections of 28th February, 2016 but the court ruled the application had no merit.

20. Mr Tom Ochier was not in arrears and was fully paid up at the time of elections. He was eligible to participate in elections. This was the same case for Maurice Obumba who was a member fully paid up and eligible to participate in elections as well as Fredrick Juma but he did not vie in the elections.

21. The 1st and 2nd respondents rely on the cases of **Alexander Mutinda Peter and another versus the Registrar of Trade unions and 4 others, Cause No.1103 of 2011** and **Jim Mhalapo Masege versus the Secretary General, Aviation and Allied Workers Union and antler, Cause No.161 of 2011**.

The issues which emerge in this case for determination can be summarised as follows; Whether the respondents adhered to the union constitution in holding elections on 28th February, 2016; Whether the petition should be allowed in the nature of the orders sought.

22. Both parties agree to the extent that there were elections scheduled for the 31st January, 2016 but did not take place as they aborted following chaos. A new notice was issued for the elections on 28th February, 2016. The petitioner has contested that the elections held on 28th February, 2016 were without quorum and thus null and void. That in the elections persons not members and not paid up participated in the elections making them null and void.

23. The respondent agree that indeed there was a second election held on 28th February, 2016 and this was in accordance with the union constitution and the allegations made on the members who participated are not correct as there is the list of members and all who participated were fully paid up. Such members list is available.

24. Section 34 of the Labour Relations Act, 2007 provides that all trade unions must conduct their elections in accordance with the union constitution. In this regard, KUPRIPUPA has its constitution as registered with the 3rd respondent. Rule 16 is clear with regard to how an election is to be conducted. The relevant sub-rule is 16(d) which provides that a branch election shall be held every 5 years following notice by the branch secretary. Where a member is in 13 weeks arrears in dues, he or she cannot participate in the elections. Quorum for a branch annual general meeting where an election is held is one third of the branch members who are not in arrears in subscriptions.

25. Sub-Rule 16(d) also provides that;

... in a case of a quorum is not realised at the first meeting the members present at the second meeting shall take place.

26. In this regard, the constitution of a branch annual general meeting is qualified in that, where a meeting is called by the notice of the branch secretary and the same fails to take place, a second meeting called does not require *quorum* to be addressed. I take it that an annual general meeting for the branch can proceed in accordance with Rule 16(d) where it is the second and there is no quorum.

27. Such a matter of no quorum on 28th February, 2016 is not contested by the 1st respondent general secretary. My reading of section 34 of the Labour Relations Act, 2007 together with Rule 16(d) of the union constitution and the fact that there was a second meeting and elections on 28th February, 2016 was proper and lawful.

28. The general secretary of a trade union is the custodian of all union records and registers. Where there is a challenge to membership, payment of subscriptions and for how long, and the court must rely on the record of the general secretary as this is the lawful custodian of such information and pursuant to the provisions of section 2 of the Labour Relations Act, 2007. In proceedings such as these, the court must take the word of the general secretary as the lawful custodian of union records. Where there is information to the contrary, any records submitted by any other person outside what the general secretary has, the source of the same must be interrogated as to its authenticity.

29. The petitioner has submitted that various persons participated in the elections held on 28th February, 2016 while they were not members of the 2nd respondent, that some were not eligible to vote or be voted for and some were not fully paid up members. The petitioner's position in the union is that he is a member. His case is that the elections of the 2nd respondent were irregular and should be nullified and this also affected the national elections of the 1st respondent which should also be declared null and void. He however does not state the source of the records that he filed.

30. As noted above, the union records are kept by the general secretary and where required, filed with the office of the 3rd respondent. Such is the official record. As noted by Mr Mwondi in his affidavit, the members who participated in the elections and voted or vied for various positions were member fully paid up and were thus eligible. Without any evidence that the record of members of the union was a forgery, I take those who participated in the elections of 28th February, 2016 were eligible.

31. Accordingly, the orders sought in their nature cannot issue. The elections held on 28th February, 2016 were in accordance with the respondent union constitution and therefore lawful.

The petition is hereby dismissed. Each party to bear own costs.

Read in open court at Nairobi this 20th day of April, 2018.

M. MBARU

JUDGE

In the presence of:

Court Assistant:.....

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