



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION 35 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

KENYA NATIONAL UNION OF TEACHERS.....1ST PETITIONER/APPLICANT

HON. WILSON SOSSION.....2ND PETITIONER/APPLICANT

-VERSUS-

THE REGISTRAR OF TRADE UNIONS.....1ST RESPONDENT

TEACHERS SERVICE COMMISSION (TSC).....2ND RESPONDENT

HESBON OTIENO AGOLA.....3RD RESPONDENT

RULING

On 2nd May 2018 I heard an application by the petitioners/applicants and granted prayers 2, 3, 4, 5 and 6 of the application pending inter partes hearing. The effect of the orders granted was to restrain the respondents who are the Registrar of Trade Unions, Teachers Service Commission and Hesbon Otieno Agola from interfering with the 2nd petitioner's position as Secretary General of the 1st petitioner Kenya National Union of Teachers.

The application was fixed for inter partes hearing today when the applicant sought extension of the interim orders. The application for extension of the orders is contested by both the respondents.

According to the respondents the changes that are the subject of the interim orders had been effected on 2nd May 2018 while the orders were served on 3rd May 2018. They state that the subject matter has been overtaken by events. They further state that there should be no vacancy in the office of the Secretary General of Kenya National Union of Teachers.

The applicant states that the documents presented by the respondents are not proof of registration of changes as provided in Section 35 of Labour Relations Act. They further argue there for the court to vary the orders of 2nd May 2018 the applicants require to make a formal application.

I reserved my ruling on the issues of extension of interim orders to enable me peruse documents that were filed by the parties today and which I had not had the opportunity to look at as they were placed on record when the file was heard in court.

In the replying affidavit of the 1st respondent ELIZABETH GICHEHA, she has deposed at paragraph 3, 4, 5 and 6 that the notice of change of officers together with minutes of the special NEC meeting held on 30th April 2018 and list of attendance were lodged in her office on 2nd May 2018, that she effected the changes on 3rd May 2018 before she was served with the court orders after deregistering or removing the name of the 2nd petitioner from the register. She exhibited a copy of the application with a receipt stamp of 2nd May 2018 at 2 p.m. The order of the court exhibited to her affidavit has a stamp endorsed at 9.51 a.m. on 3rd May 2018.

I have also considered the replying affidavit of the 2nd respondent sworn by Josephine Mueni Maundu, the Director of Human Resource Management and Development in which she deposes in sum that the 2nd respondent has not role whatsoever in the changing of register of official of the 1st petitioner.

No response has been filed by the 3rd respondent although he was served on 3rd May 2018.

Section 35 of Labour Relations Act provides as follows –

35. Notification of officials.

1. A trade union, employers' organisation 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 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' organisation, or federation or of any branch.

The issues for determination are the following –

1. What is the evidence of registration of change
2. When was the registration of change in the present case effected.

As provided in Section 35 (5) no change of officials shall have effect until registered by the Registrar. Is a letter from the Registrar prima facie evidence of registration. To my mind a change of registration can only be proved by production of the register itself or an extract of the register. What has been produced by the 1st respondent is a letter dated 3rd May 2018 stating as follows –

“I wish to inform you that I have registered the notice of change of officers covering the appointment made on 30th April 2018.”

The letter does not state the name of the officer that was made in the register or when the changes were made. The letter does not even mention the date of the notice of change of officers or the date on which the notice was received by the 1st respondent.

The letter is dated 3rd May 2018 which

is the date on which the court order was served. It does not bear the time of receipt although there is an endorsement on the letter on record that it was received by HENRY COLLINS OYUU ASG KNUT with the date 3rd May 2018. It does not bear the time of receipt.

Form Q that was submitted for registration of the change of officials has an endorsement of the words “*pse process*” with the date 3rd May and another endorsement “*Action taken*” with the date 3rd May.

With all this evidence, it is clear that no changes were effected on 3rd May 2018 before receipt of the court orders.

At paragraph 6 of the replying affidavit the 1st respondent deposes that –

“That later on the same day, unfortunately after making the necessary changes and communicating the same, my office received a court order dated 2nd May 2018 inter alia prohibiting my office from deregistering or removing the 2nd petitioner as the Secretary General of the union and barring my office from acting upon or validating the decision of the union of 30th April 2018.”

On the face of the foregoing it is my finding that there is no prima facie evidence of registration of change of officials of Kenya National union of Teachers before the court. What is in court is only a letter from the 1st respondent to the 3rd respondent stating that some unspecified changes covering the appointment made on 30th April 2018 had been registered.

It is further my finding that there is no evidence that the alleged changes were made before or after service of the court order, a matter that can only be determined upon evidence being submitted by the parties with the findings above, there is no valid reason for not exceeding the interim orders which are hereby extended pending further orders of this court.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF MAY 2018

MAUREEN ONYANGO

JUDGE