



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. 26 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM UNDER ARTICLES 77, 95 AND 26
OF THE CONSTITUTION**

AND

IN THE MATTER OF THE LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012

AND

IN THE MATTER OF THE LABOUR RELATIONS ACT NO. 14 OF 2007

KENNETH N. WAHWAI BANDE.....1ST PETITIONER

JAMES KUNGU NG'ANG'A.....2ND PETITIONER

GLADYS ANDAMBI ALEMA.....3RD PETITIONER

LUCAS OLUOCH.....4TH PETITIONER

ELLY WAFULA.....5TH PETITIONER

ELIJAH MARUGA MURITHI.....6TH PETITIONER

HELLEN WANJA NDERITU.....7TH PETITIONER

VERSUS

WILSON SOSSION.....1ST RESPONDENT

KENYA NATIONAL UNION OF TEACHERS (KNUT).....2ND RESPONDENT

RULING

Vide an application dated 20th April 2018 the applicant who is the 1st respondent in this petition seeks the consolidation of this petition with Petition No. 83 of 2071 on grounds that –

1. That the two cases raise common issues of law and fact.
2. That the two cases relate to the same substantive respondents namely the 1st and 2nd respondents.
3. That is appropriate, practical and convenient, both to the parties and the court for the two cases to proceed as a consolidated cause.

4. That consolidation of the two cases will obviate the possibility of different outcomes in respect of the same subject matter.
5. That the rules of this court expressly provide for and contemplate the consolidation of the two cases in the prevailing circumstances.
6. That it would be fair, just and in the best interest of justice that the application is allowed.

The application is supported by the affidavit of WILSON SOSSION the applicant in which he deposes that the two petitions raise common issues of fact and law and in essence seek the same nature of relief which is his removal from office as Secretary General of the 2nd respondent on account of his position as nominated Member of Parliament. He reiterates the grounds on the face of the application.

The petitioners filed grounds of objection to the application in which they state that their petition was filed under certificate and consolidation of the same with Petition No. 83 of 2017 would cause undue delay in the hearing and disposal of the petition. They further state that the consolidation would be an affront to the overriding objectives set out in Sections 1A and 1B of the Civil Procedure Act and the principal objective of the Employment and Labour Relations Court Act as set out under Section 3 thereof being the timely and efficient disposal of suits. They state that the petitioners in Petition no. 85 of 2017 are guilty of indolence in pursuing the matter, that the petition has been protracted by the 1st respondent who is buying time to enable him enjoy the numerous salaries and benefits as both Secretary General of the 2nd respondent and a Member of the National Assembly. It is stated that allowing this application would offend Article 77(1) of the Constitution and cause prejudice to the petitioners' rights to fair and effective representation by their Secretary General as contemplated under Article 6(5) of the Constitution.

The petitioners further state that the two suits are different as the 4th and 5th respondents in Petition No. 83 of 2017 are not parties in Petition No. 26 of 2018. It is submitted that the consolidation would confer undue advantage to the applicant and disadvantage the petitioners.

The application was heard on 4th July 2018. Mr. Mbaluto for the applicant in his submissions reiterated the grounds in the supporting affidavit of the applicant and on the face of the application. He stated that consolidation would save court's time and avoid different decisions being made on a similar issue.

Mr. Wafula on behalf of the 2nd respondent associated himself with the submissions of Mr. Mbaluto. He submitted that consolidation will be in the best interest of justice and avoid multiple petitions which may cause delay. He submitted that contrary to the fears expressed by the petitioners, consolidation would make the two cases move faster.

Ms. Ndwiga for the petitioners submitted that the petition was certified urgent on 29th March 2018 and as at that point the petitioners were ready to proceed and complied with all directions. She submitted that the petitioner in Petition No. 83 of 2017 has been lazy in executing his rights as the petition which was filed on 25th October 2017 has not been heard. She pointed out that there was no representative of the petitioner in court on the date of hearing of the application and it is clear that the petitioner was not keen on prosecuting the petition.

She submitted that consolidation would cause a delay as counsel for the petitioner herein would have to look for the petitioner in Petition 83 of 2017.

She prayed that the application be disallowed.

Determination

Consolidation of suits is provided for under Rule 23 of the Employment and Labour Relations Court (Procedure) Rules as follows –

Consolidation of Cases

23. The Court may consolidate suits if it appears that in any number of suits—

(a) some common question of fact or law arises; or

(b) it is practical and appropriate to proceed with the issues raised in the suits simultaneously.

The petitioner herein does not deny that Petition 83 of 2017 and the petition herein have common questions of fact and law. All that the petitioner is concerned about is the inconvenience of the finding the petitioner in Petition No. 83 of 2017 who does not seem to be as keen as the petitioners herein in prosecuting the petition and the delay that may be occasioned by having to look for the petitioner.

In the case of **KOREAN UNITED CHURCH OF KENYA & 3 OTHERS -V- SENG HA SANG [2014] eKLR** the court observed that –

“Consolidation of suits is done for the purposes of achieving the overriding objective of the Civil Procedure Act, that is, for expeditious and proportionate disposal of civil disputes. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.”

Again in the case of **LAW SOCIETY OF KENYA -V- THE CENTRE FOR HUMAN RIGHTS** the **Supreme Court** observed as follows –

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it”

As I have already observed the petitioner does not deny that the issues in the two petitions are common. The delay or inconvenience that the petitioners are apprehensive about are administrative and can be dealt with by the court’s directions. The advantages of consolidation being the avoidance of multiplicity of suits on the same subject matter and issues, the saving of court’s time and the avoidance of embarrassment should different decisions be reached in the two petitions which seek identical prayers arising from the same set of facts, far outweigh the inconvenience and fears of delay expressed by the petitioner.

For the forgoing reasons I find it reasonable to consolidate Petition No. 83 of 2017 and Petition No. 26 of 2018.

I therefore order that Petition No. 83 of 2017 be and is hereby consolidated with petition No. 26 of 2018 and will be heard under Petition No. 26 of 2018.

There shall be no orders for costs.

DATED AND SIGNED AT NAIROBI ON THIS 31ST DAY OF JULY 2018

MAUREEN ONYANGO

JUDGE