



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**PETITION NO. 10 OF 2016**

*(Before Hon. Justice Mathews N. Nduma)*

**PETER MAROGO ONSONGO.....CLAIMANT**

**VERSUS**

**1. KENYA NATIONAL UNION OF TEACHERS (KNUT)**

**2. ALBERT ONKOBA .....RESPONDENTS**

**J U D G M E N T**

1. The issue in dispute in this matter is whether the disqualification of the Petitioner from participating in the Union elections held on 18<sup>th</sup> February, 2016 as a voter and candidate was illegal and unjustified.
2. The secondary issue is whether the said election was unlawful, null and void in the event to court answers the first question in the alternative.
3. The facts of the matter is that the petitioner was interdicted by the Teachers Service commission from his position as a teacher pending disciplinary proceedings against him.
4. Whilst still under interdiction, the Petitioner applied to contest in the elections of Masaba Branch of the Kenya National Union of Teachers (KNUT) the 1<sup>st</sup> Respondent.
5. The 1<sup>st</sup> Respondent disqualified the Petitioner from voting and participating as a candidate in the said elections. The 2<sup>nd</sup> Respondent Albert Onkoba was elected to the position of Executive Secretary Masaba Branch, which the petitioner had applied to vie for.
6. The Petitioner seeks to have the election nullified and a repeat election be held.

**Response**

7. The Petition is opposed vide a replying affidavit of Wickliffe Omuche the 2<sup>nd</sup> National Vice Chairman of KNUT. He deposes that the elections of Masaba Branch of KNUT were held on 18<sup>th</sup> February, 2016 in a free and fair manner and in full compliance with the Union Constitution. That they were conducted by the Ministry of Labour.
8. That the petitioner who had initially been nominated to vie for the post of Executive Secretary for the Masaba Branch of KNUT was lawfully disqualified owing to his interdiction from the teaching profession. That the petition has no merit and it be dismissed with costs.

**Determination**

9. Article 111(1) of the Union constitution stipulates:-

**“Every registered teacher certified, licensed or authorized to teach against whose professional conduct no charge can be sustained shall have the right of admission to any of the branches of the union upon payment of the entrance fees as provided in the rules of the union together with other levies that may be stipulated by the particular branch which the teacher desires to join. Persons eligible for membership of the union shall be only those who are or have been regularly and normally engaged as teachers.”**

10. It follows that a teacher whose license or authority to teach has been suspended or cancelled by the Teachers Service Commission and there is a possibility that the charges preserved against the teacher can be sustained is not eligible to vie to be an official of the Union whilst the matter is pending.

11. Furthermore section 34(1) of the Labour Relations, Act 2007 mandates that the Union elections be conducted in terms of the Union Constitution in the following terms:-

**“The election of officials of a trade union, employers organization or federation shall be conducted in accordance with their registered constitution.”**

12. This position was clearly elaborated in the ELRC at Nairobi, **Albert Chivini Mwiroti & 2 others Vs. Registrar of Trade Unions & Others [2016]eKLR by Mbaru J** where the Hon. Judge stated –

**“... a losing candidate who challenges an election that is fair has a heavy burden to demonstrate the exceptional circumstances that a reasonable and open minded person would find to negate the same. In this case, I find no such evidence to challenge the validity of the elections held on 9<sup>th</sup> January, 2016.”**

13. In the present case, it is uncontroverted fact that as at 18<sup>th</sup> February, 2016 when the Masaba Branch elections were conducted the Petitioner was under interdiction by Teachers Service Commission. There was a possibility that the petitioner would be dismissed and deregistered as a teacher.

14. It was therefore lawful and in fact mandatory for the persons who conducted the elections to disqualify the petitioner from vying for the position of the Executive Secretary Masaba Branch while he was serving interdiction pending disciplinary action by Teachers Service Commission.

15. Accordingly, the Petition lacks merit and is dismissed with costs.

**Dated and Signed in Kisumu this 12<sup>th</sup> day of July, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Nyambega for Plaintiff

Mr. Sigei for 1st Respondent

Mr. Nyadolo for the 2<sup>nd</sup> Respondent

Chrispo – Court Clerk