



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO.23 OF 2018**

1. CORNEL MABATSI
2. EVANS MAKOKHA
3. SAMWEL KIBOI
4. JOHN NDUNDA
5. FRANCIS MAKOKHA
6. JOHN MALIMO
7. CHRISITOPHER MUTINDA
8. ZEPHANIA NYAMBANE
9. CHRIS MUTUA MUTINDA.....APPELLANTS

**VERSUS**

**THE REGISTRAR OF TRADE UNIONS.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION..INTERESTED PARTY**

**CONSOLIDATED WITH**

**CAUSE NO.223 OF 2018**

**MATILDA J KIMETO AND 380 OTHERS.....CLAIMANTS**

**VERSUS**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....1<sup>ST</sup> RESPONDENT**

**CORNEL MABATSI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The ruling herein relates to two applications one dated 5<sup>th</sup> July, 2018 and filed by the claimants under Cause No.223 of 2018 – Matilda J Kimeto and 380 others and a second application dated 17<sup>th</sup> September, 2018 filed by the appellants in Civil Appeal No.23 of 2018 – Cornel Mabatsi and 8 others.

2. The matters were consolidated for the purpose of hearing these applications and ruling noting they revolve around the affairs of the Kenya County Government Workers Union, the 1<sup>st</sup> respondent under Cause No.223 of 2018 and the Interested Party under Civil Appeal No.23 of 2018. Though the Appeal and Cause fall under different genres and procedures differ, to ensure there are no conflicting directions, orders, ruling, it became apparent to the court to consolidate the same for this ruling.

3. On the application dated 5<sup>th</sup> July, 2018 the applicants are seeking for orders that;

(a) ...

(b) ...

(c) *Pending the hearing and determination of this application this court be pleased to issue a conservatory order by way of injunction restraining the 2<sup>nd</sup> respondent, their officers, staff, agents, servants, and/or any other persons in rem acting at their behest from conducting/convening a Special Delegates Conference.*

(d) *Pending the hearing and determination of this claim this court be pleased to issue a conservatory order by way of injunction restraining the 2<sup>nd</sup> respondent, their officers, staff, agents, servants, and/or any other persons in rem acting at their behest from conducting/convening a Special Delegates Conference.*

(e) *Cost be provided for.*

4. The application is supported by the annexed affidavit of the 1<sup>st</sup> claimant, Matilda Kimeto and on the grounds that the claimants are members of the 1<sup>st</sup> respondent governed by its constitution registered with the Registrar of Trade Unions on 20<sup>th</sup> April, 2016. The 1<sup>st</sup> respondent is a registered trade union while the 2<sup>nd</sup> respondent is the branch secretary for Uasin Gishu County Branch and convenor of the illegal Special National Delegates Conference

5. Other grounds in support of the application are that there are threats of convening a Special National Delegates Conference by the 2<sup>nd</sup> respondent against the claimants' union and in contravention of the union constitution. The claimants are voicing their concerns on impending violations.

6. The claimants wrote to the 1<sup>st</sup> respondent on 10<sup>th</sup> May, 2018 addressing their grievances in respect to the convening of the illegal Special National Delegates Conference and directed that all necessary action be taken to stop any constitutional violations. On 4<sup>th</sup> July, 2018 the 2<sup>nd</sup> respondent vide medial notice issued notice convening Special National Delegates Conference on 6<sup>th</sup> July, 2018 and under such notice the agenda is set to discuss the conduct of the 1<sup>st</sup> respondent's national secretariat and its constitution. Such notice to convene Special National Delegates Conference is devoid of the provisions of Article 5.1.1(b), and 5.1.5 of the 1<sup>st</sup> respondent constitution on the calling for a Special National Delegates Conference.

7. Pursuant to court judgement delivered on 14<sup>th</sup> June, 2018 by holding the convened Special National Delegates Conference as notified by the 2<sup>nd</sup> respondent would be to defeat the 1<sup>st</sup> respondent constitution. Such will undermine the operations of the 1<sup>st</sup> respondent and where the orders sought are not granted there shall be irreparable loss and damage.

8. In the affidavit, Ms Kimeto avers that as the National Organising Secretary of the 1<sup>st</sup> respondent has authority to make the affidavit on behalf of the claimants.

9. It has come to the notice of the claimants the public notice by the 2<sup>nd</sup> respondent issued on the 4<sup>th</sup> July, 2018 and calling for a Special National Delegates Conference for the 6<sup>th</sup> July, 2018 which is done contrary to the provisions of the 1<sup>st</sup> respondent constitution. Where such Special National Delegates Conference is allowed to proceed, the members of the 1<sup>st</sup> respondent will suffer loss and damage. The notice issued is illegal and contrary to the provisions of Article 5 of the 1<sup>st</sup> respondent constitution. To convene such a Special National Delegates Conference the constitution provides that it must be with instructions of the National Executive Committee upon written request of one third of the fully paid up members. The 2<sup>nd</sup> respondent who has issued notice is not a member of the National Executive Committee and has not met the quorum necessary out of the 39,500 members of the 1<sup>st</sup> respondent. Given the resources required to convene a Special National Delegates Conference the constitution requires the members who have requisitioned for the same to make a deposit of Kshs. 5 million for the purpose of defraying the costs of convening the meeting.

10. The 2<sup>nd</sup> respondent notice has no legal effect since is devoid of constitutional procedure and the proposed agenda can well be addressed by the National Executive Committee as required under the constitution. To call and convene the Special National Delegates Conference will undermine the operation of the 1<sup>st</sup> respondent and its members comprising the claimants.

11. Ms Kimeto also avers that the 1<sup>st</sup> respondent has mandate to convene a National Delegates Conference every 5 years. The agenda for such convening is specific and other matters can be addressed by the National Executive Committee.

12. In reply, the 1<sup>st</sup> respondent filed Replying Affidavit of Roba Duba the General Secretary and who avers that the claimants are members of the 1<sup>st</sup> respondent and he is aware the 2<sup>nd</sup> respondent has persistently issued threats to convene a Special National Delegates Conference in contravention of the 1<sup>st</sup> respondent constitution. The claimants have since expressed their grievances to the 1<sup>st</sup> respondent against the actions of the 2<sup>nd</sup> respondent.

13. Mr Duba also avers that as the General Secretary he has made effort to address the concerns raised by the claimants. By letter dated 26<sup>th</sup> February, 2018 he wrote to the Branch Women Representative – Laikipia County in respect of a Special National Delegates Conference convened in contravention of the constitution. On 20<sup>th</sup> April, 2018 he wrote to the branch secretaries and chairpersons cautioning them against the illegal Special National Delegates Conference threatening disciplinary action against members who flouted provisions of its constitution and proceedings to convene a Special National Delegates Conference. On 7<sup>th</sup> May, 2018 he wrote to all branch secretaries and branch chairpersons, all national executive committee members advising on the convening of an illegal Special National Delegates Conference scheduled for 11<sup>th</sup> May, 2018 contrary to the constitution. On 5<sup>th</sup> July, 2018 he wrote to all members, all national executive committee members of the 1<sup>st</sup> respondent cautioning them on the illegal convening of a Special National Delegates Conference on 6<sup>th</sup> July, 2018 at Nakuru.

14. On these matters the 1<sup>st</sup> respondent has made effort to address any illegality apparent and the contravention of the constitution. On 17<sup>th</sup> May, 2018 he wrote to the 2<sup>nd</sup> responding being the convenor of the Special National Delegates Conference held on 6<sup>th</sup> July, 2018 with a view to finding a lasting solution. There was no response or an indication of any interest for conciliation.

15. Mr Duba also avers that on equal date he wrote to the Branch Women Reprehensive – Laikipia County Branch the convenor of the previous illegal Special National Delegates Conference with the purpose to amicably resolve any grievances and indeed this was honoured and matters are now being addressed using internal mechanisms.

16. As General Secretary there is leadership from the office by initiation of conciliation but the 2<sup>nd</sup> respondent is adamant. On 4<sup>th</sup> July, 2018 he caused to be issued a public notice through the media advertisement calling for a Special National Delegates Conference to be held on 6<sup>th</sup> July, 2018 and with the agenda to discuss the conduct of the 1<sup>st</sup> respondent secretariat and the amendment of the constitution. such notice is incompetent and contrary to article 5 of the 1<sup>st</sup> respondent constitution. in the ruling of the court in Cause No.112 of 2018 the court did not allow for the convening of a Special National Delegates Conference There was no judgement entered on 14<sup>th</sup> June, 2018. Cause No.606 of 2018 had already been withdrawn. The court did not order for a convening of the Special National Delegates Conference and the notice issued by the 2<sup>nd</sup> respondent cannot be justified under the court ruling on 14<sup>th</sup> June, 2018.

17. Mr Duba also avers in reply that the 2<sup>nd</sup> respondent lost in the last NDC elections conducted in the year 2016 and now trying to rig new officials through a hostile takeover. The 2<sup>nd</sup> respondent proceeded with the illegal Special National Delegates Conference on 6<sup>th</sup> July, 2018 which resulted in undermining the 1<sup>st</sup> respondent constitution and in an effort to sanitise the illegality has moved to change officials by filing form Q with the Registrar of Trade Unions.

18. The 2<sup>nd</sup> respondent, Cornel Mabatsi in reply filed Replying Affidavit on 30<sup>th</sup> August, 2018 and avers that the claimants' application has been overtaken by events and should be dismissed with costs for the reasons that it is in abuse of the court process. Articles 2(5)(6) and 41 of the constitution read with ILO Convention No.87, 98 allow for the freedom of association, the right to organise and the protection of these rights. Under the 1<sup>st</sup> respondent constitution Article 5 provides for the convening of Special National Delegates Conference and there is nothing which should bar the 2<sup>nd</sup> respondent from convening the same. To bar the convening of a Special National Delegates Conference is in contravention of the clear provisions of the constitution and the ILO conventions.

19. Mr Mabatsi also avers that the claimants are oblivious of the welfare and day to day running of the 1<sup>st</sup> respondent and they do not know the convenor of the Special National Delegates Conference which notice was issued by a fully paid up member under the provisions of article 5(f) of the constitution. The notice issued to convene Special National Delegates Conference is pursuant to the constitution of Kenya and that of the 1<sup>st</sup> respondent. Where there are pertinent issues affecting members of the trade union the constitution gives mandate to the respondents to convene a Special National Delegates Conference and thus the 2<sup>nd</sup> respondent acted within the law.

20. On 5<sup>th</sup> February, 2018 the 2<sup>nd</sup> respondent requisitioned for a Special National Delegates Conference but the 1<sup>st</sup> respondent has failed to address. The claimants and the 1<sup>st</sup> respondent have misinterpreted the union constitution to the detriment of the 2<sup>nd</sup> respondent and other elected members.

## **2<sup>nd</sup> application**

21. The appellants in their application and Notice of Motion dated 17<sup>th</sup> September, 2018 are seeking for orders that;

1. ...

2. *The instant appeal dated 30<sup>th</sup> day of July 2018 being appeal No.23 of 2018 of Cornel Mabatsi & 9 others =vs= the Registrar of Trade Unions and the AG be set down for hearing, heard and determined on priority basis.*

3. *Pending the hearing and determination of the Appeal, this court be pleased to issue conservatory order by way of injunction restraining the General Secretary together with the Registrar of Trade Unions by themselves, through their agents, servants, and/or employees and/or staff and/or any other person's in rem acting at their behest from conducting elections at branch level and/or changing the names of the officials and/or changing names of bank account signatories and/or in any way interfering with names of officials at the branch level and/or intimidating, harassing, threatening, pushing and/or taking disciplinary action against officials at branch level of the Kenya County Government Workers Union.*

4. *Costs be provided for.*

22. The application by the Appellants is supported by the affidavit of Cornel Mabatsi on the grounds that a Special National Delegates Conference was convened on 6<sup>th</sup> July, 2018 and a resolution passed by the delegates replacing the General Secretary of the Kenya County Government Workers Union (the Union). All relevant documents have been presented to the Registrar of Trade Unions for registration but who has declined to effect the requisite changes and leading to the filing of the appeal herein.

23. Other grounds are that since the Special National Delegates Conference and replacement of the General Secretary of the union there is a lacuna for lack of proper representation of union members. The General Secretary of the union has changed the constitution without the knowledge of the members which is an illegality and in violation of the member's rights. The Registrar of Trade Unions has proceeded to register the amended constitution which in perpetuation of an illegality.

24. In his affidavit Mr Mabatsi avers that he convened the Special National Delegates Conference held on 6<sup>th</sup> July, 2018 where a resolution was passed replacing the General Secretary of the union with himself. Despite presenting all the necessary documents for registration with the Registrar of Trade Unions, there is collusion with the general secretary not to effect the same.

25. The appellants made a protest against the on-going elections and by- elections as being contrary to the union constitution vide letter dated 25<sup>th</sup> April, 2018 to the Registrar of Trade Unions but all in vain. The members of the union are now suffering as a result and face retraction by the state.

26. Since the resolution of the Special National Delegates Conference on 6<sup>th</sup> July, 2018 the union offices have remained locked without access to the appellants. There is no victimisation of the appellants and those in attendance at the Special National Delegates Conference

27. The office of the Attorney General acting for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, filed Grounds of Opposition to the application on the basis that the Registrar of Trade Unions acted within the law as required under the provisions of section 35(2), (3), (4) and (5) of the Labour Relations Act, 2007. The court Ruling in Nakuru Cause No.112 of 2018 did not dispense the trade union from following the provisions of the law in its constitution of the Special National Delegates Conference

28. The interested party in the appeal, the union filed a Replying Affidavit sworn by the General Secretary, Roba Duba.

29. The gist of the reply by Mr Duba is that the appellants convened the Special National Delegates Conference contrary to the provisions of the union constitution and relied on misdirected and misinterpretation of a ruling delivered by the court in Nakuru Cause No.112 of 2018. Such Cause did not allow for the convening of the Special National Delegates Conference the Special National Delegates Conference convened by the appellants was not in accordance with the laid down provisions of the constitution and thus an illegality and cannot be the basis to replace officials of the union.

From both applications, the responses thereto and the submissions by the parties the court finds the following issues emerging for determination and can be summarised as follows;

Whether the Special National Delegates Conference held on 6<sup>th</sup> July, 2018 was lawful, constitutional or proper;

Whether the appeal by the appellants should be heard on priority basis;

Who should bear costs?

30. Before delving into the issues set out above, I note the appellants and the 2<sup>nd</sup> respondent have relied on the constitution provisions with regard to the right to association and fair labour practices. Indeed the constitution of Kenya, 2010 have given wide protections to all persons in the Bill of Rights. However, these rights are not absolute as held in the case of **University Academic Staff Union (UASU) versus Attorney General & Chief of Staff & another [2018] eKLR**.

31. the right to association and to fair labour practices are not absolute rights in Article 25 of the Constitution and can, therefore, be limited. However, limitation of fundamental rights and freedoms in the Bill of Rights can only be done in accordance with the Constitution itself. To that extent, Article 24(1) of the Constitution provides that;

***a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. ...***

32. article 24(5) provides that;

*(5) Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service—*

—

*(a) Article 31—Privacy;*

*(b) Article 36—Freedom of association;*

(c) Article 37—Assembly, demonstration, picketing and petition;

(d) Article 41—Labour relations;

(e) Article 43—Economic and social rights; and (

f) Article 49—Rights of arrested persons.

33. The factors to be taken into account are: the nature of the right or fundamental freedom; the importance and purpose of limitation; the nature and extent of the limitation and the need to ensure that enjoyment of rights and fundamental freedoms by an individual does not prejudice rights and fundamental freedoms of others.

34. In this regard, in establishing the Employment and Labour Relations Court the constitution of Kenya, 2010 recognises under Article 162(3) that Parliament should pass legislation giving the court jurisdiction and its functions. In this regard, Parliament has passed the Labour Relations Act, 2007 (the Act) setting out how employer and employees shall be organised and the preamble to the Act is relevant here;

***An Act of Parliament to consolidate the law relating to trade unions and trade disputes, to provide for the registration, regulation, management and democratisation of trade unions and employers organisations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes***

35. In unionisation, the Labour Relations Act, 2007 has addressed and made provision for the registration, regulation, management and democratisation. Such is to ensure sound labour relations through the protection and promotion of freedom of association.

36. Section 8(1) of the Act provides that;

*Every trade union, employers' organisation or federation has the right to—*

*(a) subject to the provisions of this Act—*

*(i) determine its own constitution and rules; and*

*(ii) hold elections to elect its officers;*

37. It is therefore under the Labour Relations Act, 2007 where the right to association in trade unions is addressed. The limitations therein have a constitutional foundation and therefore reasonable and which includes how trade unions are to organise and be democratised.

38. These provisions are not empty.

39. Upon the registration of the 1<sup>st</sup> respondent and the interested party herein, the Registrar of Trade Unions had to be satisfied that there was a constitution addressing the registration, regulation, management and democratisation. This purpose was achieved on 20<sup>th</sup> April, 2016 when the Constitution of the County Government Workers Union was registered.

40. Upon such registration, the constitution of the union became the binding documents to its members. With regard to conducting its affairs; the Kenya County Government Workers Union is bound by its own constitution.

41. This relates to election of officials;

*Section 34 - (1) The election of officials of a trade union, employers' organisation or federation shall be conducted in accordance with their registered constitutions.*

42. Inspection of accounts, appointment of trustees and for this purpose, in holding meetings the reference documents is the union constitution.

43. The limitations set out under Article 24 of the constitution of Kenya, 2010 weighed with the provisions of the Labour Relations Act, 2007 under sections 8 and 34, such being within the law are reasonable and justified as held by the Court of Appeal in the case of **Attorney General versus Kituo cha Sheria & 7 others [2017] eKLR**.

44. On the first issue with regard to the legality of the meeting of Special National Delegates Conference held on 6<sup>th</sup> July, 2018, this is the gist of matters herein with regard to the claimants' application dated 5<sup>th</sup> July, 2018 which was to stop the Special National Delegates Conference to be held vide notice issued by the 2<sup>nd</sup> respondent on 4<sup>th</sup> July, 2016 to be held on the 6<sup>th</sup> July, 2018. As noted by the 1<sup>st</sup> respondent General Secretary Mr Duba in his Replying Affidavit sworn on 31<sup>st</sup> July, 2018 at paragraphs 28 and 29 he avers that;

*I know for a fact that the illegal Special National Delegates Conference which was conducted by the 2<sup>nd</sup> respondent has occasioned*

*discord and tension, unrest and in-fighting amongst the 1<sup>st</sup> respondent's members, this has unfavourably affected the day to day running of the activities of the 1<sup>st</sup> respondent.*

*The effect of the unlawful Special National Delegates Conference has greatly destabilised the aims of Article 33 of the 1<sup>st</sup> respondent's constitution on the objectives of the 1<sup>st</sup> respondent whose sole goal among others is to foster unity of all workers/employees employed by ...*

45. From these averments, Mr Duba as General Secretary has confirmed the Special National Delegates Conference sought to be stopped by the claimants has since taken place. On this basis matters should end here. But was this Special National Delegates Conference held in accordance with the requisite provisions of the 1<sup>st</sup> respondent constitution? by answering this question, matters herein between the parties shall become clear. This also leads to the appellants' application dated 17<sup>th</sup> September, 2018.

46. Mr Mabatsi issued notice via public notice in the media on 4<sup>th</sup> July, 2018 in the following terms;

*KENYA COUNTY GOVERNMENT WORKERS UNION SPECIAL NDC*

*...*

*Pursuant to the court judgement in Nakuru Cause no.112 of 2018 on 14<sup>th</sup> June, 2018 as earlier communicated to you, I confirm the Special National Delegates Conference shall be held on 6<sup>th</sup> July, 2018 at 8:30am at Menengai Hall in Nakuru.*

*AGENDA ...*

*CORNEL MABATSI*

*Branch Secretary – Uasin Gishu County Branch and CONVENOR.*

47. Upon this notice, a Special National Delegates Conference was held on 6<sup>th</sup> July, 2018 and on its said resolutions, the appellants have moved the office of the Registrar of Trade Unions to register Form 'Q' and upon a declined, the appeal noted above has been filed seeking orders directed at Registrar of Trade Unions to register the same.

48. The Notice by the appellant and through Cornel Mabatsi as the convenor is misleading.

49. It is out rightly out of character.

50. It should not have issued in the first instance. The foundation is wrong. Nakuru Cause No.112 of 2018 upon which the notice was premised related to the convening of a meeting which had been scheduled for a different date. That cause was filed by the Union.

51. I have since drawn from **Nakuru Cause No.112 of 2018**. There is no judgement in the Cause.

52. There is a Ruling delivered on 14<sup>th</sup> June, 2018 with regard to an application the respondents with regard to the stoppage of the Special National Delegates

Conference which had been scheduled for the 11<sup>th</sup> May, 2018. The orders stopping the Special National Delegates Conference were obtained by Union, Kenya County Government Workers Union against various respondents amongst who is Mr Mabatsi as the 5<sup>th</sup> respondent, Evans Makokha the 13<sup>th</sup> respondent, Samwel Kiboi the 7<sup>th</sup> respondent, John Ndunda 15<sup>th</sup> respondent, Francis Makokha as the 17<sup>th</sup> respondent, John Milimo as the 6<sup>th</sup> respondent, Christopher Mutinda as the 20<sup>th</sup> respondent, and Zephania Nyambane as the 19<sup>th</sup> respondent. these respondents are the appellants as noted above.

53. The Ruling of the Court in Nakuru Cause No.112 of 2018 was specific and in relation to the union application seeking to stop the convening of the Special National Delegates Conference on 11<sup>th</sup> May, 2018 which stoppage was found by the court to be irregular as subsisting such stoppage there existed Nairobi Cause No.606 of 2018 seeking similar orders.

54. The substance of the matter in dispute was not addressed in Nakuru Cause No.112 of 2018. The substantive issues between the union and its members cannot be addressed from such ruling. Far from it.

55. Paragraph 38 of the Ruling in Nakuru Cause No.112 of 2018 had a finding as follows;

*... to address matters between the parties as to the legality of notices issued by the respondents to the claimant to convene an [a] Special National*

*Delegates Conference on 11<sup>th</sup> May, 2018 would be academic. Save to add that there is obvious disquiet within the membership of the claimant and where not addressed will result in unrest and further agitation. The GS [general secretary] well aware of matters between the parties ought to address and not hide behind the constitution and the stringent terms well aware the respondents are*

unable to meet. ...

56. Any convening of the union Special National Delegates Conference is subject to its constitution provisions. To look at it in any other way and without a clear and specific court order directing the convening of the same, is misdirection. It is a peradventure. To engage in a circus.

57. For Mr Mabatsi to proceed on the Court Ruling in Nakuru Cause No.112 of 2018 and issue notice calling for a Special National Delegates Conference was gross. Such does not show leadership.

58. As noted above, the union has a registered constitution regulating the conduct of its affair and including holding a Special National Delegates Conference under Article 5. Such constitution is registered with the Registrar of Trade Union and to convene a Special National Delegates Conference; outside such constitution would only invite a rejection of any resolution arising therefrom despite submission with the Registrar of Trade Unions who is bound by the provisions of section 35 of the Labour Relations Act, 2007.

59. To urge an appeal to compel the Registrar of Trade Unions to register returns derived from an illegality cannot suffice. Such illegality cannot be sanitised or sanctioned by the court. the clarity of the law put into account, the union members have agreed to be bound by its constitution unless there is a demonstration that such constitution was obtained through fraud or misrepresentation.

60. In this regard, section 35(5) of the Labour Relations Act, 2007 requires the Registrar of Trade Unions before registration of any change and Form 'Q' to be satisfied that there is validity of the process leading to appointment and any proposed changes as follows;

*(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.*

61. An inquiry is required. Where the Registrar of Trade Unions is satisfied by the inquiry that there is an illegality, any invalidity, failure to comply with the constitution of the law, the applicable law and the union constitution, no change of the registrar can be effected. The law mandates the Registrar of Trade Unions to refuse to register any change or correct the register.

62. The foundation of such refusal is inquiry as to the validity of change of correction.

63. The upshot of the matters herein is taking the parties back to the situation subsisting as at 14<sup>th</sup> June, 2014. The Special National Delegates Conference scheduled for the 11<sup>th</sup> May, 2018 did not take place. The subsequent Special National Delegates Conference held on 6<sup>th</sup> July, 2016 is herein found invalid. The resulting appeal therefrom is without a valid foundation. It cannot stand.

64. Matters resulting herein and leading parties to file Nakuru Cause 223 of 2018 and Nakuru Civil Appeal No.23 of 2018 would have been well avoided had the appellants and 2<sup>nd</sup> respondent, Cornel Mabatsi had taken the necessary caution, precaution and directions leading to the same as the subject in both matters revolve around the notice of 4<sup>th</sup> July, 2018 issued by Cornel Mabatsi as the convenor of the Special National Delegates Conference for the 6<sup>th</sup> July, 2018.

65. The court reading of the union constitution at Article 5 gives a clear roadmap on what considerations a convenor seeking to hold a Special National Delegates Conference should address. The true record of such constitution is deposited with the TRU which office cannot be faulted for abiding with the same.

**Accordingly, on the findings above, both applications must fail one being overtaken by events and the other being premised on invalidity. On the same findings, ELRC Civil Appeal No.23 of 2018 has no foundation. It must fail. The consequence of it all, the appellants in Nakuru ELRC Civil Appeal No.23 of 2018 and 2<sup>nd</sup> respondent in Nakuru Cause No.223 of 2018 shall meet the due costs in both matters. Such are assessed by the Court all at Kshs.20,000.00.**

**Dated and delivered at Nakuru this 8<sup>th</sup> day of November, 2018.**

**M. MBARU JUDGE**

**In the presence of:**

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