



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 87 OF 2015

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER CHAPTER FOUR, ARTICLE 47 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE LABOUR RELATIONS ACT

AND

IN THE MATTER OF UNION OF KENYA CIVIL SERVANTS

BETWEEN

NOAH KIPKEMBOI ROTICH

KENNEDY AKOKO WERE

DAVID OSODO

HENRY LESUPER.....PETITIONERS

VERSUS

UNION OF KENYA CIVIL SERVANTS.....1st RESPONDENT

TOM ODEGE.....2nd RESPONDENT

RULING

1. The Petitioners (members of the 1st Respondent’s National Executive Board and Central Governing Council) moved the Court on 14 October 2015 alleging that by summoning them to a disciplinary hearing, the Respondents had violated the constitution of the 1st Respondent and Article 47 of the Constitution of Kenya.

2. In the Petition, two substantive orders were sought, to wit

(a) A declaration that the notice summoning the Petitioners to disciplinary proceedings is deficient, irregular, unfair and unconstitutional and

(b) The notice convening the National Executive Board meeting scheduled for 16th October, 2015 be declare null and void, and of no effect.

3. The Petition was filed together with a motion seeking interim orders interdicting the disciplinary process and on 12 October 2015, an *ex parte* conservatory order was issued restraining the Respondents from proceeding with the disciplinary process.

4. When the motion came up for *inter partes* hearing, the Court dismissed it because of the non-attendance of the parties.
5. The Petitioners then moved Court on 24 November 2015 to have the dismissal order vacated and the Court directed that the Respondents be served.
6. On 6 April 2018, the Respondents filed an application seeking that the Petition be dismissed for want of prosecution.
7. When this application came up for *inter partes* hearing on 17 May 2018, the Respondents advocate informed the Court that application had not been served.
8. Considering the failure of the Respondent to serve the application and without tendering any sufficient reasons as to the failure, the Court dismissed the application.
9. On the same day, the Respondents filed an application seeking the reinstatement of the application, and the Court heard brief submissions from the parties on 10 July 2018.
10. The Respondents admitted that they did not serve a hearing notice upon the Petitioners and submitted that was an excusable error.
11. However despite the admission, no factual explanation was offered as to why a hearing notice was not served.
12. Without the explanation, the Court is unable to exercise its discretion in favour of the Respondent. The application filed in Court on 17 May 2018 is therefore dismissed with costs.

Delivered, dated and signed in Nairobi on this 2nd day of November 2018.

Radido Stephen

Judge

Appearances

For Petitioners Nyamweya Mamboleo Advocates

For Respondents Maina & Onsare Partners Advocates

Court Assistant Lindsey