



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 401 OF 2016

ROSEMARY OKAYO MURUNDU.....
CLAIMANT

VERSUS

KENYA UNION OF POST PRIMARY

EDUCATION TEACHERS (KUPPET).....RESPONDENT

JUDGMENT

Introduction

1. This action was commenced by the Claimant via a Statement of Claim and Notice of Motion under certificate of urgency dated 16th March 2016 and filed in Court on even date.
2. In her pleadings, the Claimant sought restraining orders to stop the Respondent's elections scheduled for 19th March 2016. At the interlocutory stage it was agreed between the parties that the elections would proceed save for the position of Secretary Gender National Office for which the Claimant sought to vie.
3. By virtue of separate proceedings in *Petition No 28 of 2016 (Robert Nyabuto Nyabwocha v Ronald Kiprotich Tonui & Kenya Union of Post Primary Education Teachers)* the position of National Assistant Treasurer was also affected.

The Claimants' Case

4. The Claimant states that a notice dated 18th Respondent's Secretary General giving the January 2016 issued by the deadline for submission of nomination papers as 26th February 2016 was in contravention of Article 13(g)(i) of the Respondent Union's Constitution which requires that persons contesting in national elections must submit their intention to vie four (4) weeks prior to the date of elections.
5. The elections having been scheduled for 19th March 2016, the deadline for submission of nomination papers ought to have been 20th March 2016. Nevertheless, the Claimant who met the qualifications for the position of Secretary Gender National Office submitted her nomination papers for the position on 26th February 2016 upon paying Kshs. 50,000 as nomination fees.
6. The Claimant was later to learn that her name had been omitted from the list of those cleared to vie for the said position on the ground that she had lodged her nomination papers out of time.
7. It is the Claimant's case that the Respondent discriminated against her by declining to accept her

nomination on the ground that her documents had been submitted late while accepting other candidates' nominations out of time. She contends that her nomination papers were lodged within the stipulated timeframe as advised by the Secretary General in the union election timetable, 2016.

The Respondent's Reply

8. The Respondent filed a Replying Affidavit on 18th March 2016 and a Statement of Response on 4th October 2016. In the Replying Affidavit which is sworn by the Respondent's Secretary General, Maurice Akello Misori it is deponed that the Claimant had attended the meeting of the National Governing Council in her capacity as the Executive Secretary of Uasin Gishu Branch, which position she had since lost in the Branch elections.

9. Misori confirms 20th February 2016 as to the deadline for submission of nomination papers for the national elections in accordance with Article 13(g)(i) of the Respondent's Constitution. He adds that the requisite notices were issued on 13th July 2015 and not 18th January 2016 as pleaded by the Claimant.

10. It is the Respondent's case that the Claimant was time barred to contest in the election for the position of Secretary Gender National Office as she had missed the nomination deadline of 20th January 2016.

11. In its Memorandum of Response, the Respondent states that the deadline set by its Constitution supersedes any date issued by the Secretary General.

Determination

12. In light of the consent adopted by the parties on 18th March 2016 which paved way for the elections for other positions, it seems to me the only issue pending determination is whether the Claimant was duly qualified to vie for the position of Secretary Gender National Office.

13. From the pleadings filed before the Court, there appears to be consensus that under Article 13(g)(i) of the Union Constitution candidates in national elections are required to submit their intention to vie plus bank pay in slips for nomination fees four (4) weeks prior to the date of elections.

14. It would appear however that in the elections timetable issued by the Respondent's Secretary General which gave 26th February 2016 as the date of submission had itself ignored the timelines set out under Article 13(g)(i) of the Union Constitution. That being the case, the Claimant who relying on the election timetable, submitted her intention to vie on 26th February 2016, should not have been penalized for submitting her nomination documents out of time.

15. In his Replying Affidavit the Respondent's Secretary General, Maurice Akello Misori depones that notice of the elections was issued on 13th July 2015. He however produced a notice dated 13th January 2016.

16. From the foregoing it seems to that the Respondent sent mixed signals on key dates in its election calendar and thus misled the Claimant.

17. In light of the foregoing I make the following orders:

a) The Respondent is directed to organize and conduct elections for the position of Secretary Gender National Office in line with its Constitution within the next sixty (60) days from the date of this judgment;

b) The Claimant is at liberty to contest for the said position of Secretary Gender National Office and the sum of Kshs. 50,000 already paid by the Claimant into the Respondent's bank account shall be deemed to be her nomination fees for this election;

c) Each party will bear their own costs.

18. These are the orders of the Court.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 17TH DAY OF MARCH 2017

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JUDGE

Appearance:

Mr. Obel for the Claimant

Mr. Achiando for the Respondent