



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 7 OF 2017

**KENYA ELECTRICAL TRADES & ALLIED WORKERS UNION
(KETAWU) MT. KENYA EAST BRANCH.....CLAIMANT**

VERSUS

**THE GENERAL SECRETARY KENYA ELECTRICAL TRADES &
ALLIED WORKERS UNION (KETAWU).....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 16th June, 2017)

RULING

The respondent filed on 25.04.2017 a notice of motion dated 21.04.2017 through Onyony & Company Advocates. The application invoked sections 3(1), 12 (1) (d), 12 (3) (i) and 4 of the Employment and Labour Relations Court Act, 2011 and Rules 17(1), (3), (4) and (5) of the Employment and Labour Relations Court (Procedure) Rules, 2016 and all other enabling provisions of the law. The respondent prayed for orders:

That the application be certified urgent and be heard ex-parte and service thereof be dispensed with in the first instance.

1) That the honourable court be pleased to declare the purported Kenya Electrical Trade and Allied Workers Union (KETAWU) Mt. Kenya East Branch elections held on 25th February 2017 unlawful, null and void.

2) The honourable court be pleased to declare the suit as abated.

3) That costs of the application be in the cause.

4) That the honourable court do issue any other or further orders as it may deem necessary and expedient in the interest of justice.

The application was supported with the attached affidavit of Kosgey Kilil and urged upon the following grounds:

a) That David Mogire Nyabuti, the purported branch secretary after the unlawful elections of 25.02.2017 had been transferred to Turkwel Power Station in North Rift Branch and is not eligible to seek for any positions as an official of the union within Mt. Kenya East Branch.

- b) That the procedural requirements for conducting the branch union elections were not adhered to as the elections were amongst other requirements, not supervised by any labour officials.
- c) That there are interim officials duly appointed by the National Executive Board as provided for in the union's constitution.
- d) Thus, no valid elections took place.
- e) The orders as prayed for should be granted to avert lawlessness and absence of authority at the branch.

The application is opposed by the replying affidavit of David Mogire Nyabuti filed on 27.04.2017. The affidavit stated as follows:

- a) That David Mogire Nyabuti is the elected branch secretary of the respondent.
- b) That the said David Mogire Nyabuti was elected the branch secretary of the claimant during elections held by the claimant on 25.02.2017 per letter dated 22.02.2017 by one J.A. Yidah, Chief Industrial Relations Officer at the Department of Labour.
- c) That the elections notice dated 16.02.2017 was served upon all members of the claimant eligible to vote at the elections by displaying the same at notice boards of the stations where they work and also upon the respondent.
- d) All procedures for conducting elections were observed in carrying out the elections of 25.02.2017.
- e) The transfer letter was served upon the said David Mogire Nyabuti on 03.03.2017, days after the elections.
- f) It was strange that the respondent was in possession of the transfer letter as it was confidential communication to the said David Mogire Nyabuti by his employer so that the respondent must have instigated the transfer.
- g) That the labour officer at Embu County had informed the said David Mogire Nyabuti that the 1st respondent had asked that the elections should not take place and in the circumstances, the said David Mogire Nyabuti telephoned the Labour Commissioner who asked that a neutral person be identified to preside at the elections and the claimant then settled upon Pastor Josphat Wambua as the presiding officer.
- h) In the circumstances the court should order the 1st respondent to forward form Q to the Registrar of Trade Unions so as to register the branch officials elected at the elections of 25.02.2017.

The parties filed their respective submissions on the application and as per the directions by the court. The court has considered the material on record and the matters in dispute in the application and makes findings as follows.

The **1st issue** is whether the said David Mogire Nyabuti was not eligible to participate in the elections as a voter or as a candidate on 25.02.2017. The applicant says that he was not eligible because he had been transferred out of the branch by the letter dated 27.02.2017. Article 15.8 of the union's constitution provides that all branch officials shall normally be elected every five years by secret ballot at the branch general meeting of members and shall remain in office for 5 years. The court finds that under the Article, the branch general meeting of members elect the officials but the Article does not say that the candidates must of necessity be drawn from the branch members; and even if that was the case, the court returns that the elections were held on 25.02.2017 and the said transfer was on 27.02.2017 so that the said David Mogire Nyabuti was entitled to participate in the elections. The court returns that he was entitled to

participate in the elections.

The **2nd issue** for determination is whether the elections of 25.02.2017 were conducted in accordance with the union's constitution. Article 17.1 of the union's constitution provides that the taking of all decisions in respect of the election of officials who are required to be elected, the amendments of rules, strikes, dissolution and any other matters affecting members of the union generally shall be by secret ballot. It further provides that the National Chairman of the union or Ministry of Labour returning officer shall announce the results. The evidence on the point is clear. The Ministry of Labour by the letter dated 22.02.2017 appointed the County Labour Office at Embu one L. Mburu to preside over the branch elections to be held on 25.02.2016 at Gitaru Social Hall. The replying affidavit is clear that she did not do so and instead one Pastor Josphat Wambua who is not said to have been an officer of the Ministry of Labour presided at the elections. Accordingly, the court returns that the elections were not conducted in accordance with Article 17.1 of the union's constitution as the presiding officer was incompetent in view of the provisions of the said Article 17.1.

The **3rd issue** for determination is whether the interim officials were appointed in accordance with the union's constitution. Article 15.1 of the constitution is clear on what must happen in event of establishment of a new branch for the union. The Article states thus,

“15.1 Branch Office

The National Executive Board shall decide the place where a branch office of the union may be established provided that no branch shall be established if the number of members is less than two hundred (200). The National Executive Board of the union can split or curve branches as it deems fit and necessary. In such a case, the newly created/ formed branch shall hold elections of branch officials and committee members as provided for in this constitution. Should the paid up membership of any registered branch fall below twenty members for a period of four months, such a branch may be disbanded and its members transferred by the board to another branch.”

The court has also considered Article 7.3 on the functions of the National Executive Board and it is clear that the functions do not include appointment of interim branch officials. In view of the provisions of the union's constitution, the court returns that the appointment and registration of the interim branch officials for the union's Mt. Kenya East Branch as conveyed by the Registrar of Trade Unions as at 21.06.2016 was null and void as it was in contravention of the union's constitution. The court further returns that the legitimate action was for the new branch to elect branch officials as envisaged in Articles 15 as read with Articles 16 and 17 of the union's constitution. In that regard the court considers that the branch officials be elected per Article 17 not later than 01.08.2017 failing the branch members be entitled to elect the branch officials at a special general meeting not later than 01.10.2017 as per Article 17 as read with Article 15.4 of the union's constitution and with the relevant assistance of the Ministry of Labour per Article 17.1 thereof.

The **4th issue** for determination is whether, in view of the findings of the court in this ruling, there would be further steps in the main suit. In the main suit, per the statement of claim filed on 11.01.2017 and the statement of response filed on 02.02.2017, the issue in dispute was the holding of the branch elections. The claimant had prayed that an injunction be issued restraining the respondent from interfering with the special general meeting of the claimant and from interfering with the elections of the branch officials of the claimant. The court considers that by the findings of this ruling the issue in dispute has been determined and the suit is thereby disposed of but with liberty of parties applying as they may deem necessary or appropriate. The court has taken all circumstances of the case into account including that the parties draw funds from the same union or members and returns that parties shall bear own costs of the application as well as the proceedings of the main suit.

In conclusion, the application dated 21.04.2017 and filed on 25.04.2017 is hereby determined and orders to issue for:

- 1) The declaration that the branch elections for the Kenya Electrical Trade and Allied Workers Union, Mt. Kenya East Branch held on 25.02.2017 were null and void as they were held in contravention of Article 17.1 of the union's constitution.
- 2) The union's National Chairman to initiate elections for branch officials for the Kenya Electrical Trade and Allied Workers Union, Mt. Kenya East Branch, to be elected per Article 17 not later than **01.08.2017**; and, failing, the branch members be entitled to elect the branch officials in a special branch general meeting of members held not later than **01.10.2017** as per Article 17 as read with Article 15.4 of the union's constitution and with the relevant assistance of the Ministry of Labour per Article 17.1.
- 3) The declaration that the appointment and registration of the interim branch officials for the union's Mt. Kenya East Branch as conveyed by the Registrar of Trade Unions as at 21.06.2016 was null and void as it was in contravention of the union's constitution.
- 4) The declaration that as the matters in the main suit have been resolved by the findings in this ruling, the suit is thereby determined with orders that each party to bear own costs and be at liberty to apply as may become necessary or appropriate.

Signed, dated and delivered in court at **Nyeri** this **Friday, 16th June, 2017**.

BYRAM ONGAYA

JUDGE