



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 233 OF 2016

JAPHAT MURIITHI KABUNGO.....1ST CLAIMANT

JOSEPH STANLEY KARO.....2ND CLAIMANT

JULIA WANGECI GICHOBI.....3RD CLAIMANT

VERSUS

PAUL KARIUKI NDUNGU.....1ST RESPONDENT

SIMON WAHOGO.....2ND RESPONDENT

FRANCIS MWAI.....3RD RESPONDENT

AND

REGISTRAR OF TRADE UNIONS.....INTERESTED PARTY

(Before Hon. Justice Byram Ongaya on Friday, 21st July, 2017)

JUDGMENT

The claimants filed the memorandum of claim on 19.10.2016 through C.M King'ori & Company Advocates. The claimants prayed for judgment against the respondent for:

- (a) A declaration that the branch elections held on 05.10.2016 and the results thereof in respect of Kirinyaga branch of the Union of Kenya Civil Servants were unlawful, irregular, not credible, and against the constitution of the union.
- (b) An order nullifying and quashing the said elections and the results thereof.
- (c) In alternative, an order for scrutiny and recount of votes cast in the said elections for determination of the lawful results.
- (d) Costs and interest.

The respondents filed the memorandum of response dated 02.05.2017 through A.M Njagi, State Counsel, for Attorney General. The respondents prayed that the suit be dismissed with costs.

There is no dispute that there were elections held on 05.10.2016 for the union's Kirinyaga branch. In line with the relevant court order, the interested party undertook an inquiry about the elections and filed on 08.02.2017 a report dated 17.01.2017. The report states that the 4th respondent was the presiding officer at the elections and it was the position by the 4th respondent that the elections were free, fair and democratic. Further, as the interested party was not present at the elections, the allegation by the claimants that non-members voted could not be ascertained by the interested party. The elected persons had been registered by the interested party and the only option was for the claimants to move the court. Finally, the interested party reported that the elections had been conducted in accordance with the guidelines issued by the interested party and the Union's constitution.

The claimant's case is that the elections were not valid as they were irregularly conducted with no credibility. In particular, the voters were not verified and the list of eligible voters was not used and the winners were mysteriously announced.

The claimants' witness (CW) was the 1st claimant. He was a candidate for the position of chairperson at the questionable elections. The 1st respondent was his only opponent. His testimony is that the members were not registered as they entered the voting venue. As per the circular calling elections and issued by the union's national office, a member's register to be used to verify the voters against the voter's latest payslip (for September 2016) and the national identification card. The register had been prepared as required but was not used to verify the members. Thus the voters produced payslips but were not verified against the register of voters as eligible members as was required. The voters were not registered upon arrival by marking against the register of voters as appropriate. Further, the voters did not produce the national identification cards for verification. By the circular of 21.09.2016 the Independent Electoral and Boundaries Commission (IEBC) had been approached to manage the elections but that arrangement was changed to a labour officer. CW testified that the presiding officer took the view that it was cumbersome to use the voters' register to verify the voters and not all persons who voted were marked by the provided indelible ink as was required. CW concluded that the persons who voted could not be verified, some voted severally and the outcomes had been mysterious as the whole process was not credible.

The respondent's witness (RW) was one Joseph Chigiti Rungu, the county labour officer at Kirinyaga and the presiding officer at the elections in issue. He confirmed that a register of voters was provided for use on the voting day. It was provided by the then branch officials as required. RW confirmed the register to have been the proper register. After voting, some voters' names were marked and others were not marked because the assigned clerks had stopped making the register at some point. RW stated that persons who voted ranged from 200 to a figure he could not tell but only 4 persons had been marked on the voters' register filed in court; meaning that only 4 voters had voted but which was contrary to RW's recollection that over 200 persons had voted.

The court has considered the pleadings, the evidence and all material on record. The court returns that the evidence by RW and CW is that the voters' register was not used to verify the persons eligible as voters at the elections. The elections were not held as per Article 18(3) of the constitution of the union which states that branch officials and committee members shall be elected directly by members in the respective branches for a five year term and shall be eligible for re-election. In particular the court finds that it is impossible to show that the members elected the alleged winners in absence of proper use of the available register in verifying the voters so as to ensure that only eligible persons voted and only once at the said elections. The court returns that the elections were not credible at all. Accordingly, the claimants' suit must succeed.

In conclusion, judgment is hereby entered for the claimants against the respondents for:

- a) The declaration that the branch elections held on 05.10.2016 and the results thereof in respect of Kirinyaga branch of the Union of Kenya Civil Servants were unlawful, irregular, not credible, and against the constitution of the union.
- b) The order nullifying and quashing the said elections and the results thereof together with the registration of the persons purportedly elected thereat.

c) The respondents to pay the claimants' costs of the suit.

d) For avoidance of doubt, the union's Kirinyaga Branch elections are carried out afresh, forthwith, and in accordance with the relevant law and applicable provisions of the union's constitution and rules including provisions of section 34 of the Labour Relations Act, 2007.

Signed, dated and delivered in court at **Nyeri** this **Friday, 21st July, 2017**.

BYRAM ONGAYA

JUDGE