



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2261 OF 2016

FRANCIS WANDERI.....1ST CLAIMANT
JULIUS MBATI.....2ND CLAIMANT
RUTH WAMBUI.....3RD CLAIMANT
WINFRED KATUNGE.....4TH CLAIMANT
SUGARAY OTIENO.....5TH CLAIMANT
ABEDNEGO MUDHIANI.....6TH CLAIMANT

VERSUS

**ALBERT NJERU (Sued as General Secretary and Authorized Representative
of KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS (KUDHEIHA).....1ST RESPONDENT**
REGISTRAR OF TRADE UNIONS.....2ND RESPONDENT

RULING

1. This ruling flows from the Claimant's application brought by Notice of Motion dated 4th November 2016 and filed in Court on 7th November 2016 seeking the following orders:

- a) That all activities or decisions of the Executive Works Committee for Kenyatta National Hospital (KNH) elected on 6th June 2016 be suspended;
- b) That the election of the Committee be nullified;
- c) That any actions or decisions of the Committee be declared null and void;
- d) That a general meeting be called within one (1) month and elections of the Committee be carried out in accordance with the KUDHEIHA Constitution, under the supervision of an independent body.

2. The application which is supported by two affidavits sworn by the 1st Claimant, Francis Wanderi on 4th

November 2016 and 10th February 2017 respectively, is based on the following grounds:

- a) The Claimants are paid up members of KUDHEIHA employed at KNH hence entitled to participate in the lawful activities of the Union;
- b) On 6th July 2016, 47 employees of KNH were summoned by the 1st Respondent to attend a training at Marble Arch Hotel, which turned out to be an irregular and secret forum for election of members of the Executive Works Committee for KNH;
- c) By letter dated 15th July 2016, the 1st Respondent wrote to the Chief Executive Officer of KNH confirming the elections and declaring that the Committee would be in office for five (5) years;
- d) Members of the Union were denied the opportunity to participate in the elections;
- e) The Executive Committee has been acting arbitrarily without conferring with the Works Committee;
- f) The 1st Respondent has exhibited high handedness in the conduct of its affairs;
- g) It is in the interest of justice that the orders sought are granted.

3. The 1st Respondent's response is contained in a replying affidavit sworn by Albert Njeru Obed on 9th December 2016. He deposes that members of KUDHEIHA from KNH organized their departmental elections on 27th May 2016. Due to the large number of employees, each department elected its delegates to the Works Committee.

4. Following the elections, the 1st Respondent planned for training and election of the Executive Committee on 30th June 2016, which did not take off due to some logistical issues. The meeting was reconvened on 6th July 2016 and an agenda, which included elections of the Executive Committee, was shared with all delegates.

5. Njeru states that on the said date, all delegates present opted to begin with training and sensitization on roles of delegates and responsibilities of the Executive Committee, followed by elections. There was no objection on the adopted procedure.

6. The 1st, 3rd, 4th and 5th Claimants are said to have participated in the elections of the Executive Committee by filling the requisite nomination forms. They also received allowances for the day.

7. During these elections, the 3rd Claimant was elected Vice Chairperson and the 4th Claimant Women's Representative. The 1st Respondent maintains that the KUDHEIHA Constitution does not provide for election of the Works Committee or its Executive Committee by all members. The practice has been for members to elect delegates at the departmental level to form the Works Committee which then elects an Executive Committee from among its members.

8. It is further deposed that there is no requirement in the KUDHEIHA Constitution for elections to be conducted at the work premises or during an Annual General Meeting.

9. The 1st Respondent takes issue with the four (4) months' lapse between the elections and the filing of the present application, stating that the Claimants failed to file an appeal against the elections within the seven (7) days set out in the KUDHEIHA Constitution.

10. The employer in conjunction with the 1st Respondent subsequently organized a consultative retreat for the Executive Committee from 19th September 2016 to 23rd September 2016. It was during this retreat when some members of the Works Committee, who had not been elected to the Executive Committee,

sought to disrupt the operations of the duly elected officials by holding a separate meeting at which they purported to disband and replace the Executive Committee.

11. Njeru states that the parallel meeting was not duly convened because there was no notice sent to all members. He adds that the meeting was attended by only seven (7) persons with some signatures being forged.

12. Njeru goes on to depone that after the elections held on 6th July 2016, the 1st Respondent published a list of the members of the Executive Committee. Thereafter, the 1st Respondent arranged for a labour training for the Works Committee, comprising of 42 delegates, including the Claimants. The training took place between 18th August 2016 and 19th August 2016. No complaint was raised despite the elections having taken place on 6th July 2016.

13. The 2nd Respondent's response is contained in a replying affidavit sworn on 19th December 2016. She states that the elections of Works Committees is an internal affair of trade unions with no intervention by the Registrar of Trade Unions.

14. The 2nd Respondent takes the view that the present application does not disclose a cause of action against her and is an abuse of the court process.

15. The Claimant's complaint in this application is that the elections of the Executive Works Committee for Kenyatta National Hospital conducted on 6th July 2016 were in violation of the KUDHEIHA Constitution and the law. In this regard, the Claimants allege a number of irregularities. It was however not lost on the Court that the Claimants' complaint came at least four (4) months after the impugned elections.

16. Moreover, it would appear that some of the Claimants participated in the said elections. In the affidavits sworn by the 1st Claimant in support of this application, he depones that the delay was caused by lack of access to the Union Constitution. He further depones that some of the Claimants participated in the elections in order to avert rigging by the 1st Respondent.

17. The Court is not convinced. First, the Claimants did not demonstrate any efforts made to access the Union Constitution. Second, there was no evidence of any issues taken with regard to the elections of 6th July 2016, until filing of this application, four (4) months' down the line. Third, the 5th Claimant's letter dated 20th February 2017, by which she objects to her joiner in these proceedings, casts serious doubts on the veracity of the Claimants' claim.

18. The Court must be careful not to interfere with the running of trade unions and their organs, without a justifiable cause. In this case, it seems to me that the Claimants are disgruntled members out to ruin the operations of the Union for their own selfish reasons. The Court will not assist them to do so.

19. For these reasons, the Claimants' application dated 4th November 2016 is dismissed with costs to the Respondents.

20. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF AUGUST 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Aketch for the Claimants

Mr. Njiru for the 1st Respondent

Mr. Kioko for the 2nd Respondent