



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 49 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

KENNEDY MAKASEMBO.....CLAIMANT

-VERSUS-

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS.....RESPONDENT

JUDGMENT

By a statement of claim filed in court on 11th March, 2014 the Claimant **Kennedy Makasembo** seeks the following orders against the Respondent;

i) *A declaration that the withholding of the branch grants to KUPPET Migori County branch by the Respondent herein is unlawful and unjustifiable, an order of permanent mandatory injunction directing the Respondent to forthwith resume remittance of such grants as well as to pay the arrears so far accrued especially the dues of the Claimant as set out in the statement of claim.*

ii) *Costs of the suit.*

ii) *Any other or further relief that the court may deem just and expedient to grant.*

The Respondent was properly served with all pleadings, hearing and mention notices but did not file any response or participate in the hearing of the case.

The Claimant through the Memorandum of claim and his testimony in court states that he was elected as chairman of the Kenya Union of Post Primary Education (KUPPET) Migori County Branch at the elections held in 2011 to hold office for five (5) years.

He testified that to the KUPPET Constitution the Respondent is required to remit 65% of the Union's budget to its branches to be applied in running the branches including payment of office expenses and allowances for the branch officials. Migori County Branch was entitled to Kshs. 160,000/= per month which the Respondent duly remitted until November, 2013 when it stopped. Upon inquiry the Claimant was informed verbally by the National office that the cessation of remittance was occasioned by an alleged suspension of the Branch officials.

According to the Claimant the alleged suspension is unprocedural and therefore null and void as the Union Constitution was not complied with.

As the chairman of the Branch the Claimant was entitled to an allowance of Shs. 15,000 per month. He

annexed payment schedules for September, October and December, 2013 allowances.

The Claimant also annexed a letter from the Secretary General of the Respondent Mr. Akelo M.T.Misori dated 28th November, 2013 addressed to **MADAM HILDA GATI**, the Branch Assistant Secretary, Migori Branch which reads as follows;-

"28th November, 2013

REF:KUPPET/MIGORI/BGC/1

MADAM HILDA GATI

BRANCH ASISTANT EXECUTIVE SECRETARY

MIGRORI BRANCH

Dear Madam

RE: BRANCH GOVERNING COUNCIL MINUTES

MINUTE 3/20/11/2013-WAY FORWARD

I am in receipt of Branch Governing Council minutes dated 20/11/2013 endorsed by you and Mr. Migwambo, the vice Chairman of the Branch. I have also presented the same to the National Executive Board for consideration. The Board has looked into the matter and is of the opinion that these resolutions were arrived at without due regard to KUPPET'S Constitutional Provisions.

Subsequently, there is need to get a few facts right;

- i) Was a proper notice for the meeting given?*
- ii) Were the three officials given a chance to defend themselves against the allegations?*
- iii) Did the Branch Governing Counsel consider submissions by a competent auditor over branch spending?*
- (v) Are you aware that there is no provision for a caretaker office in the Union constitution?*
- iv) Are you aware, it is only the Registrar of Trade Unions/and or Court to freeze Union accounts?*

If you want cooperation from this office, you must do the right things.

Consequently, the alleged suspension of the three is null and void.

Thank you.

Yours Akelo M.T. Misori

Secretary General"

The Claimant further annexed an extract of the register of Trade Union Officers, Trustees and Committee Members as at 3rd March, 2011 confirming that he was registered as the Chairman of the Migori County Branch with effect from 26th February, 2011.

I have perused the documents and I am persuaded that the claimant was indeed elected as Chairman of KUPPET Migori County Branch in the elections held in 2011 and that his term was for a period of 5 years.

I am also persuaded that there were no valid proceedings removing the claimant from office as demonstrated by the Secretary General's letter dated 28th November, 2013 which states in part that the Board has looked into the matter and is of the opinion that these resolutions were arrived at without due regard to KUPPET's Constitutional Provisions.

I have also perused the annexed Constitution of the Respondent Union. Article 12 which provides for Union Funds states at Clause (d) thereof that

"The National Treasurer shall pay to all branches the total monthly dues entitled to each branch at a rate of 65% (sixty five percent)."

The Claimant pleaded and also testified that the Migori Branch entitlement was Shs. 160,000 per month which the Head office had been remitting every month up to November, 2013. No remittances were received from December, 2013. This contention has not been rebutted by the Respondent, neither has the Respondent rebutted the contention as proved by the payment records, that the claimant was entitled to an allowance of Shs. 15,000 per month out of the monthly remittances.

For these reasons I am satisfied that the Claimant has proved his case against the Respondent and is entitled to Shs. 15,000 per month from December, 2013 to January, 2016, that being the month when his 5 year tenure as the Branch chairman of Migori County Branch would come to an end at the 5th anniversary of his election to the position.

I therefore award the Claimant allowances for the 26 months in the sum of Shs. 390,000. The Respondent shall also pay the Claimant's costs of this suit and interest from date of judgment.

Dated, signed and delivered this 16th day of February, 2016.

MAUREEN ONYANGO

JUDGE