



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1188 OF 2015

TITUS WAMALWA KHAEMBA.....CLAIMANT

VERSUS

TRANSPORT WORKERS UNION.....1ST RESPONDENT

DAN MIHADI (GENERAL SECRETARY)2ND RESPONDENT

JUDGMENT

1. The claimant seeks payment of his arrears monthly salary with effect from July 2015, at the rate of Ksh.80,000 per month; transport allowance of Kshs.10,000 per month from April 2015 and branch operation allowance at Kshs.5,000 per month with effect from May 2015.
2. The claimant is the elected deputy general secretary of the union and secretary of the Airport branch of the respondent.
3. The dispute arose after the 2nd respondent, the general secretary of the union Mr. Dan Mihadi vide a letter dated 18th May 2015 changed the terms and conditions of service of the claimant.
4. Interim orders were granted on 31st July 2015 restraining the 1st and 2nd respondents from interfering with the claimant's salaries and allowances and / or to interfere with the function of the claimant as a deputy general secretary of the 1st respondent. The respondents were also interdicted from interfering with the operations of the Airport branch of the 1st respondent.

Facts of the case

5. In 2011, the claimant was re-elected as the branch secretary of the Airport branch of the 1st respondent and on 19th March 2011, the claimant was elected as the deputy general secretary of the 1st respondent.
6. On 6th August 2014, the general secretary of the 1st respondent, Mr. Simon Kigalu died and the claimant became the acting general secretary.
7. On 23rd April 2015, one Dan Mihadi, the 2nd respondent was elected in an impugned election as the general secretary and was registered as such on 8th May 2015. The elections were held while the incumbent was sick in the intensive care unit.
8. On 18th May 2015, the 2nd respondent, drew a letter pursuant to a meeting of the finance committee of the 2nd respondent in which it was decided to change the terms of the claimant as a full time official to a part time official. The claimant challenges the authenticity of the resolution since as the deputy secretary general he was entitled to attend the committee meeting.

That only the national executive committee has the mandate to vary his terms and conditions of service.

9. That under Rule 13(g) of the registered constitution of the union, the general secretary would convene such a meeting by giving two weeks' notice, which did not happen since the 2nd respondent was registered as the general secretary on 8th May 2015 and the decision was made on 18th May 2015. A period of less than two weeks had lapsed from the date of registration of the 2nd respondent as the general secretary of the 1st respondent. The purported variation of terms was therefore irregular and in violation of Rule 13(g) of the union constitution.
10. The finance committee, in any event could not discuss affairs of any official without first notifying such an official with any charges levelled against him.
11. That the claimant has received salary and allowance from the respondent since 2001 and he has legitimate expectation to receive such remuneration.
12. That the claimant was not given any hearing at all in violation of rules of natural justice. That being 2nd in command, the 2nd respondent should have had the courtesy of informing him what was going on before any such drastic action was taken against the claimant. That the reduction in remuneration was meant to punish the claimant for objecting to the manner the general secretary was appointed to office.
13. That the reduction of remuneration has gravely prejudiced the claimant's ability to meet his family obligations. The claimant prays for the relief set out in paragraph 3 of the statement of claim dated 7th July 2015.

Statement of response

14. The respondents filed a statement of response dated 28th July 2015 in which paragraphs 1 to 6 of the statement of claim have not been placed in dispute. The position of the claimant as the deputy general secretary of the 1st respondent and branch secretary of the Airport branch has not been placed in dispute.

The respondent denies paragraphs 7 to 30 in general terms without giving any specifics and puts the claimant to strict proof in respect thereof.

15. The change of the terms and conditions of service of the claimant by the union's finance committee is not denied by the respondent. The respondent only seeks to justify the change of terms of the claimant by stating that the 1st respondent was experiencing financial difficulties and that it was not only the claimant's terms and conditions of service which were affected by the changes introduced by the financial committee. That all deputies and assistants were affected by not being full time anymore.
16. The respondent also allege that the claimant was diverting union funds to a secret account contrary to previous orders of the court stopping the claimant from doing so.
17. The respondents do not deny that the claimant was not consulted and / or called to a meeting before the drastic changes were effected on his terms and conditions of service. The respondent prays that the suit be dismissed with costs.

Determination

18. The only issue for determination was whether it was lawful for the 1st and 2nd respondent to vary the terms and conditions of the claimant, to his detriment without discussing the matter with him at all.
19. It is not in dispute that the position of deputy general secretary of the 1st respondent is an elected position and is the number two over all position in the union organization.

The deputy general secretary is the substantive deputy to the general secretary. It is not in dispute that the deputy secretary general was not invited to the meeting of the national executive committee

of the 1st respondent held on 16th May 2015. It is not in dispute that the deputy secretary general was a member of the said committee.

20. The minutes of the meeting do not indicate why the claimant who is recorded as absent in the minutes, did not attend the meeting and whether the agenda to discuss his terms and conditions of service was notified in advance.
21. It is also evident from the minutes of the meeting that, no specific resolution was made in respect of the terms and conditions of service of the claimant. In fact, no specific changes to the position of deputy general secretary were discussed at that meeting.
22. It is therefore pretentious to reduce the salary and allowances of the claimant on the basis that the national finance committee varied the terms when the minutes of the meeting do not reflect any such changes.
23. It is the court's considered view and finding that the purported reduction of the salary and allowances earned by the claimant was not sanctioned by the national finance committee of the 1st respondent nor was it authorized by the national executive committee of the 1st respondent.

The purported changes violated the union constitution and were unlawful.

24. Accordingly, the court makes the following orders;

- a. the alteration of the terms and conditions of service of the claimant was against the union constitution and was unlawful;
- b. that the 1st and 2nd respondents to jointly and severally pay the salaries and allowances of the claimant without any variation as and when they fall due as long as the claimant continues to hold the twin positions of the deputy general secretary of the 1st respondent and the branch secretary of the Airport branch of the 1st respondent;
- c. that the 1st and 2nd respondents refrain from interfering with the functions of the claimant as the deputy general secretary of the 1st respondent and secretary of the Airport branch of the 1st respondent until he is lawfully removed from office;
- d. the respondents to pay the costs of the suit.

Dated and delivered at Nairobi this 5th day of February 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE