



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAROB

PETITION NO 7 OF 2016

GABRIEL

**OLALA.....
.....PETITIONER**

VS

KENYA UNION OF PRINTING PUBLISHING PAPER MANUFACTURERS PULP & PACKAGING INDUSTRIES NAIROBI BRANCH.....1ST RESPONDENT

KENYA UNION OF PRINTING PUBLISHING PAPER MANUFACTURERS PULP & PACKAGING INDUSTRIES HEAD OFFICE.....2ND RESPONDENT

RULING

1. This Ruling flows from the Petitioner's application brought by Notice of Motion dated 27th January 2016 seeking the following prayers:

- a. That the 2nd Respondent's letter dated 15th December 2015 be declared unlawful, unconstitutional and therefore null and void;
- b. That the Court be pleased to find that the Petitioner's and members' rights will be violated if the 1st Respondent's elections are held without the Petitioner being allowed to defend his position;
- c. That Rules 9(f) and 22(b) of the 1st Petitioner's Constitution be nullified.

2. The application, which is supported by the Petitioner's own affidavit is based on the following grounds:

- a. The Petitioner is eligible and wishes to contest in the 1st Respondent's elections;
- b. The 2st Respondent's letter dated 15th December 2015 is unlawful and violates the principles of natural justice;
- c. The said letter violates Rule 16(g) and (h) of the 1st Respondent's Constitution.

3. In his supporting affidavit sworn on 27th January 2016, the Petitioner depones that the letter dated 15th December 2015 issued by the 1st Respondent is in violation of his constitutional right to contest in the elections.

4. The Respondents' reply is contained in a replying affidavit sworn by the General Secretary of

Kenya Union of Printing, Publishing, Paper Manufacturers, Pulp and Packaging Industries, Rajab Wellington Mwondi. He depones that the Petitioner ceased being a member of the Union when he became a front line Manager. Mwondi adds that the union dues said to have been paid by the Petitioner were not received in the Union Account. The Petitioner therefore has no proof of union membership and he therefore is not eligible to participate in the elections.

5. I have looked at the Petitioner's application alongside the Petition itself and have formed the opinion that the prayers sought in both pleadings are substantially similar. Further, the application is premised on averments of fact which are contested. To my mind these issues can only be tested and determined in a full hearing and not at the interlocutory stage.

6. For these reasons, the Petitioner's application fails and is dismissed. Each party will bear their own costs.

7. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF MARCH 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Gabriel Olala (the Petitioner in person)

Miss Guserwa for the Respondents