



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 299 OF 2016

WILSON O. ONDUTO (Suing as the Secretary Elect, Kenya Scientific Research International Technical Institute Workers Union (Nairobi Branch).....1ST CLAIMANT

PATRICK NGUGI (Suing as the Chairman, Kenya Scientific

Research International Technical Institutions Workers Union Nairobi Branch).....2ND CLAIMANT

STEPHEN A. ODHIAMBO (Suing as the Treasurer, Kenya Scientific

Research International Technical Institutions Workers Union Nairobi Branch).....3RD CLAIMANT

Vs

MARTIN J. ODUOR (Sued as the Secretary General, Kenya Scientific Research International Technical

Institutions Workers

Union).....1ST RESPONDENT

KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL

AND ALLIED INSTITUTIONS WORKERS

UNION.....2ND RESPONDENT

RULING

1. The Claimants' application dated 29th February 2016 brought under certificate of service seeks the following orders:

- a) That the Court enlarges time within which Form 'Q' prepared by the Kenya Scientific Research International Technical and Allied Institutions Workers Union-Nairobi Branch on 15th February 2016 pursuant to the Branch elections held on 14th February 2016, may be sent to the Registrar of Trade Unions, as the statutory period of 14 days within which the said Form 'Q' may be prepared, signed and sent to the Registrar lapsed on 28th February 2016;
- b) That the 1st Respondent, Martin John Oduor be directed to receive, sign and send to the

Registrar of Trade Unions the Form 'Q' prepared and presented to him by Kenya Scientific Research International, Technical and Institutions Allied Workers Union-Nairobi Branch;

c) That the Registrar of Trade Unions be directed to receive, sign and act on the said Form 'Q' prepared by the Kenya Scientific Research International, Technical and Institutions Allied Workers Union-Nairobi with or without the signature of the 1st Respondent;

d) That the costs of this application be borne by the 1st Respondent personally.

2. The application which is supported by the affidavit of Wilson O. Onduto is on the following grounds:

a) On 25th November 2015 the Registrar of Trade Unions called for union elections both at the branch and national levels;

b) The 1st Respondent, Martin John Oduor who is the General Secretary of Kenya Scientific Research International Technical and Allied Institutions Workers Union and the then incumbent Branch Secretary issued a notice calling for elections for Nairobi Branch to be conducted on 14th February 2016 under the supervision of Labour Officers;

c) The Nairobi Branch elections were duly held on 14th February 2016 with the Claimants being elected as Branch Officials;

d) On 15th February 2016 the requisite Form 'Q' was prepared and presented to the 1st Respondent for signature and transmission to the Registrar of Trade Unions. The said Form 'Q' should have been sent to the Registrar by 28th February 2016;

e) The 1st Respondent has however without any valid reason failed, neglected, ignored and/or refused to sign the said Form 'Q';

f) The action or inaction of the 1st Respondent is unlawful and is in contravention of the Union Constitution as the General Secretary of the Union is obligated by law to sign the Form 'Q' and send it to the Registrar of Trade Unions within 14 days of the changes;

g) The action or inaction by the 1st Respondent is prejudicial not only to the Claimants but also to other elected Branch Officials, members of the Branch and the industry at large.

3. In a replying affidavit sworn by the 1st Respondent, Martin J. Oduor on 7th March 2016, he depones that the elections for Nairobi Branch were conducted without the requisite quorum as ten (10) workers from Riri (K) Limited and another ten (10) workers from Sana Industries were locked out of the elections.

4. Oduor further depones that the elected Branch Secretary, Wilson Onduto was involved in the theft of union motor vehicle registration number **KBX 181N** and that the theft was the subject of **ELRC Cause No 50 of 2015**.

5. The issue for determination in this application is whether the Claimants have made out a case for orders compelling the 1st Respondent to sign and transmit to the Registrar of Trade Unions Form 'Q' on account of the elections of the Kenya Scientific Research International Technical and Allied Institutions Workers Union-Nairobi Branch.

6. On 25th November 2015, the Registrar of Trade Unions issued a circular to all registered trade unions, employers' organisations and federations requiring them to conduct branch elections by 30th March 2016 and national elections by 30th June 2016. The Registrar also directed that names of the elected officials be filed with her office in accordance with Section 35 of the Labour Relations Act, 2007.

7. In compliance with the directions given by the Registrar, the Nairobi Branch of the 2nd Respondent

held elections on 14th February 2016. However, the 1st Respondent, who is the 2nd Respondent's General Secretary and was also a candidate for the position of Secretary for Nairobi Branch, refused to sign Form 'Q' which would have forwarded the results of the elections to the Registrar of Trade Unions.

8. Section 34(3) of the Labour Relations Act requires that notification of elected officials of a trade union be transmitted to the Registrar of Trade Unions within 14 days after completion of the election.

9. The 1st Respondent, Martin J. Oduor states that he declined to sign the said Form 'Q' because the elections in issue were conducted without the requisite quorum. He in fact alleges that some union members were barred from voting. In addition, Mr. Oduor states that the 1st Claimant, Wilson O. Onduto who had been declared winner for the position of Nairobi Branch Secretary was not a fit and proper person to hold office as he had been implicated in the theft of a motor vehicle belonging to the Union.

10. From the record, the 1st Respondent objected to the manner in which the elections were conducted by his letter dated 25th May 2016, close to two weeks after the said elections. No credible explanation was offered for this delay; yet, the Labour Relations Act which was reiterated by the Registrar of Trade Unions gives strict deadlines for conducting and completing union elections.

11. Additionally, the 1st Respondent failed to avail himself of the provisions of Section 34(4) of the Labour Relations Act which allows for reference of disputes arising from union elections to this Court. More significantly, none of the complaints raised by the 1st Respondent both in his letter to the Registrar and in his replying affidavit were supported by any evidence.

12. It seems to me therefore that the 1st Respondent is abusing his statutory office as General Secretary of the 2nd Respondent by declining to sign Form 'Q' on account of the Nairobi Branch Elections, in which he lost.

13. Consequently I make the following orders:

a) The 1st Respondent, Martin J. Oduor is directed to complete, sign and transmit to the Registrar of Trade Unions Form 'Q' on account of the 2nd Respondent's Nairobi Branch elections by close of business on Monday, 16th May 2016;

b) The Registrar of Trade Unions is directed to receive, accept and act on the said Form 'Q' notwithstanding the fact that the fourteen (14) days' deadline provided under Section 34(3) of the Labour Relations Act has lapsed. Time is therefore accordingly enlarged;

c) The 1st Respondent will personally pay the costs of this application.

14. These are the orders of the Court.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF MAY 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Rakoro for the Claimants

Martin J. Oduor (the 1st Respondent in person)

No appearance for the 2nd Respondent