



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.102 OF 2016

(Before D. K. N. Marete)

KENYA UNIVERSITIES STAFF UNION MOI UNIVERSITY

CHAPTER.....CLAIMANT

VERSUS

KENYA UNIVERSITIES STAFF UNION

NATIONAL EXECUTIVE COMMITTEE.....RESPONDENT

RULING

This is an application by the claimant/applicant and seeks the following orders of court;

- a. *That this motion be certified as urgent and should be heard on priority basis and exparte in the first instance.*
- b. *That pending the hearing and determination of this motion inter parties, this honourable court be pleased to suspend the K.U.S.U Moi university Branch Elections set to be held on 3rd June, 2016.*
- c. *That this Honourable Court be pleased to stop the K.U.S.U Moi University Branch elections set to be held on 3rd June 2016 and order that the officials elected on 13th May, 2016 as duly elected and further order the secretary general to register the elected branch officials.*
- d. *That the National Delegates Conference (N.D.C) be put on hold pending the determination of this case.*
- e. *The costs of this motion be provided for.*

The motion is grounded as follows;

1. *That the respondents vide a letter dated 20th May, 2016 has ordered that elections be conducted on 3rd June, 2016.*
2. *That the elections were conducted on 13th May, 2016 and officials duly elected as per the constitution K.U.S.U.*

3. *That the claimant was not consulted about this date.*
4. *That the respondent was dully consulted about the elections held on 13th May, 2016 as per the constitution of the Union.*
5. *That the respondents will not suffer any prejudice if the orders sought are granted.*

The respondent opposes the application for being dishonest and lack of merit. She also deems the same as an abuse of the process of court and prays that the same be dismissed with costs to herself.

The claimant's application is premised on the supporting affidavit of Azihemba Jose Mbai, the Branch Secretary of the claimant. It is his averment that the branch members Annual General Meeting (AGM) was scheduled on 22nd February, 2016 but this was disrupted by some members and the branch served with court orders in Eldoret CMCC 133 of 2016 stopping the elections. The matter was ultimately determined on 4th May, 2016 and the orders vacated.

By a notice dated 5th May, 2016, members were notified of elections to be held on 13th May, 2016. These indeed were held and supervised by the County Labour Officer.

The claimant's case is that despite the holding of elections, the General Secretary of the respondent ordered elections to be conducted on 3rd June, 2016 without consultation of the claimant. This was also done in bad faith. The claimant avers and pleads that the respondent should be banned from ordering fresh elections but instead register the already elected officials. This is because she stands to suffer unduly for the illegal actions of the respondent who would, in any event, not suffer prejudice if the orders sought are granted.

The respondent in response and opposition to the application avers and submits as follows;

4. *That in answer to paragraph 6 of the claim I have the following comments to make;*
 - a. *My union gave notice dated 11-5-2016 to the claimant to hold elections on 3rd June 2016- Annexure "AKO-1".*
 - b. *A letter dated 12-5-2016 appointing M/s Khaemba as co- coordinator for the above elections- Annexure "AKO-2"*
 - c. *My union was not aware that the claimant stage managed an election vide its notice dated 5-5-2016- Annexure "AKO-3"*
 - d. *A letter of complaint dated 16-5-2016 to the Registrar of Trade Unions about the purported election of 13-5-2016 - Annexure "AKO-4"*
 - e. *A reply from the Registrar of Trade Unions dated 20-5-2016- Annexure "AKO-5"*
 - f. *A letter appointing a person to preside over the elections of 3-6-2016- Annexure "AKO-6a"*
 - g. *Before the date for the above elections the respondent was injuncted- Annexure "6b"*

It is her further submission that the elections of 13th May, 2016 were illegal, null and void for being covered and conducted contrary to the party's constitution. This is because in the first place the elections were in respect to three (3) offices and not the eight vacant ones. Again, the notice period was wanting and short of the twenty one (21) days provided for under Article 16 (2) (iv) of the respondent's constitution. The respondent therefore prays for a vacation of the orders restraining the elections of 3rd June, 2016 as these were made without a full disclosure of the facts of the matter and entirely dismiss this application.

I agree with the submissions of the respondent. This is not a safe case for allowing the application. This is because there are salient but disputed issues touching on their elections of 13th May, 2016 that are as yet unanswered. These are also controversial. They would require elucidation at trial. I am therefore inclined to dismiss this application and vacate this court's orders of 30th May, 2016 in entirety. Each party shall bear their own costs of this application.

Delivered, dated and signed this 30th day of June 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Ombati instructed by Ombati & Company Advocates for the Claimant.
2. Mr. Ongenyi instructed by Ongenyi, Maube & Company Advocates for the Respondent.