



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 71 OF 2016**

**DOMINIC NDEGWA KIERE..... CLAIMANT**

**-VERSUS-**

**MERCY MUTHONI NDUNG’U..... RESPONDENT**

**AND**

**REGISTRAR OF TRADE UNIONS.....INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Friday 29<sup>th</sup> July, 2016)

**JUDGMENT**

The claimant filed the memorandum of claim on 13.04.2016 through C.M.King’ori Advocates. The respondent prayed for judgment against the respondents for:

- a) A declaration that the election of the respondent as the treasurer of KNUT Laikipia Branch in the elections held on 04.02.2016 is invalid ab initio and unlawful for being contrary to the KNUT constitution.
- b) An order cancelling the election of the respondent as the treasurer of KNUT Laikipia Branch in the elections held on 04.02.2016.
- c) An order declaring the claimant the winner of the post of treasurer of the KNUT Laikipia Branch, in the elections held on 04.02.2016, in the place of the respondent.
- d) In alternative to c above, an order for repeat elections for the post of treasurer, KNUT Laikipia Branch without affecting the election of the other officials thereof as elected in the elections of 04.02.2016.
- e) Costs and interest.

The respondent filed the statement of defence on 06.05.2016 through Gathiga Mwangi & Company Advocates. The interested party did not enter appearance and did not file any pleading.

The claimant’s case is as follows:

- a) KNUT is a trade union duly registered in accordance with the Labour Relations Act, 2007.

b) The claimant and the respondent were candidates for election for the position of treasurer of KNUT, Laikipia Branch in the elections held on 04.02.2016.

c) Article X(C) (1) of the KNUT constitution provides thus, **“A trained and qualified teacher shall be eligible for elections as KNUT Branch official after 5 years continuous service as a teacher and as a member of KNUT.”**

d) As at the time of elections on 04.02.2016, the respondent had not complied as per the said provision because prior thereto and up to 31.12.2015 the respondent had been a member of the Kenya Union of Post Primary Union of Teachers (KUPPET), hence the respondent was only a member of KNUT for only 2 months prior to the said elections.

e) The claimant lost to the respondent at the elections by only one vote but the election of the respondent must be found null and void because the respondent was not qualified to be elected under the said provision of the KNUT constitution.

The respondent's case is as follows:

a) The respondent has been a KNUT member from September 1988 to 2016 and has paid all KNUT dues to date.

b) The respondent has held official positions in KNUT since 1988 to 2016 and has never revoked her membership in the trade union.

c) The respondent has never applied to join KUPPET.

d) Any union dues by the respondent not remitted to KNUT by the employer have been duly paid to KNUT by the claimant.

e) Thus the election of the respondent on 04.02.2016 was lawful, valid and in accordance with Article 36 of the Constitution of Kenya, 2010 conferring the freedom of association.

f) That the respondent was nominated to contest in the elections of 04.02.2016 is enough evidence that she was a member of KNUT.

On 04.05.2016 by consent of the parties, the court ordered that the only issue for determination is whether the respondent has been a member of KNUT for 5 continuous years on the basis of not revoking membership, paying union dues, and not having applied to join KUPPET, a union in competition with KNUT. The court makes findings as follows:

1) The claimant has admitted in his submissions that indeed the respondent has paid all union dues only that she paid the arrears for union dues for the period March 2014 to January 2016 to enable her participate in the elections of 04.02.2016. It is not an issue for determination that such belated payment was wrong or contrary to KNUT constitution and the court returns that it has been established that as of 04.02.2016 the respondent had paid all the union dues to KNUT.

2) The parties are in agreement that the respondent was a member of KNUT and no evidence has been filed to show that the respondent ever revoked her membership. The court returns that the respondent had never revoked her membership with KNUT.

3) There is no evidence on record showing that the respondent applied to join KUPPET. The evidence on record includes the certificates and letters that show that the respondent has over the years actively participated in KNUT activities such as KNUT training seminars.

To decide the only agreed issue for determination, the court returns that it has been established that the respondent has been a member of KNUT for 5 continuous years on the basis of not revoking membership,

paying union dues, and not having applied to join KUPPET, a union in competition with KNUT.

In conclusion, the statement of claim filed on 13.04.2016 for the claimant is hereby dismissed with costs.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 29<sup>th</sup> July, 2016**.

**BYRAM ONGAYA**

**JUDGE**