



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 52 OF 2015

BETWEEN

SULEIMAN MOHAMED ABDALLA
CLAIMANT

VERSUS

1. KENYA COUNTY GOVERNMENT WORKERS' UNION MOMBASA
BRANCH
2. FATIYA KOMBO
3. RASHID MUTETI MUSOMBA
4. REGISTRAR OF TRADE UNIONS
RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Siocha Okemwa & Company Advocates for the Claimant

Brian Otieno & Company Advocates for the 1st, 2nd and 3rd Respondents

No representation for the 4th Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on the 9th February 2015. He states he is an Employee of the County Government of Mombasa, and the Chairperson of the Mombasa Branch of the Kenya County Government Workers' Union. He claims the Union defaulted in paying his monthly allowance, from April 2014. There are complaints from Branch Members that the 3rd Respondent is not working full time, and petition has been made to the 4th Respondent, asking the 3rd Respondent's position to be declared vacant. The Claimant seeks the following orders:-

- a) Monthly allowance from May 2014, to January 2015, totaling Kshs. 180,000.

b) The position of the 3rd Respondent be declared vacant, and the 1st Respondent to call election for, or appoint, a full time Branch Secretary.

c) Costs and interest.

2. The first 3 Respondents filed their Statement of Response on the 24th July 2015. The record indicates nothing was filed by the Registrar of Trade Unions in response. The Respondents state the Claimant is only a part time official of the Branch, entitled to sitting allowances only. He is not entitled to a salary or monthly allowance. He failed to attend meetings. He was not owed any allowances therefore. The Claim should be dismissed with costs to the 3 Respondents.

3. Parties agreed the dispute is considered and determined on the strength of their Pleadings, Documents and Submissions. They confirmed the filing and service of the Submissions at the last appearance in Court on the 28th June 2016, when the Court reserved its decision for 30th September 2016.

4. The Claimant submits he was elected as Chairman of the Branch on 23rd March 2013. The Branch has its own Bank Account, with its own income. Under Section 39[a] of the Labour Relations Act 2007, a Trade Union is mandated to use its funds in paying among others, the allowances of its Officials. Article 18 Rule J [i] of the Respondent's registered Constitution states funds of the Union may be expended on payment of Officials' allowances.

5. It is not in dispute the Claimant is Branch Chairman. Branch Bank Statements show the Claimant was receiving his monthly allowance until April 2014. The 3 Respondents have been receiving and withdrawing funds. The Branch held a meeting on the 16th January 2015, where the 2nd Respondent stated the Respondents did not have a problem in paying the Claimant his dues. He would be paid once he withdrew his Case against the Respondents from the Court. The Regional Secretary had advised the Branch to pay up, lest strong action is taken against the Branch. The Claimant prays the Court to allow the Claim.

6. The 3 Respondents concede the Claimant is the Branch Chairman. He was elected under the Union Constitution of 1996, which did not require the Chairperson to be a full time Employee. He is not qualified as a Chairperson under the revised Union Constitution. The revised Constitution requires County Chairperson should possess post-secondary school qualifications. The Claimant does not hold such qualifications. He was only entitled to sitting allowances for meetings. He did not attend meetings to merit sitting allowances. The Claim has no merit.

The Court Finds:-

7. It is not disputed that the Claimant became the Union's Branch Chairperson on 23rd March 2013. This is confirmed through an extract of registered officers from the Registrar of Trade Unions, attached to the Statement of Claim as appendix SMA2. This position was confirmed in the Registrar's letter to A.O. Hamza & Company Advocates dated 7th August 2014. It is not disputed the Claimant remains the Chairperson, and no change has been shown to have been registered at Registrar's Office, with regard to the position of Branch Chairperson, from 23rd March 2013.

8. There is no firm evidence to show that as Chairperson, the Claimant was entitled to a monthly allowance of Kshs. 20,000. He relies on Article 18 Rule J [i] of the Union Constitution and Section 39 [a] of the Labour Relations Act, as the foundation for this prayer. Both, in the reading of the Court allow the Union to apply its funds in among other things, meeting the allowances and salaries of officials and officers. There is nowhere in the Union Constitution, or the Law, where it is specifically stated the Chairperson of the Branch, shall be entitled to a monthly allowance of Kshs. 20,000.

9. It was for the Claimant to show the rate of the allowance payable to him as Chairperson, the frequency at which this was to be paid, and the arrears due. There are minutes of a meeting of the Branch Executive Committee, held on 16th October 2013, and which was chaired by the Claimant, which brings to the fore

the need for the Claimant to establish his entitlement to this allowance.

10. The Claimant proposed to the meeting, what was described as the *monthly sitting allowance*, is increased to Kshs. 20,000, the rate upon which the Claim is founded. It is indicated an Official who failed to attend the meetings would not qualify for the sitting allowance. It is the view of the Court that the position of the 3 Respondents on the nature of the allowance has support in the minutes recording the meeting of 16th October 2013. The allowance was not supposed to be an invariable monthly payment; it was meant to be paid when an Official attended a meeting.

11. For the Claimant to succeed in his claim for arrears of allowances from 2014 to-date, he would have to demonstrate to the Court that he has attended a number of meetings commensurate to the arrears of allowances sought. The notion that he was entitled to a standing monthly allowance, even in the absence of any meetings, has no support in the Union Constitution, the Law, and the internal records of the Branch.

12. It is noted the Claimant is a full time Employee of the County Government of Mombasa. He renders his labour to the County Government, on a full time basis. He does not serve the Union daily. He is not an Employee of the Union. Employees of the Union, under Rule 24 of the 1996 Union Constitution, were appointed by the Finance and General Purposes Committee. The Claimant was elected as an Official. His approach that the allowance was due to him monthly, irrespective of his participation in the meetings of the Branch Executive, cannot be correct. Rule 28 which set the role of Branch Chairperson, did not suggest that role was discharged on a day to day basis. He has not established he is entitled to Kshs. 20,000 monthly in allowances, from May 2014 to-date, simply because he has not availed to the Court the legal and factual bases justifying the allowance. He did not supply the Court with any document, showing he would be paid an invariable allowance of Kshs. 20,000 monthly. There are, on record however, bits and pieces of material to show the Branch had conceded owing the Claimant some form of arrears of allowances. The demands by the Claimant for payment were never seriously challenged by the Respondent before the Claim was presented in Court. The number of meetings attended by the Claimant to justify or clarify the amount payable is lacking from either Party. The intervention of the Regional Union Office was that the Branch should settle the Claimant's demand. The submission that the Claimant was receiving his allowances consistently, prior to May 2014, was not denied. There are minutes of other meetings he is shown to have attended, other than the meeting of October 2013. The Respondents did not provide the Court with evidence that they paid the Claimant any allowance, for any meeting falling after May 2014. Their position was that he should withdraw his Case in Court, for his demand to be considered. The Claimant seems to have fallen out with his Branch Colleagues, so much so, that the Colleagues curtailed his ability to regularly earn extra income by way of allowances.

13. The assertion that the 3rd Respondent is not working full time, and should have his position declared vacant, is an aspect of the fallout between the Claimant and his Colleagues. It is not a serious issue of governance, but a tool in the hands of the Claimant, used in fighting back the Respondents. It is not an issue which calls for an in-depth evaluation by the Court. There is a petition on the issue before the Registrar of Trade Unions. The Claimant ought to pursue that petition. The Court shall, in light of the analyses of the factual and legal positions above, order that the Claimant is paid sitting allowances for 7 meetings at Kshs. 140,000 in settlement of the dispute. This shall afford the Parties a reasonable settlement, as they ponder their common future. To conclude, the Court is satisfied the allowance was not a standing monthly payment, and therefore payable in arrears from May 2014 to-date. It was an allowance payable to the payee on attending meetings. The Claimant attended some meetings. He should not leave the Court with accumulated sitting allowances for over a continuous period of 2 years, but should also not leave empty-handed. **IT IS ORDERED:-**

a) The 1st, 2nd and 3rd Respondent shall pay to the Claimant sitting allowances for 7 meetings at Kshs. 140,000.

b) No orders on the Costs, Interest, and Declaration of any Office as being vacant.

Dated and delivered at Mombasa this 29th day of September 2016

James Rika

Judge