



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**CAUSE NUMBER 375 OF 2016**

**GEORGE OKOTH.....1<sup>ST</sup> CLAIMANT**  
**EUGENE OKOTH.....2<sup>ND</sup> CLAIMANT**  
**BENSON MAKOTI.....3<sup>RD</sup> CLAIMANT**  
**FREDRICK M. MACHIO.....4<sup>TH</sup> CLAIMANT**  
**GANIRA A. ANDOLO.....5<sup>TH</sup> CLAIMANT**  
**BEATRICE CHEBII.....6<sup>TH</sup> CLAIMANT**  
**PHILIP ONYANGO.....7<sup>TH</sup> CLAIMANT**

**VERSUS**

**KENYA PETROLEUM WORKERS UNION.....1<sup>ST</sup> RESPONDENT**  
**REGISTRAR OF TRADE UNIONS.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 10<sup>th</sup> March, 2016 the claimant sought orders among others that:-

- (a) Pending the hearing and determination of the application the 2<sup>nd</sup> respondent be and is hereby restrained by a temporary injunction from registering the notice of change of officials form 'Q' for elections by the 1<sup>st</sup> respondent.
- (b) Pending the hearing and determination of this suit the 2<sup>nd</sup> respondent be and is hereby restrained by injunction from affecting any changes in the register of Trade Union Officials of the 1<sup>st</sup> Respondent.
- (c) That in the alternative to prayer 2 and 3 above there be a stay of the registration of officials of the respondent allegedly elected on 6<sup>th</sup> March, 2016 and the status quo pertaining to the 1<sup>st</sup> respondent's officials as at 5<sup>th</sup> March, 2016 be maintained until the hearing and determination of this suit.

(d) That the purported annual Delegates Conference held on 6<sup>th</sup> March, 2016 and the elections held thereon be and are hereby nullified.

(e) The 1<sup>st</sup> respondent be and is hereby ordered to hold fresh elections within thirty (30) days or such other period as the Honourable Court may deem fit and just to grant.

2. The application was brought on the ground among others that:-

(a) The 1<sup>st</sup> respondent without issuing any notice specifying the venue and time of the Annual Delegates Conference has purported to conduct elections.

(b) The 1<sup>st</sup> respondent's Nairobi, Mombasa and Eldoret Branches were not issued with the mandatory notices convening of the Annual Delegates Conference.

(c) The 1<sup>st</sup> claimant/applicant who had applied to contest the position of the Secretary General was not notified of the venue of the elections.

(d) To date the Claimants and other delegates from Nairobi, Mombasa and Eldoret Branches who are entitled to attend and vote at the Annual Delegates Conference are not aware where the alleged delegates conference was conducted.

(e) That without the delegates from the Nairobi, Mombasa and Eldoret Branches the meeting did not meet the requisite quorum of an Annual Delegates Conference which is seventy five (75%) percent of the members entitled to attend and vote thereat as per the provisions of rule 7, 8 of the 1<sup>st</sup> respondent's constitution.

3. The application was further supported by the affidavit of George Okoth who deponed on the main that:-

(a) That he was a member of the 1<sup>st</sup> respondent and an elected delegate to the union's General Conference.

(b) That he was also a candidate for the position of the National General Secretary of the 1<sup>st</sup> respondent.

(c) That by a letter dated 25<sup>th</sup> November, 2015 the 2<sup>nd</sup> respondent directed all registered trade unions to conduct Branch and National elections by 30<sup>th</sup> March, 2016 and 30<sup>th</sup> June, 2016 respectively.

(d) That pursuant to the said letter the 1<sup>st</sup> respondent issued a circular letter to all its Branches and gave to a timetable for the conduct of its Branch elections culminating to the National elections scheduled for 6<sup>th</sup> March, 2016 on a date and venue to be communicated later.

(f) That under Rule 72 of the Constitution the Annual Delegates Conference shall be convened by the National General Secretary by giving four weeks' notice to each Branch at the union.

(g) That the Nairobi Branch, Mombasa and Eldoret Branch of the 1<sup>st</sup> respondent were not issued with the mandatory notice for the convening of the Annual Delegates Conference.

(h) That the Nairobi Branch of the 1<sup>st</sup> respondent also conducted and held its elections on 2<sup>nd</sup> March, 2016 whereat the Branch Officials and delegates to the Delegates Conference were elected.

(i) That the Coast Branch of the 1<sup>st</sup> respondent had not conducted the Branch elections as it was

waiting for a ruling from the Honourable Court in Mombasa Cause No. 93 of 2016; Clay Odari & 2 others vs. Kenya Petroleum Oil Workers Union and 5 others which was finally delivered on 4<sup>th</sup> March, 2016 giving the Branch 7 days to carry out a verification exercise and subsequently conduct the elections.

(j) That the incumbent National General Secretary of the 1<sup>st</sup> respondent and other officials were using the election date and the Constitution as a secret weapon to avoid competition which should not be allowed to prevail.

(k) That upon getting wind that the elections of the union had been held in a secret location he wrote an objection to the 2<sup>nd</sup> respondent contesting the holding of the elections.

(l) That he went personally to the Union's Offices to get the detail of the Annual Delegates Conference but he was not able to get any information or documents since the same were held secretly.

(m) That the purported elections held on 6<sup>th</sup> March, 2016 at an unknown venue was a sham and disenfranchised several delegates of the union.

4. The 1<sup>st</sup> respondent opposed the application and filed a replying affidavit through one Gilbert Amolo who deponed in the main that:-

(a) That he is the National General Secretary of the Kenya Petroleum Oil Workers Union, well versed with the issues raised in the Notice of Motion, Supporting Affidavit and the Statement of Claim and equally competent to swear that affidavit.

(b) That the Annual Delegates Conference held on 6<sup>th</sup> March 2016 was properly called for, conducted and officials of the Kenya Petroleum Oil Workers Union (hereafter referred to as the Union) registered.

(c) That the Annual Delegates Conference was called by a Notice dated 23<sup>rd</sup> December 2015 and 2<sup>nd</sup> February 2016 on all the existing and would be new delegates.

(d) That upon receipt of the above Notice the Branches of the Union called for branch elections to secure delegates and officials in line with Rule 22 of the 1<sup>st</sup> respondent Constitution.

(e) That branch elections had so far been concluded in majority of the branches save for Mombasa branch.

(f) That the claimant allegation that Nairobi branch, Mombasa branch and Eldoret branch never received the Notice converting the Annual Delegates Conference is not true as it is the Branch Secretaries who receive the communication from the General Secretary do receive the Notices and in turn communicate to branch members on the expected elections as provided under rule 22 (4) of the 1<sup>st</sup> respondent in the same process as the Notice to conduct branch elections.

(g) That it was not true that Nairobi, Mombasa and Eldoret branches were not issued with mandatory notices of the annual Delegates Conference as there was no specific reason why not. The Notice for Annual Delegates Conference was communicated in the same process as the Notice to conduct branch elections.

(h) That all the branch elections were conducted pursuant to the notice issued by the deponent which carried out the details of Annual Delegates Conference.

(i) That without the Nairobi, Mombasa and Eldoret branches the 1<sup>st</sup> respondent still met the

required threshold of 75% of the quorum as set by the Constitution for the Annual Delegates Conference.

(j) That there is no requirement on the Constitution of the 1<sup>st</sup> respondent that all the delegates must attend the Annual Delegates Conference there was no requirement mandatory for 100% attendance of all delegates as that was not ordinarily feasible owing to logistical reasons.

(k) That paragraph 12 of the Supporting Affidavit was not true as the claimants had knowledge of the Annual Delegates Conference held on 6<sup>th</sup> March 2016 for more than 1 month and further had access to the Constitution at its hands and even filed its own copy in the pleadings herein.

(l) That there was no “playing field” that had been titled in any negative directions the 1<sup>st</sup> respondent had followed its Constitution and directions from the Registrar of Trade Unions dated 25<sup>th</sup> November, 2015 in follow up to its elections.

(m) That at the date of the Annual Delegates Conference the expected number of Delegates was to be 43 delegates, eligible to take part in the conference, this comprising of the National Executive Council members who number 18 and the central council members who number 7 and the new delegates who were to be 18 at the date of this elections.

(n) That out of the 43 delegates 34 of the delegates participated in the Annual Delegates Conference, which was more than 75% required by Rule 7.9 of the 1<sup>st</sup> respondent’s Constitution.

(o) That the delegates who attended the Annual Delegates Conference were bonafide and validly elected from the branches who had by the time of the Annual Delegates Conference completed their branch elections who were essentially National Executive Council or Central Council of Members, Elected Branch Officials and Organizing Secretaries who are delegates by virtue of Rule 12.8.3 of the Constitution of the Union.

(p) That the 1<sup>st</sup> respondent had provided a list of the Attendance of the Delegates and the basis of the delegate representation or legal backing.

(q) That the Constitution of the Union only requires 75% of the delegates to form a quorum and the same was met. That the claimants had no dispute relating to the Constitution and had participated in elections conducted on the mechanism and rules of the Unions Constitution, the same Constitution provides for the delegates system through National Executive Council, Central Council, Organizing Secretaries and Branch Officials.

(r) That the directive of the Registrar of Trade Unions dated 25<sup>th</sup> November 2015 also directed that all the members of the 1<sup>st</sup> respondent went to elections with the Registered Constitution and no applications for amendments or change of the Constitution and the claimants never challenged that directive in any Court of Law nor obtained any orders against conducting elections under the Constitution of the 1<sup>st</sup> respondent since November 2015 to date.

(s) The order sought by the Notice of Motion had all been overtaken by events and were not capable of being implemented or complied with the Notice of Change of Officials from Q for the elections of the 1<sup>st</sup> respondent has already been acted upon by the Registrar of Trade Unions.

(t) That the litigants herein are litigious who have so far filed several cases before the Employment and Labour Relations Court and failed, neglect to prosecute them while keeping the files open potentially for the 1<sup>st</sup> claimant to draw the Court at every turn of the electoral process which is not healthy for the administration and management of the union.

(u) That the claimant application was based on apprehension and not real factual basis as indicated

in its ground (vii) page 3 of the claimants bundle and the court should not act on apprehensions.

5. In his submissions in support of the application, Mr. Nyabena for the applicants submitted that the elections of 6<sup>th</sup> March, 2016 were a sham and disenfranchised several delegates of the union. According to him, 1<sup>st</sup> respondent's National General Secretary issued a circular to all branches on 23<sup>rd</sup> December, 2015 notifying that the annual delegates conference was to take place on 6<sup>th</sup> March, 2016 at a venue to be communicated later. On 2<sup>nd</sup> February, 2016 the General Secretary wrote to Refinery Branch Secretary notifying them that the annual delegates conference was to take place at Afraha High School in Nakuru. He further notified the Labour commissioner via undated letter marked GA6 of the replying affidavit.

6. According to Counsel, the 1<sup>st</sup> respondent failed to issue notice specifying the venue and time of the annual delegates conference to other branches but went ahead and convened the same and conducted elections.

7. According to counsel, there was no evidence showing that the applicants were notified of the Annual Delegates Conference held on 5<sup>th</sup> March, 2016 and specifically the 1<sup>st</sup> applicant who was contesting the post of Secretary General. The assertion that 34 delegates out of 43 required attended the conference was misleading in that 10 attendees of the conference were not qualified to attend and participate at the conference.

6. Mr. Nyabena further submitted that the 1<sup>st</sup> respondent's constitution which requires a minimum of 75% of delegates to form quorum was not met as only 24 attendees qualified to attend and participate in the annual delegates conference. According to counsel the claimants and other delegates from Nairobi, Mombasa and Eldoret Branches were not aware where the delegates conference was conducted. It therefore followed that without the delegates from Nairobi, Mombasa and Eldoret Branches, the meeting did not meet the requisite quorum of an annual delegates conference being 75% of members entitled to attend and vote as per the provisions of rule 7.8 of the Union's Constitution.

7. Counsel therefore concluded that the officials elected on the purported annual delegates conference held on 6<sup>th</sup> March, 2016 were not properly elected since the people who attended were not delegates as had been submitted earlier thus not capable of electing the National Office bearers.

8. Mr. Onyonyi for the respondents on his part submitted that the 1<sup>st</sup> respondent's elections were conducted as per its registered Constitution giving outline on who ought to be delegates and requirement of the notice of the annual delegates conference to be issued to the Branch of the Union and not to any member individually. The member must get the notice through the Branch.

9. According to Counsel the quorum to the annual delegates conference was met and all delegates who attended were bona fide.

10. He further submitted that none of the claimant was denied the right to vie and that the 1<sup>st</sup> claimant never presented any form of documentation to the union's office and that the 1<sup>st</sup> claimant never attended the annual delegates conference that was even attended by a Mr. Joel Marete who was from Nairobi Office and who was the confidant of the 1<sup>st</sup> claimant.

11. According to Mr. Onyonyi, the allegations by the claimant about them not being notified of the venue and time of the elections are a sham and an afterthought. This is because the claimants had prior knowledge of the annual delegates conference held on 6<sup>th</sup> March, 2016 for more than a month through the notice dated 2<sup>nd</sup> February, 2016.

12. The Court has considered in depth the factual background and basis of the present application. The Court has further reviewed the responses tendered by the respondent to the application.

13. The nature of the orders sought in the application are such that if granted, it would be like no elections

took place and the incumbents continue in office pending the resolution of the dispute herein.

14. Section 34(2) (b) of the Labour Relations Act requires that election of Trade Union Officials be done at least once every five years. The elections, the subject matter of this dispute were conducted pursuant to the above provision.

15. By a letter dated 25<sup>th</sup> November, 2015 issued by the Registrar of Trade Union Mrs. E. N. Gicheha, she gave a directive that union elections at Branch and National Level be held by 30<sup>th</sup> March, 2016 in order to give room for elections of officials of Central Organization of Trade Unions and Trade Union Congress of Kenya by 30<sup>th</sup> August, 2016. The Court is aware that these events have both taken place and there are new officials in office as well as those who retained their position at various levels. On the other hand there are disputes filed by unsuccessful parties like the applicants herein raising different kinds of concerns or grievances over the just concluded elections wanting this Court to exercise its powers under section 34 of the Labour Relations Act to address and render a determination over these concerns and grievances.

16. In order to adequately determine these concerns and grievances and reach a just and informed decision the Court just like its sister the High Court Election Petitions would require to hear evidence and cross-examination on such evidence. This can only take place at the main trial of the action. The Court cannot decide the dispute adequately based on untested affidavit evidence. While that determination is awaited, the affairs of the union must go on. There cannot be a Union without officials in office. Just like with our Parliamentary and County Assembly elections, the fact that an election has been challenged does not mean the person whose election has been disputed is enjoined by an Election Petition Court from assuming his position.

17. In the circumstances the Court will decline to make any interlocutory orders as sought by the applicants but hereby direct that the dispute over the elections of the 1<sup>st</sup> respondent's officials be decided after full trial which is hereby ordered to be set down for hearing on priority basis.

18. Cost in the cause.

19. It is so ordered.

Dated at Nairobi this 9<sup>th</sup> day of September 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 9<sup>th</sup> day of September 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**