



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 252 OF 2016**

**CHARLES NJOGU MWANIKI.....**  
**CLAIMANT**

**VERSUS**

**KENYA UNION OF COMMERCIAL**

**FOOD AND ALLIED WORKERS.....1<sup>ST</sup> RESPONDENT**

**BONIFACE KAVUVI (Being sued in his capacity**

**as the Secretary General of the 1<sup>st</sup> Respondent.....2<sup>ND</sup> RESPONDENT**

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

**RULING**

1. The Claimant's application brought by Notice of Motion dated 22<sup>nd</sup> February 2016 and filed in Court on 23<sup>rd</sup> February 2016 seeks orders restraining the Interested Party from registering the national officials of the 1<sup>st</sup> Respondent elected on 19<sup>th</sup> February 2016.

2. The Claimant also asks that the elections held on the said date be nullified and the 2<sup>nd</sup> Respondent be directed to convene a National Delegates Conference, in consultation with the National Executive Committee, where fresh elections shall be held.

3. The application, which is supported by the Claimant's affidavit sworn on 22<sup>nd</sup> February 2016 is based on the following grounds:

a) That pursuant to Rule No. 8(d) of the 1<sup>st</sup> Respondent's Constitution, notice regarding the National Delegates Conference shall be dispatched to the delegates concerned by the Secretary General at least fourteen (14) days before the date of the Conference;

b) That the Claimant did not receive the notice as provided for and only received it on the morning of 19<sup>th</sup> February 2016 despite being a member of the National Executive Council and an Assistant Secretary General of the 1<sup>st</sup> Respondent;

c) That the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> Respondent failed, refused, ignored and/or neglected to follow the rules laid down in the constitution of the 1<sup>st</sup> Respondent before carrying out elections;

d) That Rule 30 of the 1<sup>st</sup> Respondent's constitution provides that decisions in respect of election of officials, the amendment of rules, dissolution and any other matter affecting the members of the union generally shall be by secret ballot;

e) That the elections held on 19<sup>th</sup> February 2016 were not by secret ballot. But rather, some pieces of paper were passed around with names of the contestants that the 2<sup>nd</sup> Respondent wanted appointed as officials at the expense of the Claimant;

f) That the Claimant filed an objection to the officials that were elected on 19<sup>th</sup> February 2016 through an illegal election with the Registrar of Trade Unions on 22<sup>nd</sup> February 2016, which objection was duly received;

g) That it is only fair and just that the application be allowed.

4. In a replying affidavit sworn by the 2<sup>nd</sup> Respondent, Boniface M. Kavuvi, who is also the Secretary General of the 1<sup>st</sup> Respondent, it is deponed that by a circular dated 25<sup>th</sup> November 2015, the Registrar of Trade Unions instructed all registered trade unions to conduct elections. The 2<sup>nd</sup> Respondent therefore wrote to all Branch Secretaries on 14<sup>th</sup> December 2015 drawing their attention to the directive by the Registrar.

5. By letter dated 11<sup>th</sup> December 2015, the 2<sup>nd</sup> Respondent convened a National Executive Council meeting for 18<sup>th</sup> December 2015 whose agenda included the circular from the Registrar of Trade Unions and the setting of a date for the National Delegates Conference.

6. The National Executive Council met as scheduled on 18<sup>th</sup> December 2015 with 19 members in attendance, including the Claimant. At this meeting it was unanimously agreed that the National Delegates Conference would be held on 19<sup>th</sup> February 2016 at Konza City Hotel-Machakos and the 2<sup>nd</sup> Respondent was mandated to issue the requisite notice.

7. Kavuvi asserts that the Claimant was aware of the date and venue for the National Delegates Conference as early as 18<sup>th</sup> December 2015 when he attended and participated in the deliberations of the National Executive Council meeting.

8. The 2<sup>nd</sup> Respondent issued a notice on 1<sup>st</sup> February 2016 convening a National Delegates Conference for 19<sup>th</sup> February 2016 at Konza City Hotel- Machakos. The notice was addressed to all National Officials, Executive Council members and Branch Secretaries.

9. The 2<sup>nd</sup> Respondent further depones that the Claimant was issued with the notice and nomination form on 1<sup>st</sup> February 2016 of which he acknowledged receipt. The Claimant completed and sent to the 2<sup>nd</sup> Respondent his nomination form to enable him defend his position as Assistant Secretary General.

10. Kavuvi denies that the Claimant was served with the notice convening the National Delegates Conference on the morning of 19<sup>th</sup> February 2016.

11. He goes on to state that the National Delegates Conference was supervised by the County Labour Officer, Machakos who had been appointed by the Labour Commissioner on 9<sup>th</sup> February 2016. The Labour Officer gave a report confirming the results of the elections held on 19<sup>th</sup> February 2016.

12. After the elections, the 2<sup>nd</sup> Respondent presented the Notice of Change of Officers (Form 'Q') to the Registrar of Trade Unions who registered the changes on 23<sup>rd</sup> February 2016.

13. The 2<sup>nd</sup> Respondent also swore a supplementary affidavit on 9<sup>th</sup> June 2016 taking issue with the

Claimant's assertion that the minutes of the National Executive Council are not a true reflection of the proceedings of the meeting.

14. The Interested Party's response is contained in a replying affidavit sworn on 4<sup>th</sup> August 2016 in which she depones that by a circular dated 25<sup>th</sup> November 2015, she directed all trade unions to conduct branch and national elections between January and August 2016.

15. Following national elections held on 19<sup>th</sup> February 2016, the 1<sup>st</sup> Respondent lodged a Notice of Change of officials (Form 'Q') on 22<sup>nd</sup> February 2016. On the same day, the Claimant and one David Luttah filed objections.

16. On the said date, the Registrar received a report on the elections from the County Labour Officer, Machakos who had presided over the elections. The report indicated that the elections were carried out in accordance with the Union Constitution. The Interested Party takes the view that the objections by the Claimant and David Luttah ought to have been raised with the Presiding Officer.

17. Having considered the objections, the records and the Presiding Officer's report, the Interested Party found that the elections had been conducted lawfully and the objections raised were frivolous and without merit.

18. On 23<sup>rd</sup> February 2016, the Interested Party registered the results of the elections and on the same day at 4.40 pm, she was served with a court order stopping the registration. The Interested Party states that the court order was incapable of being implemented as it was served upon her after she had already effected the registration.

19. I have considered the application by the Claimant and taking note of the pleadings filed by the parties, find that the facts of the case are highly contested. It seems to me therefore that the prayers sought by the Claimant cannot be granted without taking evidence in a full hearing. I say so because the Claimant's case is premised on allegations of election malpractices on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. To my mind, these allegations can only be proved or disproved in proceedings in the nature of an election petition.

20. For this reason alone, I decline to grant the prayers sought in the Claimant's application dated 22<sup>nd</sup> February 2016 and direct the parties to fix the main claim for hearing on priority basis.

21. The costs of the application will be in the cause.

22. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14<sup>TH</sup> DAY OF OCTOBER 2016**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Mumia for the Claimant

Mr. Nyabena for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Miss Chege for the Interest Party