



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 way of Notice of Motion dated 19th July, 2016. It seeks the following orders of court;

- i. THAT this motion be certified as urgent and should be heard exparte in the first instance.*
- ii. THAT pending the hearing and determination of this motion interparties this Honourable Court be pleased to suspend the KUSU Moi University Branch, Special General Meeting and Elections scheduled on 27th July, 2016.*
- iii. THAT this honourable court do stop the respondent from holding any Special General Meeting and conducting KUSU Moi University Branch Elections pending he hearing and final determination of this claim.*
- iv. THAT cost of this application be provided for.*

It is grounded as follows;

- a) THAT the respondent has issued a notice dated 4th July, 2016 for the election of new officials and holding a special general meeting.*
- b) THAT the Ruling of this Court dated 30th June, 2016 clearly indicated that the parties herein were to be heard during the trial before the court making a conclusion.*
- c) THAT the claim herein will be rendered nugatory if the S.G.M and elections take place as notified.*

d) THAT the national Executive Secretary has no powers to call for Election and S.G.M as this is contrary to Article 16.2 rule IV of K.U.S.U constitutional.

The respondent in her Grounds of Opposition dated 22nd July, 2016 opposes the application and prays that the same be dismissed with costs.

The claimant's/applicant's case is that vide a ruling of this court delivered on 30th June, 2016 this court held that there were salient but disputed issues in this cause that required elucidation at trial. Despite this finding and observation by court, the respondent through the National Executive Secretary has by a notice dated 4th July, 2016 called for elections and a Special General Meeting on 27th July, 2016.

It is the applicant's further case that the ruling in itself did not allow the respondent to call for elections and if these are held, the claim shall be rendered nugatory and indeed spent. It is the applicant's further case that the notice issued by the National Secretary is defective in that it contravenes Article 16.2 rule iv of the union constitution which requires issue of notices by the Branch Secretary.

The respondent opposes the application and submits that this court lifted the injunctive order in favour of the claimant unconditionally and that Article 16.2 (iv) is not on elections. Instead Article 18 deals with the issue of elections now disputed as follows;

4. THAT Article 18 deals with both the National and Branch Elections and Article 18.8(ii) reads; "The Branch Executive Committee in consultation with the National Executive Committee shall organize, co-ordinate and oversee the Branch Elections."

It is her further submission that this application is unnecessary and an abuse of the process of court and should be dismissed with costs.

A ruling in the circumstances of this case falls in favour of the claimant/applicant. This is because, like she observed, the multifaceted ruling observed and held that there were unanswered and controversial and disputed issues that required elucidation and determination at and upon trial.

"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."

The dismissal of the application cannot therefore be taken in isolation of the other observations and orders of court. This is a case where the issues in dispute must be heard and determined before the parties can make the next move. This is all the idea of impartiality and justice; all parties must be afforded a fair opportunity to ventilate their cases irrespective of what our feelings on these cases may be.

I am therefore inclined to allow this application and order as follows;

- i. THAT the KUSU Moi University Branch, Special General Meeting and Elections scheduled on 27th July, 2016 be and are hereby suspended pending hearing and determination of this cause.
- ii. THAT the respondent be and is hereby stopped from holding any Special General Meeting and conducting KUSU Moi University Branch Elections pending he hearing and final determination of this claim.
- iii. THAT the costs of this application shall be borne by the respondent.

Delivered, dated and signed this 14th day of November 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. No appearance for Claimant/Applicant.
2. Mr. Odeny instructed by Bruce Odeny & Company Advocates for the Respondent.