



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 223 OF 2016

JOHN MWANIKI MAKENGE.....1ST CLAIMANT
 ESTON IRERI NJERU.....2ND CLAIMANT
 ANDREW NJAGI RUNJI.....3RD CLAIMANT
 NICASIO NJIRU NJAGI.....4TH CLAIMANT
 PHILOMENA WANJIRU NGARI.....5TH CLAIMANT
 TRUPHENA WAMBETI NYAGA.....6TH CLAIMANT
 MARGARET IRUMA WACHIRA.....7TH CLAIMANT
 KENNEDY KINYUA KIMATHI.....8TH CLAIMANT

VERSUS

SECRETARY GENERAL OF THE UNION OF KENYA CIVIL SERVANTS....1ST RESPONDENT

REGISTRAR OF TRADE UNIONS.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 9th December, 2016)

JUDGMENT

The claimants filed the memorandum of claim on 01.10.2016 through Victor L. Andande & Company Advocates. The claimants prayed for judgment against the respondents for:

- a. A declaration that the respondent’s elections held on 05.10.2016 were null and void for flouting the union’s constitution on conduct of branch elections.
- b. An order for the respondent to pay the claimant’s costs of the claim plus interest thereon.

By the notice of change of advocates dated 09.11.2016 the claimants changed their advocates to Magua & Mbatha Advocates.

The memorandum of response was filed for the 1st respondent on 12.10.2016 through Rakoro &

Company Advocates. The 1st respondent prayed that the claim be dismissed with costs.

On 03.11.2016, by consent of the parties, it was ordered that the suit be determined on the basis of the pleadings, affidavits, and documents on record together with the final submissions to be filed for the parties. The submissions were filed for the claimant and the 1st respondent as the 2nd respondent did not enter appearance and did not file the response or submissions.

The claimants are civil servants and members of the Union of the Kenya Civil Servants (the union). The claimants' case is that the union was scheduled to hold elections on 05.10.2016 for the union's Mbeere branch and as the union members waited to vote, a person claiming to be the presiding officer under the instructions of the 1st respondent arrived and read out names of the then incumbent office holders as the duly elected officials. The claimants and other union members that were present protested but the purported presiding officer left without any further indulgence. The claimants' case was that no elections took place on 05.10.2016 as was scheduled because no votes were cast by way of secret ballot as provided for in the union constitution and the rules made under the constitution. The respondents failed to nullify the flawed elections in view of the claimants' demand so that in such turn of events, and the claimants being dissatisfied, the present suit was filed.

The 1st respondent opposed the suit and pleaded as follows:

- a. The proper respondent in the suit ought to have been the union and not the 1st respondent so that the suit was fatally defective.
- b. The elections of the branch took place on 05.10.2016 so that it was for the claimants to prove otherwise.
- c. The labour officer was the returning officer for the elections at the Mbeere Branch and had prepared the relevant report dated 06.10.2016. Thus the union had prepared a Form Q dated 06.10.2016 for registration of the elected officials.
- d. The union was not aware of any objections sent to the registrar before and after the said elections.

Under Article 19 (2) of the union's constitution, election of union officials at all levels shall be decided by secret ballot. The parties are not in dispute that the elections were to be held on 05.10.2016. The constitution of the union is not clear on nomination of candidates. By the letter dated 30.09.2016, the union forwarded to the Labour Commissioner names of members who had applied for various positions in Mbeere Branch. The names were as follows:

- a. Susan K. Nyaga for Women Leader,
- b. Agnes Muthoni Nyaga for Young Worker,
- c. Franco Muturi Ngari for Secretary,
- d. Jane W. Kiana for Assistant Secretary,
- e. Patricia W.Njiru for Vice Chairperson,
- f. Thomas N. Mbugua Chairperson,
- g. Patrick M. Kithinji for Treasurer, and
- h. Josephat N. Kibisu for Assisitant Treasurer.

The record shows that by the returning officer's letter dated 06.10.2016 it was returned that the same persons were elected unanimously as their competitors didn't meet the union's constitutional requirements as provided in Article 7. The said Article 7 provides for establishment of offices and election of national officials. The Article does not provide for branch officials. In view of the returning officer's letter dated 06.10.2016 the court finds that the reason given for the unanimous election of the mentioned persons was not valid or genuine because of the following reasons:

- a. The list of the other candidates at the election was not provided.
- b. The details of the requirements that were not met by the other candidates were not provided.
- c. It is not clear why the 1st respondent in the letter dated 30.09.2016 left out the other candidates that had applied. By the 1st respondent's own record, for example, one Lydia Ndegi Kabangi had applied but it is not clear why her name was left out and it is not clear how many other applicants were left out.
- d. The returning officer in justifying the results invoked Article 7 but which clearly did not apply to the branch elections.
- e. By reason of the returning officer's letter of 06.10.2016, it is established that as alleged for the claimants, no valid elections took place on 05.10.2016.
- f. The record of the union's members present and the proceedings of the election proceedings for Mbeere Branch on 05.10.2016 were not made available at all and the claimants' concern that no elections took place is thereby vindicated.

To answer the **1st and main issue** for determination in this case, the court returns that no elections took place on 05.06.2016 for the union's Mbeere Branch.

The **2nd issue** is whether the 1st respondent was a proper party in the suit. The record is clear that the 1st respondent was at the centre of initiating the branch elections and receiving the results from the returning officer. Accordingly he was a proper party as a respondent for effectual and complete determination of the issues in dispute.

The **3rd issue** is whether the claimants are entitled to the remedies as prayed for. Since the elections never took place and the results as purportedly declared were inconsistent with the union's constitution, the court returns that the claimants are entitled to the remedies as prayed for.

In conclusion judgment is hereby entered for the claimants against the respondents for:

- a. The declaration that the respondent's elections purportedly held on 05.10.2016 (and all subsequent steps flowing from the purported elections) were null and void for flouting the union's constitution on conduct of branch elections; and for avoidance of doubt the elections will be carried out afresh in accordance with the union's constitution and relevant law, and involving all eligible candidates and eligible voters.
- b. The 1st respondent to pay the claimants' costs of the claim.

Signed, dated and delivered in court at **Nyeri** this **Friday, 9th December, 2016.**

BYRAM ONGAYA

JUDGE