



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1028 OF 2014

STEPHEN MASIKA & 3 OTHERSCLAIMANTS

VERSUS

TITUS W. KHAEMBARESPONDENT

Mr. Jaoko for Applicants

Mr. Rakoro for Respondent

RULING

1. The Application dated 19th June, 2014 was brought on a Certificate of Urgency seeking interim orders to stop the Deputy General Secretary of Transport workers Union TWU(K) Mr. Titus W. Khaemba from convening a National Executive Committee (NEC) meeting scheduled to take place on 22nd June, 2014.
2. Temporary restraining orders were granted on 20th June, 2014 and the matter has protracted to date.
3. The Application is supported by the grounds set out on the face of the Application and Supporting Affidavit of the National General Secretary of the Union.
4. At the time, the National General Secretary was hospitalized at the Mater Hospital Nairobi on 31st May, 2014 and has been at the hospital since.
5. The Applicants who included the National Chairman of the Union, the National Treasurer of the Union and the National General Secretary himself stated that the purported NEC meeting called by the Deputy Secretary is illegally scheduled and was not sanctioned by the NEC and that the Deputy General Secretary was merely taking advantage of the sick General Secretary.
6. That there was no emergency to warrant a NEC meeting and the meeting was intended to oust the General Secretary from his office.
7. That there are many disputes pending in court all being secretly sponsored against the National officials by the Deputy General Secretary which include Cause No. 580 of 2014; 1394 of

2011 and 1178 of 2013.

8. In its Replying Affidavit and Written Submissions the Respondent Mr. Titus Khaemba, states that he has lawful authority to call a NEC meeting by dint of Section 15(e) of the Union Constitution which authorizes the National General Secretary to call a NEC meeting and the Respondent has power to act on behalf of the General Secretary when he is absent from office.

9. That the General Secretary has been ill as from 28th May, 2014 and hospitalized until the time of coming to court.

10. That he has no ulterior motive as alleged or at all. That the 1st, 2nd and 3rd Claimants have no authority to include the Union as the 4th Claimant since the 4th Claimant has not lawfully appointed Nchoe Jaoko & Company Advocates to represent it in the matter.

11. That the General Secretary is sick and not in a position to give instructions to commence this suit. That it is important that the affairs of the Union continue while the General Secretary is undergoing treatment.

12. **Determination**

The Applicants have satisfied the court that the Respondent is acting without consultation and/or consensus of fellow Executive Committee officials.

13. The court is satisfied that this lone ranger conduct by the Respondent is likely to escalate the wrangles in the Union.

14. The court is satisfied that the Respondent intends to usurp the authority and powers of the General Secretary while he is not absent in the sense contemplated under Section 15(e) of the Union Constitution.

15. Indeed the Respondent's conduct appears to lack any empathy and concern for his ailing colleague but instead seeks to steal the thunder from the General Secretary as it were while he is recuperating in hospital.

16. No medical evidence has been submitted to substantiate the allegation that the General Secretary is incapable of discharging his duties vide the Constitution.

17. For these reasons, the Respondent is prohibited from calling any NEC meeting without concurrence of the NEC officials including the National General Secretary, Chairman and the Treasurer pending the hearing and determination of the main suit.

18. Costs in the cause.

Dated and Delivered at Nairobi this 26th day of February, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE