



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

**AT NAIROBI**

**CAUSE NUMBER 2004 OF 2013**

**LAWRENCE NJOROGE.....**  
**.....CLAIMANT**

**VERSUS**

**KENYA UNION OF POST PRIMARY EDUCATION TEACHERS NAIROBI BRANCH.....**  
**1<sup>ST</sup> RESPONDENT**

**EXECUTIVE SECRETARY (KUPPET) NAIROBI BRANCH.....2<sup>ND</sup>**  
**RESPONDENT**

**ASST. TREASURER (KUPPET) NAIROBI BRANCH.....3<sup>RD</sup>**  
**RESPONDENT**

**VICE CHAIRMAN (KUPPET) NAIROBI BRANCH.....**  
**.....4<sup>TH</sup> RESPONDENT**

**NATIONAL TREASURER.....5<sup>TH</sup>**  
**RESPONDENT**

**SECRETARY GENERAL (KUPPET).....6<sup>TH</sup>**  
**RESPONDENT**

**REGISTRAR OF TRADE UNIONS.....7<sup>TH</sup>**  
**RESPONDENT**

**RULING**

1. The claimant in this application complains that he was illegally suspended through an irregularly convened meeting held on 17<sup>th</sup> November, 2013 convened at the behest of the 2<sup>nd</sup> and 3<sup>rd</sup> respondent. According to him, the said meeting did not comply with KUPPET’S constitution.
2. According to the applicant, article 11 sub article 1 states that the branch chairman shall preside at all governing council and branch executive council meetings and in his absence the vice chairman shall preside over the meetings.
3. Further, the constitution provides that the executive secretary in consultation with the branch

chairperson shall prepare the agenda of the meeting. In contrast to the provisions of these articles of the 2<sup>nd</sup> respondent's constitution, the applicant contends that the chair and the vice were absent from the meeting as per the minutes. The contentious meeting was presided over by a Mr. Chabulobi in contravention of the constitution. He further contends that the meeting of 17<sup>th</sup> November, 2013 that passed the alleged suspension was improperly constituted since members present especially member no. 8 and 9 designated as Branch Executive Council Women Nominee and Branch Governing Council Nominee were not nominees of the Branch Governing Council as per the Branch Executive Council meeting held on 7<sup>th</sup> April, 2012.

4. The applicant further complained that the decision to suspend him was never formally communicated to him but was only notified to him via unsigned email further if indeed there was a decision to suspend him, the respondents were bound by the union's constitution to recommend the action to the National Governing Council within 7 days in order to kick start other procedures outlined in the Union's constitution. According to the applicant, this has not been done.

5. Concerning the meeting pursuant to which he was removed, the notice of invitation which was forwarded to him via email, informed him that it was to be held at the Nairobi branch office but the same was held in a different venue. This he contends, was deliberately meant to mislead him and ensure that he was not present to defend himself.

6. The respondent on its part refutes the allegations by the claimant. In an affidavit filed through a Mr. Moses Mbora who described himself as the Executive Secretary, the respondent states that the claimant was suspended by the Branch Governing Council after a meeting that was held on 17<sup>th</sup> November, 2013 and the disciplinary measure was awaiting deliberation by the National Governing Council at a future date.

7. According to Mr. Mbora, the claimant like everyone else was invited for the meeting through a notice of the Branch Governing Council which was issued on 12<sup>th</sup> of November, 2013. The applicant however did not communicate to the Executive Secretary after he received the notice and instead locked the office door where the meeting was to be held forcing members present to hold the meeting at an alternative venue.

8. Mr. Mbora, further deponed that the claimant had not worked harmoniously with other members of the Governing Council and had on several occasions ignored calls for consultation in running the affairs of the Branch.

9. This is an application for interlocutory injunction and the Court will not delve into the merits and demerits of the allegations against any party as that will be left to the full trial.

10. Removal of a person from office occasions loss of that office and the privileges that go with it. Damages may at times not adequately compensate a person for such loss but can at least mitigate it. It is in such cases that it can be said that the Court is in doubt and therefore has to determine the matter on a balance of convenience.

11. The post the claimant holds is elective and the respondents constitution has internal mechanisms for resolving disputes arising in course exercising the functions of the offices and positions provided for under the respondent's constitution. The Court ought to be last resort in the event of a dispute.

12. In the circumstances, the Court will not issue any interim order at this stage until the applicant exhausts all the internal dispute resolutions mechanisms provided for in the respondents constitution.

13. This application is therefore dismissed with costs.

Dated at Nairobi this 19<sup>th</sup> day of March 2015

**Abuodha J. N.**

**Judge**

Delivered this 19<sup>th</sup> day of March 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**