



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 904 OF 2011**

**(Before Hon. Justice Hellen S. Wasilwa on 5<sup>th</sup> March, 2015)**

**WANJALA J.A.KULOBA**

**PETER RUGANO NTHIGA**

**LEONARD RUFUS OCHIENG**

**JAMES K. MAINA**

**JOHNSON MUTHAMA WAITHAKA ) .....CLAIMANTS**

**ROBERT BARASA KARANI**

**DINA BOSIBORI NYARANGO**

**ALBERT CHESIRO KIPNUSU**

**STANLEY MWANGI KANGUU**

**JOHN MWANGI MATHENGE**

**VERSUS**

**REGISTRAR OF TRADE UNIONS .....RESPONDENT**

**LAWRENCE NJOROGE**

**JUDITH AKOLO AHINYA**

**MBORA MOSES OWITI**

**BEATRICE MUGENI AMEMBA**

**JAYNE NYAGOGHA EMISEMBE**

**MONICAH N. GITHINJI)...INTERESTED PARTIES**

**SAMUEL KINYUA**

**SARAH C. LANGAT**

**ZACHARY S.F. CHEBULOBI**

**PHYLLIS S. MWACHILUMO**

**JUDGMENT OF THE COURT**

1. The Claimants herein filed their Memorandum of Claim on 12/6/2011 through the firm of Gitonga Muriuki Advocates. They had initially approached court under a Certificate of Urgency filed through a Notice of Motion filed the same date but the Judge handling the matter at the defunct Industrial Court Tribunal dismissed the application and directed that the parties take a hearing date.

On 13/10/2013, the Claimants herein filed an Amended Memorandum of claim and a Re-Amended Memorandum of claim on 25/4/2014.

The nature of the dispute as filed against the Respondent – the Registrar of Trade Unions is the issuance of an illegal Notice for Nairobi County Branch and nullification of elections held on 5<sup>th</sup> March 2011 and registration of unlawful elections held on 18<sup>th</sup> July 2011 by the Respondent.

The Respondents never filed any response to the claim nor even the amended claim or the Re-amended claim.

They were also served with the hearing notice for hearing on 17/2/2015 but they failed to attend. The case therefore proceeded exparte.

**The Claimants case**

2. The Claimants aver that they are the elected officials of the KUPPET under elections held on 5<sup>th</sup> March 2011.

The Respondent is the Registrar of Trade Unions appointed for the purpose of the Registration of Trade Unions under the Ministry of Labour and Human Resources Development (as it then was).

The 3<sup>rd</sup> Respondents are the purportedly registered officials of Nairobi County Branch of KUPPET following elections held on 1<sup>st</sup> June 2011.

3. The Claimants contend that on 5/3/2011, the Nairobi branch of KUPPET conducted their elections supervised by a Labour officer Mr. Twanga who filed returns on 7/3/2011. The General Secretary of the Union filed and signed Form Q with the Registrar of Trade Unions dated 7/3/2011 which was duly registered. Thereafter some members went to court seeking to restrain registration of the officials elected on 5/3/2011. The matter proceeded before court upto June 2011 when the suit was dismissed. The Registrar thereafter conspicuously send a notice to Nairobi Branch indicating that he had declined to register Form Q dated 7/3/2011 on the ground that Form Q had been overtaken by another notice.
4. The Claimants then moved to court through an application dated 13/6/2011 which application was never heard. By the time they expected the application to be heard, another set of people had been registered.
5. It is the Claimants case that the registration referred to a notice not the one referred to under Section 34 of Labour Relations Act which is Form Q. They contend that by the time the Registrar was rejecting Form Q he had no other Form Q before him.

6. It is also the Claimants' contention that the Nairobi Branch of KUPPET amended the Constitution which was registered on 2/12/2010. That the said Constitution made drastic changes in offices and that the old offices were replaced. Branches were further elevated to County branches. Nairobi became a County branch. Under Article 21 of the amended Constitution, it was contemplated that the new officers take place after elections. At the time, 2 sets of offices were to be submitted being the branch Register (Form F) and the officer registered (Form Q).

However, at this time the Registrar of Trade Unions rejected Form F and not Form Q – yet a branch could not exist without officials.

7. The Claimants therefore contend that the Registrar deregistered officials by way of notice he issued on 7/6/2011 that he had rejected Form Q. The Claimants aver that under Section 34 of Labour Relations Act, it is clear that elections have to be conducted as per the Constitution whereby the branch Secretary is to issue notices as per the requirements of the law. The Claimants contend that at the time they were moving from one Constitution to another and the organ existing then was the one to usher the new officials. Article 21 of the amended Constitution also provided that the organs and officers to occupy the offices were to occupy the offices after the elections.
8. The Claimants have submitted that the Registrar under Labour Relations Act has no power to sit on appeal of his actions. It is only the court that can nullify elections and have him register other officials.

They submit that the Registrar cannot move to annul elections before him after the Secretary General has already filed Form Q and Form F and under Section 34 of Labour Relations Act the Registrar's Statutory Power had already been spent and so he could not issue another notice and therefore he acted unilaterally in what he did.

The Claimants contend that under section 34 of Labour Relations Act, the Registrar can only conduct inquiries and no order prohibited him from making these inquiries. They contend that if Registrar rejected officials presented by branch Secretary, he should have initiated another process of elections.

9. They contend that if elections were held after March 2010, it was after the timetable given by the Registrar. They also contend that Article 41 of the Constitution gives Union member Labour rights and under Article 47, the Registrar is to act fairly to give effect to the meaning of the Bill of Rights.

The Claimants want this court to nullify elections held on 10/6/2011 and register officials rightly elected as per Form Q on 7/3/2010. They also seek for costs of this suit.

### **Respondents case**

10. As already indicated, the Respondent did not file any rebuttal to

this claim dispute service. The only response is from 1<sup>st</sup> Respondent dated 10/7/2014 and 1<sup>st</sup> Respondent as per amended claim is no longer a party to this claim.

### **Issues for determination**

- 11.(1) Whether the Registrar of Trade Unions can nullify properly

held elections on the strength of a letter from the Union's Secretary General

- (2) Whether a letter issued by the Secretary General of KUPPET

dated 7/6/2011 was a competent notice to the Respondent to act upon and proceed to declare

Form Q filed on 7<sup>th</sup> March 2011 overtaken by events.

(3) What order this court can grant in the circumstances.

12. Under Article 41(1) of the Constitution :

*“Every person has the right to fair Labour practices”*

Under Article 41(4) of Constitution:

***“Every Trade Union and every employer” organization has the right:***

a. ***To determine its own administration programmes and activities....”***

In the case of KUPPET herein by virtue of Article (4) they have a Constitution which determines how they are administered.

The Constitution of KUPPET subsisting at the time is the one registered on 21/11/98.

It was amended on 2/12/2010 as per pages 44-58 of the Claimants’ list of documents filed in court on 25/4/2014.

13. Article 9 of the Constitution of KUPPET provides that:

***“(a) Except as otherwise expressly provided for, all officers shall be elected every five years by secret ballot at the delegates conference (for National Officials) and at (b) Branch General Assembly (for branches of the Union).***

***“Branch elections shall precede national elections and shall be presided over by Government Labour Officials in their respective counties”***

Under Article 9(6):

***“The National Executive Board shall coordinate/ensure branch elections adhere to the Constitution”.***

Other than issues of nomination of candidates for the elective posts and the mode of vetting, there is no other express provision in the KUPPET Constitution on elections.

14. The Labour Relations Act Section 34 on its part states as follows:

***“(1) The election of officials of a trade union, employers’***

***organisation or federation shall be conducted in accordance with their registered constitutions.***

***(2) The constitution of a trade union, employers’ organization***

***or federation shall—***

a. ***not contain a provision that discriminates unfairly between incumbents and other candidates in elections; and***

b. ***provide for the election, by secret ballot, of all officials of a trade union at least once every five***

years.

**(3) Notice of the election of officials under this section shall be given to the Registrar in the prescribed form within fourteen days of the completion of the election.**

**(4) Disputes arising from, or connected directly or indirectly to, elections held under this section may be referred to the Industrial Court.**

**(5) The Registrar may issue directions to a trade union,**

**employers' organisation or federation to ensure that elections are conducted in accordance with this section and their respective constitutions”.**

Under Section 34(4) Labour Relations Act, where there are disputes related to the elections directly or indirectly the same may be referred to the Industrial Court.

15. In this case, the elections of the Nairobi branch were held on

5/3/2011. This was done following a circular released by the Respondent dated 10/12/2010 calling on all registered trade unions to conduct their elections at branch level by 30<sup>th</sup> March 2011 and at National level by 30<sup>th</sup> June 2011 (Appendix JWK-2 attached to the certificate of urgency filed in court on 13/6/2011 and at page 59 of the Re-amended Memorandum of claim.

16. Following these elections, Form Q as envisaged under the Labour

Relations Act – Section 35 was filled and submitted by the Secretary General of KUPPET showing who the elected officials were. Under Section 35 (3) of Labour Relations Act:

**“ (3) Before registering any change of officials or**

**correcting any register, the Registrar may require the production of any relevant evidence of the change.**

**4. If after inquiry, the Registrar is not satisfied as to the validity of any appointment on the propriety of any proposed correction the Registrar may refuse to register the change of officials or to correct the register.”**

The understanding of this law is that the Registrar can only correct the register after being satisfied of the validity of the appointment and if he is not satisfied, he cannot correct the register.

17. In the instant case, the issue was registration of elected official

and this was after receipt of Form Q. The Registrar then proceeded to enter into the register the registered officials as per Appendix at Page 70, 71, 72, 73 (Re-amended Memorandum of Claim) and the extract Appendix JWK 1.

On 10<sup>th</sup> March 2011, some Applicants in case No. 355/2011 being dissatisfied with the turn of events filed an application under certificate of urgency and the Hon. Judge Kosgei gave orders restraining the Respondent herein from registering the notice of change of officers named in Form Q and F dated 7<sup>th</sup> March 2011 of KUPPET Nairobi Branch. The application came up for hearing inter-parties on 23<sup>rd</sup> March 2011 and the application was withdrawn therefore reverting the status quo to what it was on 10<sup>th</sup> March 2011.

18. Given the above sequence of events, how did another body

reverse the status of the elections as evidenced in Appendix JWK 13 reversing elections held on 5<sup>th</sup> March 2011 as overtaken and consequently rejecting Form Q dated 7<sup>th</sup> March 2011?. This is dated 8<sup>th</sup> June 2011. In this court's view, this is the height of impunity and flouting of Article 37 of the Constitution where improper administrative action was meted out against the Claimants herein.

It is therefore the finding of this court that the Registrar of Trade Unions the Respondent herein could not nullify properly held elections on the strength of a letter from the Unions Secretary General. Having entered results of elections in the Register, only this court could reverse it. It is therefore the finding of this court that the letter issued by the Secretary General of KUPPET dated 7<sup>th</sup> June 2011 was not a competent authority to cause the Respondents to declare Form Q filed on 7<sup>th</sup> March 2011 overtaken by events.

19. The upshot is that the decision by the Registrar – the Respondent

herein to find the Form Q filed on 7<sup>th</sup> March 2011 overtaken by events is null and void and therefore the court quashes the said decision and any other decisions made thereafter.

The court therefore orders the Respondent to register Form Q dated 7<sup>th</sup> March 2011 as it was on 10<sup>th</sup> March 2011.

The Respondent shall pay costs of this suit.

Read in open Court this 5<sup>th</sup> day of March, 2015

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Respondent

Ochieng for Claimant