



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MOMBASA

CAUSE NUMBER 157 OF 2015

BETWEEN

LIVINGSTONE ABUTA.....1ST
CLAIMANT/APPLICANT

BALLON KAZUNGU MWENI.....2ND
CLAIMANT/APPLICANT

MOHAMED MWAMBIRE.....3RD
CLAIMANT/APPLICANT

SUSAN KALII.....4TH
CLAIMANT/APPLICANT

STEPHEN KALALE.....5TH
CLAIMANT/APPLICANT

CHARO NGUMBA.....6TH
CLAIMANT/APPLICANT

VERSUS

NICHOLAS ZANI.....
..... 1ST RESPONDENT

PATRICK SHIKUKU.....
.....2ND RESPONDENT

DAVID MULI.....
..... 3RD RESPONDENT

JAMES BITOK.....
.....4TH RESPONDENT

KENYA HOTELS & ALLIED WORKERS UNION.....
.....5TH RESPONDENT

Court Assistant: Benjamin Kombe

Mr. Livingstone Abuta, 1st Claimant, for the Claimants.

Mr. John Simiyu, 2nd Deputy Secretary General, for the Respondents

RULING

1. The Claimants filed an Application under Certificate of Urgency, on 23rd March 2015. The Application bears the same date. It is based on the Affidavit of Mr. Livingstone Abuta, the 1st Claimant, sworn on 23rd March 2015.
2. Mr. Abuta swears he is the National Deputy Secretary General of Kenya Hotels and Allied Workers Union (5th Respondent). He is also, the Branch Secretary of the Mombasa Branch of the said Union.
3. He describes his Co-Claimants as Branch Officials representing North Coast, Voi and Mombasa.
4. He avers the Respondents are National Officials of the Union. The Claim and Application are based on the alleged neglect by the National Officials, to advance finances to the 3 Branches. Mr. Abuta swears the Respondents have turned the Union into a cash cow. They have opened unauthorized Bank Accounts. They are plundering the resources of the Union. The Branches are starved of finances, and cannot meet the costs of their operations.
5. The Claimants pray the Court to order the Respondents to release finances to the Branches; all cheques for withdrawal of money from the Union Bank Accounts be signed by the National Treasurer, Secretary General, National Chairman, Trustee and/or Deputy National Treasurer and exclude the 1st and 3rd Respondents; the Respondents be restrained from accessing the Bank Accounts, and all revenues collected by the Union be deposited in the designated Equity Bank Account. These are among the interim orders sought.
6. The substantive Claim seeks the following orders against the Respondent: a declaration that the Respondents acted illegally; the Respondents to refund to the Union its funds; the Respondent Officials be suspended from holding any position with the Union; the Union to pay all pending salaries and allowances to its Officials; and banking in any other Bank Account, other than the designated Equity bank Account, be prohibited.
7. The Respondents filed a Notice of Preliminary Objection on 7th April 2015. They hold the Claim is malicious, and an abuse of the process of the Court. The Claimants have no authority to file the Claim. Mr. Abuta is not the Deputy Secretary General. He was removed from the register of the Union's Officials. Secondly, Mr. Abuta has been serving as the Human Resources Manager of an Employer. He has acted against the Union Members, leading to mass defection from the Union. Mr. Simiyu states the Claimants are imposters and their Claim has no validity.
8. The Preliminary Objection is misplaced, according to the Claimants. Mr. Abuta affirms he is the Branch Secretary. The extracts of the register relied upon by the Respondents, are irrelevant. In issue is not the leadership of the Union; it is about funding of the Branches.
9. The Preliminary Objection was argued on the 14th May 2015, and is the subject of today's ruling.

The Court Finds:-

10. Mr. Livingstone Abuta claims he is the Deputy Secretary General of the 5th Respondent Union. He has attached an extract from the Register of Trade Union's Officers, Trustees and Committee Members.

The extract shows the position, as of 23rd September 2014. His name is shown to belong to the Deputy Secretary General.

11. There is however a more recent extract, exhibited by the Respondents. It shows the position, as of 16th February, 2015. There are two Deputy Secretary Generals. Mr. Wycliff Sava Mundu and Mr. John Simiyu are the officers holding this position. Mr. Abuta is no longer in this position. His statement that he is the Deputy Secretary General is not correct.

12. Mr. Abuta has claimed he is the Mombasa Branch Secretary, apart from being National Officer. He attaches an extract reflecting the composition of the Branch Officers as of 17th January 2011. He is named as the Secretary.

13. The Court is not persuaded Mr. Abuta is a Union Branch Secretary. He ought to have attached a current extract. This is more so because there is evidence availed by the Respondents that he was, as of 14th March 2014 acting as the Human Resource Manager of Kazkazi Beach Hotel.

14. His position with Kaskazi Beach Hotel is incompatible with Trade Union Membership and Leadership. He cannot have one leg in the Trade Union, the other in an Enterprise engaged in industrial relations with the Trade Union Mr. Abuta claims to represent. He cannot be a Branch Secretary of the Trade Union, and a Human Resource Manager in a Hotel.

15. In the view of the Court, Mr. Abuta lacks the legal capacity, and the legitimacy to bring this Claim.

IT IS ORDERED:-

1. ***The Claim is hereby struck out in its totality.***
2. ***Costs to the Respondents.***

Dated and delivered at Mombasa this 26th day of June 2015

James Rika

Judge