



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
CAUSE NO. 1265 OF 2014

STEPHEN MUTWIWA MASIKA.....1ST CLAIMANT

JAMES NJIHIA.....2ND CLAIMANT

SIMON KIGALU.....3RD CLAIMANT

TRANSPORT WORKERS' UNION (KENYA).....4TH CLAIMANT

VERSUS

TITUS W KHAEMBA.....1ST RESPONDENT

REGISTRAR OF TRADE UNION.....2ND RESPONDENT

RULING

1. The ruling is with regard to two applications, one filed on **28th April 2015** by James Kivuva Wambua, Wilfred Kinyua, Edward Simiyu Mukoro, Caleb Owino Malasi, Nicholas Ogola and Joseph Wesonga who are seeking to be enjoined in the suit as Interested parties. The other application is filed by the Claimants on **11th May 2015** and another seeking to have the 3rd claimant substituted. Both applications have several common issues that will be addressed herein.

2. In the application filed on 28th April 2015, the applications have based the same on the provisions of section 12 of the Industrial Court Act and Rule 16 of the Industrial Court (Procedure) Rules and seeking for orders that;

1. Spent

2. The applicants James Kivuva Wambua, Wilfred Kinyua, Edward Simiyu Mukoro, Caleb Owino Malasi, Nicholas Ogola and Joseph Wesonga be enjoined herein as Interested parties

3. The meeting of the Central Council Committee held on 23rd April 2015 at the Transport Workers Union offices on 4th floor, Nacico Plaza, Ladhisi Road, Nairobi together with its resolutions, outcome of elections be annulled/set aside.

4. That the appointment and registration of Quincy Musembe as an official of Transport Workers Union by the Registrar of Trade Unions on 27th March 2015 or on any other date be annulled and

set aside.

5. Pending the hearing and determination of this application, the Registrar of Trade Unions be restrained from implementing or registering the resolution of the meeting of the Central Council Committee of the Transport Workers Union held on 23rd April, 2015 and the resultant Form Q or any resultant resolution thereof.

3. The application is supported by the annexed affidavit of Edward Simiyu and on the grounds that the applicants are members of the Central Council Committee, the governing body of the Transport Workers union, the 4th claimant herein. They were not notified of the meeting of the Central Council Committee held at the Union offices on 23rd April 2015 that purposed to elect a General Secretary and the meeting was held without resolving the issues on the inclusion and eligibility of Quincy Musembe that led to the manipulation of the list of officials from 16 to 17. The meeting was convened by an unauthorised person as no complaint was made of the acting General Secretary inability to call for a meeting.

4. In the affidavit of Edward Simiyu he states as a member of the Central Council of the 4th claimant together with the other applicants, he has a stake in the affairs of the Union, whose resolutions are arrived at through voting. On 24th February 2014 [2015], the Court made orders directing the Union to conduct fresh election and the same be supervised by the Deputy Registrar of the Court. On 14th April 2015 the Central Council congregated but the meeting could not proceed due to issues on the eligibility of voting officials who were in arrears of Union subscriptions and the status of Quincy Musembe who had convened the meeting as a person different from the one set out by the Court in its ruling. The Deputy Registrar called off the meeting to ascertain the concerns on the status of official from the Registrar of Trade Unions and had such concerns been addressed, a notice should have been issued to all officials.

5. Mr Simiyu also avers that before the Deputy Registrar could address the concerns with the Registrar of Trade Unions, a meeting was called and an election held to appoint a new General Secretary. He only learnt of the meeting when he was called by the office caretaker at 2.15pm on 23rd April 2015 noting there was an unusual police presence in the office. He proceeded to the office where he met the Deputy Registrar and a Labour Officer and noted that he was not aware of the meeting as he had not been informed, the meeting was not properly convened as the Court had made directions with regard to the convenor. That the Labour Officer had been invited by Quincy Musembe and his impartiality was therefore questionable. At this point there was no complaint to the Court that the convenor had failed to convene such a meeting and thus he left under protest noting the agenda of the meeting. He later learnt that elections had been held and Dan Mihadi elected as General Secretary.

6. Mr Simiyu also avers that the list of the Union officials was manipulated to include a 17th official Quincy musembe which was irregular as he had been removed as an official of the Union on 29th March 2014 pursuant to a resolution of the Central Council and by the Registrar of Trade unions then registering him as an official under the reason that it was through a Court orders in **Industrial Cause No.155 of 2014** is misleading as Quincy Musembe was not a party in the suit. To thus reinstate him is erroneous. On 9th September 2014 the Acting General Secretary wrote to the Registrar of Trade Unions inquiring if the removal of Quincy Musembe had been effected and in reply it was confirmed that he was not an official. Quincy was therefore brought in to support the election of the General Secretary while he was not eligible to vote. He was in arrears of subscriptions and based on another enquiry it was established he is an interim General Secretary of Kenya Airways Staff Union, a proposed Union from 16th October 2013. Since 17th March 2015 Quincy musembe has not re-joined the Transport Workers Union or paid up subscriptions. The Registrar of Trade Unions should therefore be restrained from registering Dan Mihadi as his election was from an unlawful meeting.

7. In reply, the claimant on 6th May 2015 filed Replying Affidavit sworn by Stephen Mutwiwa Masika and depones that as the national chairman of the Union he is opposed to the application by the applicant to be enjoined herein and granted the orders sought as they lack merit and not made in good faith. The suit was filed on 31st July 2014 a fact within the knowledge of the applicants, they have always supported

the 1st respondent, they supported him in a bid to be elected on 23rd April 2015 which failed and since have never shown interest herein until now and as such they are in abuse of the Court process. The orders sought to be enjoyed herein are meant to bring payers that the 1st Respondent is unable to address. They seek to benefit from an illegality perpetuated by the 1st Respondent who has refused to obey a Court order issued on 24th February 2015. The 1st Respondent was directed to call a meeting of the General Council in 7 days which he failed to call. After 7 days, as chairman, wrote to the 1st Respondent reminding him to issue notice but he declined to receive the letter but has also not called for a meeting to date. Noting the position the Union is seeking to fill is that of the General Secretary, a member of the Central Committee and a signatory to the Bank account, the 1st Respondent has made it very difficult to have the position filled making the Union operations very difficult. On 1st April 2015, pursuant to Rule 11(c) of the Union constitution, Quincy Musembe was nominated as the assistant General Secretary to convene the Central Council meeting to fill the vacant position of General Secretary.

8. Mr Masika also avers that on 14th April 2015 he appeared at the Union offices and the 1st respondent, in collusion with the applicants herein brought in hooligans numbering about 50 and disputed the entire election forcing the Deputy Registrar and the Labour officer and Deputy County Commissioner to adjourn the meeting/elections and to be able to get police officers to avert chaos and hence the consensus meeting held after a week. On the same date, the 1st Respondent made efforts to cause chaos by disrupting the list of Central Council Members on the extract which were eligible to attend and vote and the Deputy Registrar sought for an adjournment in order to get an extract from the Registrar of Trade Unions. A notice was then issued by Quincy Musembe for the 23rd April 2015 for the election of a General Secretary which has remained vacant. On 23rd April 2015, in the presence of the Deputy Registrar and Labour Officer, Dan Mihadi was elected as General Secretary by beating his main rival, the 1st Respondent by 10 votes from the 12 member of the Central Council who had been present.

9. Mr Masika also avers that on the 23rd April 2015, the applicants were present together with the 1st Respondent and they all took their allowances for attending to the election. Prior to the elections, a notice had been issued on 16th April 2015 and the police were present to ensure security. There is no merit in seeking to annul the elections carried out on 23rd April 2015.

10. He further depones that the allegations against Quincy Musembe are false and misconceived as he has never been in arrears for more than 13 weeks and only members who are not officials who are required to subscribe as once elected as an official, no subscriptions are payable and noting he is the assistant General Secretary like the 1st respondent, both do not pay any subscriptions. Quincy Musembe was never removed from the Central Council, there is no offence cited to have been committed and the persons who sanctioned him are unknown to the union. from the alleged minutes indicting the removal of Quincy Musembe, an official titled *Acting General Secretary* is registered which position does not exist in the Union. The 1st Respondent in collusion with the applicants is made to hold the Union at ransom bring confusion and frustrate operations. This can be traced from the various suits he has filed especially *Industrial Cause No 1178 of 2013*, and is now buying time in order to address Appeal Case No.65 of 2015 where he is seeking to stay the Court ruling of 24th February 2015. The application should be dismissed with costs.

11. The 1st Respondent Titus Khaemba in his affidavit with regard to the application dated 24th April 2015 States that as the Deputy General Secretary the Replying Affidavit by the Claimants is abusive for making inference that the applicants are working behind him and should be expunged. The Intended Interested Parties have a constitutional right to apply as herein.

12. Mr Khaemba also avers that he has not disobeyed Court orders herein; the Claimants are indeed the ones manipulating the legal process by convening illegal meetings without Court directions. On 5th September 2014, Court made orders that no Union funds were to be withdrawn without the written consent of the trustees which orders are still in place. The Union is running effectively contrary to the averments made by the 1st claimant.

13. The deponent also avers that the nomination of Quincy Musembe to convene Central Council meeting was in blatantly disregard to the Court orders of 24th February 2015, the Union constitution is clear on who should convene such meeting. 14. The statements that he disrupted the meeting convened on 14th April 2015 are not true and there was no consensus that a follow up meeting be held on 23rd April 2015 as claimed and the election held was an illegality and in breach of Court orders. Several members of the Council were never notified of the meeting despite being in Nairobi and others with known addresses in Mombasa. He never participated in any elections as alleged and the allowances received was for the meeting held on 14th April 2015.

15. Mr Khaemba also avers that the Union constitution requires all members to pay their subscriptions to be eligible to vote and where in arrears of more than 13 weeks cannot vote.

16. The second application is the one dated **11th April 2015** and filed by the claimant seeking for orders that;

1. Spent

2. The Court be pleased to make an order allowing the claimants/applicants to substitute the newly elected General Secretary of Transport Workers' Union-Kenya, Mr Dan Mihadi (the General secretary), to be the 3rd claimant / applicant, in place of the deceased general secretary of Transport Workers' Union – Kenya, Mr Simon Kigalu, who dies on 16th August 2014 and was buried on 31st August 2014.

3. The Memorandum of Claim dated 31st July 2014 and filed in Court on the same date, the pleadings generally be amended to have the 3rd claimant – general secretary of Transport Workers' Union – Kenya, Mr Dan mihadi.

4. Costs of this application be in the cause.

17. The application is supported by the annexed affidavit of Dan Mihadi and on the grounds that the 4th claimant/applicant Union held its elections on 23rd April 2015 pursuant to Rule 11(c) of the constitution and Dan Mihadi was elected the general secretary. The memorandum of claim need to be amended to have the 3rd claimant as Dan Mihadi in place and instead of Simon Kigalu who has since died.

18. In his affidavit, Dan Mihadi states that following the Court ruling delivered on 24th February 2015 and noting the demise of the Union general secretary on 16th August 2014, the Union conducted elections on 23rd April 2015 and he was elected as the general secretary. The claim herein and other pleading should be amended to have him as the 3rd claimant in place and instead of the deceased. The Registrar of Trade Unions has already received Form Q and made the necessary registration of the officials noting the elections held.

19. In reply, the 1st Respondent Titus Khaemba filed his Replying Affidavit on 11th may 2015 and being opposed to the Claimants application stated that as the Deputy general secretary of the Union the application and affidavit of Dan Mihadi is misleading as the same is seeking the Court to sanction an illegality as the election of Dan Mihadi is in contention and to have him herein as general secretary is erroneous. On 24th February 2015, the Court directed the Claimants to amend the claim noting the demise of Simon Kigalu which order they did not comply with. The Claimants have convened illegal meetings to hold elections and proceeded without seeking Court directions. The Union operations are running smoothly and the Claimants are only Interested in running the Union bank accounts. Rule 11(c) of the Union constitution is only applicable where members have requisitioned the general secretary to convene a meeting which the Claimants failed to do. He was not issued with any notice for a meeting on 23rd April 2015 and any elections conducted was an illegality. The claim that is sought to be amended was filed unprocedural as the former general secretary the 3rd claimant did not sign the Verifying Affidavit. With

the orders now made on 24th February 2015, the claim is spent and overtaken by events. The application should be dismissed.

20. On 20th May 2015, the Claimants filed their Supplementary Affidavit sworn by Dan Mihadi and another filed by Rose Injede Kigalu and states that a meeting of the Central Council could not be called in October 2014 as the 3rd claimant was deceased and hence the need to have the substitution sought by the Claimants in their current application. Ms Rose Kigalu states that she is the daughter to the 3rd claimant, now deceased and was made to hurriedly sign an affidavit dated 23rd October 2014 by the 1st Respondent before being able to carefully read. Before signing the affidavit, the 1st Respondent indicated that the Court required the 3rd claimant to be removed from this matter and that his salary paid.

21. The Parties herein made their submissions oral submissions save for the State Counsel for the 2nd Respondent who opted to remain neutral.

Determination

Whether the Intended Interested Parties should be enjoined as Parties herein;

Whether the appointment of Quincy Musembe should be set aside;

Whether the 2nd Respondent should be prevented from registering the resolution of 23rd April 2015 and the resultant Form Q;

Whether the 3rd claimant should be substituted; and

Whether the claim dated 31st July 2014 should be amended.

22. The Intended Interested Parties herein seek to be enjoined herein on the basis that they are members of the Central Council committee and were not notified of the meeting held on 23rd April 2015 where an election was held. That they have a stake in the affairs of the Union whose resolutions are arrived at through voting.

23. The claim herein if filed by the 4 claimants, one being the Chairman of the 4th Respondent union, the 2nd being the National Treasurer, the 3rd being the General Secretary and the Union as the 4th respondent. The Claimants are therefore not acting in their own names but in these capacities as outlined. This is an issue not contested herein with regard to the capacity of the claimants. To therefore bring in the applicants as Parties to the proceedings herein in the capacity of 'Interested party' that 'interest' must be established first as these are not Parties the Claimant has found fit to add to the suit. Particularly in a matter that the Claimant has objected to the joinder of the applicants as Interested party, the Court must take great caution in such joinder as held by this Court in **Mathia Njoka Ngala & Others versus Kenya Private Security Workers Union & Another, Cause No. 2212 of 2014.**

24. An 'Interested party' has now been defined under **The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedures Rules, 2013** thus;

?'Interested Party' means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a Party to the proceedings or may not be directly involved in the litigation;

25. Equally, the Industrial Court Act and the Rules thereto do not directly address the issue of joinder and non-joinder of Parties or the case of an Interested party, but Rule 18 (1) of the Industrial Court (Procedure) Rules provides;

18. Case management.

(1) *The Court may, on its own motion and where it considers fit; serve a pleading on any other Party whom it is satisfied may be Interested in the matter being considered.*

26. Order 1 rule 10(2) of the Civil Procedure Rules provide clear wording for a person to be enjoined as plaintiff or defendant, but there is no clear wording for a person to be enjoined as an Interested Party. However, the words "***whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon...***" could be deemed to cover persons Interested in the subject matter of the suit. There is therefore no bar to the joinder of an Interested Party to a suit although the rules are not very explicit. In the case of **Supermarine Handling Services Ltd vs Commissioner General, Kenya Revenue Authority (2002) 2 KLR 758**, the Court held;

... it is probably time that the procedure for applying to be joined as an Interested Party to proceedings be given more consideration. An Interested Party is not a litigant per-se as he is neither a plaintiff nor defendant.

27. This is further buttressed in the finding of the High Court in **Judicial Service Commission versus Speaker of the National Assembly 7 Others, Petition No. 518 of 2013**, where the Court held;

The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012, defines an Interested party as "a person or entity that has an identifiable stake or legal interest in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation". From the foregoing it is clear that an Interested party as opposed to an amicus curiae or a friend of the Court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings.

28. The above petition went before a 5 bench which re-emphasised the position with regard to who can be an Interested party in a suit thus;

Rule 2 of the Mutunga Rules defines an Interested party as a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court, but is not a party to the proceedings or may not be directly involved in the litigation. In our view, the application by Mr. Mboko did not meet the criteria set in the Mutunga Rules. No identifiable stake or legal interest in the proceedings was demonstrated; nor was it shown how the outcome of these proceedings would impact on him. Further, with regard to his knowledge of Parliamentary matters and proceedings of Parliamentary committees, there was already a substantive party, the Speaker of the National Assembly, who could deal with the issues in dispute, and was the proper party to do so.

29. The issue was then more aptly addressed by the Supreme Court in **Communications Commission of Kenya and 4 others versus Royal Media Services limited and 7 Others [2014] eKLR** where the Court held;

... an Interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is the one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause... a party could be enjoined in a matter for the reasons that:

i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

ii. Joinder to provided protection of the rights of a part who would otherwise be adversely affected in law;

iii. Joinder to prevent a likely course of proliferated litigation.

30. In the instant case, the applicants are members of the Central Council committees of the 4th claimant Union with voting rights as outlined by Edward Simiyu in his affidavit in support of the application. As members who are represented by the 1st and 3rd respondents, the stake the applicants may have is already covered by the appearance of these Claimants as the corporate representatives of the 4th claimant union. Where these committee members seat at the Central Council committee as of right, they have a chance to participate and make approvals within that entity for the Union good and to ensure all members' interests are protected. This does not have to be within the current suit which has been in existence since 31st July 204 and no interest so far has been expressed until the issue of a contested election arose. Such are matters that the Intended Interested Parties can address at their seating of the Central Council committee where they have the voting power.

31. That said, the Intended Interested Parties have also raised the issue of the appointment of Quincy Musembe and submitted that it should be set aside or annulled as he is not a proper member of the Central Council committee and did not have voting rights at the elections held on 23rd April 2015. It is trite that the role of the 2nd Respondent in matters such as this one is crucial. As the Registrar of Trade Unions, this office receives and records returns filed by trade unions such as the 4th claimant. the returns thus filed from this office assist this Court in material ways and where there is a dispute with regard to such returns and or records, the Labour Relations Act has laid the procedures applicable. I note the various returns made by this office on;

3rd July 2013;

1st April 2014;

28th January 2015; and

16th April 2015.

32. Save for the returns dated 1st April 2014 that note the position of assistant secretary general is *vacant* the rest indicate that Quincy Musembe is the Assistant secretary general as of **19th March 2011**. This date of **19th march 2011** is constant in all the return even the most recent. Where this official was removed through whatever means by a committee of the 4th Respondent or by non-payment of his dues or as the case may be, such returns have not been registered by the 2nd respondent. without getting into the various in-house affairs of the 4th claimant, where there exists good grounds for the removal of an official of any trade union, such as the case may be of Quincy Musembe, such are matters outside the current cause of action and as to whether this member appointment should be annulled, I find no basis as the official record of the 4th claimant vilifies his being a member of the Central council. Members of the Central Council have voting rights that are not qualified as to whether one is fully paid up or has dues outstanding for over 13 weeks. A member of the Central Council can only be removed by a two-third vote of the Central Councilmembers under Rule 12(c) read together with Rule 13 (f). in any event evidence of non-payment or a list of the Central Councilmembers who are paid up is not attached. To therefore set aside one Quincy Musembe as the erring party is farfetched. My reading of Rule 24 of the Union constitution is not lost, the conditions set therein as to who should vote or not is a matter of fact and where such facts exist that any Union member is not fully paid up, and such evidence must be produced to controvert the contrary. The election of national official being dully addressed under rule 11, 12 and 13, elections for branch level officials is also regulated. For purposes of these proceedings and as regards the officials to vote at the Central council, I find no such evidence other than general averments by Titus Khaemba and Edward Simiyu in their affidavits in this regard. I find no ambiguity in the constitution and had any existed, section 33 of the Labour Relations Act resolves the issue.

33. It is worth noting here that the issue of who is an official of a trade Union is addressed by the trade

Union constitution and also strictly regulated in law. Section 31 of the Labour Relations Act outlines the criteria to be followed; section 33 outlines as to who can vote; and section 34 regulate the election of the Union officials. Where such provisions of law have not been adhered to, such may be subject to question and upon production of such evidence, a party who being eligible for lack in criteria, cannot vote is cannot become an official of any union, sanctions can issue. In this case, the issues raised against Quincy Musembe that he was not eligible and not fully paid in his subscriptions is not substantiated in any material way for the Court to set aside such membership to the 4th claimant Central council.

34. The other contention is that even as a Central Councilmember, Quincy Musembe was not a fully paid up member to be eligible to vote on 23rd April 2015. Such a voting member is defined under the Union constitution at Rule 11(e). Being a national official as under the provisions of section 33 read together with section 34 of the Labour Relations Act, Quincy Musembe was such an official based on the most current return from the 2nd Respondent and thus eligible to participate in any called election, meeting and resolutions of the 4th claimant. this official Quincy Musembe has held his current position as of 19th March 2011. The same subsists to date. I find no merit or justification in the agitation to remove him from running the affairs of the 4th claimant as a voting member or as his position of Assistant secretary general requires.

35. On the question as to whether the office of the Registrar of Trade unions should register the resolution and Form Q arising from the meeting and elections held on 23rd April 2015, this is a matter that the Court went into in its ruling of 24th February 2015. The background of it being the various applications that the Court has had to address with regard to the vacant position of the 3rd claimant, now deceased. The Court on good reasons, gave directions and orders as to how all Parties herein were to address the matter to ensure an effective running of the 4th claimant union. in this regard, the Court also directed the Court Deputy Registrar to ensure adherence to the orders and directions by a supervision of the same. the Deputy Registrar has since filed a report that the Court takes very seriously. Each issue raised with regard to the convening of the meeting on 23rd April 2015 I find was adequately addressed by persons authorised by this Court being independent persons assisting the Court in this regard. The returns of the Deputy Registrar of this Court shall be adopted herein the basis having been the ruling dated 28th February 2015. The election of Dan Mihadi as the 4th Respondent secretary general is hereby confirmed.

36. It is worth noting here that, matters of Union operations through regulated in law, there are the officials who are responsible for ensuring that such matters and affairs of the Union run effectively. Where the election of an absent official is required, such replacements as in this case where the 3rd claimant is deceased as the former secretary general is crucial. This is an issue that has bogged down the Union since July 2014. This should not be the subject of delay as the case has been herein. Each position held by the members of the Central Council is important and none is less to the other as all are one in equal and the absence of one removes the whole. The Claimants as the initiators of the suit herein have a duty to ensure the cause of action is addressed expeditiously but in a legitimate manner that is removed from any illegality. Where there is a dispute, the Court has the constitutional and legal mandate to arbitrate. Thus the orders and directions given on 28th February 2015 were made in this regard.

37. The 1st Respondent in submissions raised a very fundamental issue. Those elections are a constitutional right that each Union member should be allowed to enjoy and therefore a fair election is an ideal that legitimise the officials given the mandate to run the affairs of the union. however, even where a party enjoys the right to a fair elections, such elections have rules that are predetermined to ensure a fair process. such rule in this case required Parties to adhere to orders issued on 28th February 2015, the 1st Respondent was to initiate the process by calling for a meeting of the Central Council in 7 days and other processes were to follow this action. Where the 1st Respondent failed to adhere to these orders, the process was not to stall at his will. At the convened meeting where elections were called, the rules required a set quorum for the meeting to hold election and this having been confirmed by the Deputy Registrar and the Labour Officer present as directed, the outcome cannot be held at the mercy of a party who was present and opted not to participate. The 1st Respondent is an official of the 4th Respondent

with voting rights and can contribute in his current capacity as such. His mandate does not end with the election of the secretary general, his position remains intact.

38. On whether the 3rd claimant should be substituted or not, the Claimants are equally not blameless. This is the second such time the Court has brought to the attention of the Claimants the need to address the issue of the missing, absent or the deceased 3rd claimant, now deceased. It is not lost to the Court that the Claimants are keen to address the issue of election of the general secretary without going to the first order and direction by the court. What is apparent, the position of a secretary general as defined by the Labour Relations Court is the officer of the Union who has to move in litigation for and on behalf of any Union or give authority to persons who may sue and protect the interests of the union. Noting the procrastination in this regard by the claimants, the current elected secretary general has the capacity to give authority to other officials/officers of the Union to proceed in the suit herein as authorised and required.

39. The necessity to substitute, amend or make changes to the pleadings herein having been lost, the suit can still survive the 3rd respondent. Whatever issues remain pending, not addressed and outstanding, can adequately be addressed by the other Claimants granted the requisite authority by the office of the general secretary now elected.

In conclusion, the two applications, one dated 28th April 2015 and 11th May 2015 shall not be allowed. The two are hereby declined save that the Court confirms the election of the secretary general as Dan Mihadi effective 23rd April 2015. This effectively vacates the orders made on 5th September 2014 and 7th October 2014. Costs shall be in the cause.

Delivered in open Court, dated and signed in Nairobi on this 4th day of June 2015.

M. MBARU

JUDGE

In the presence of

Lilian Njenga: Court Assistant

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