



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**CAUSE NO. 1999 OF 2014**

**FRANCIS MUSYIMI.....1<sup>ST</sup> CLAIMANT**

**JOMO JOSEPH KIRWA.....2<sup>ND</sup> CLAIMANT**

**JOSEPH MWANGI NGATIA .....3<sup>RD</sup> CLAIMANT**

**VERSUS**

**JOHN OCHIENG .....1<sup>ST</sup> RESPONDENT**

**PETER NTHAKA .....2<sup>ND</sup> RESPONDENT**

**ROSE J. MARTIN .....3<sup>RD</sup> RESPONDENT**

**ERNEST NAKENYA NADOME, GENERAL SECRETARY KENYA**

**ELECTRICAL TRADE & ALLIED WORKERS UNION .....4<sup>TH</sup> RESPONDENT**

**REGISTRAR OF TRADE UNIONS.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Notice of Motion Application seeks inter alia orders against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents from assuming office as officials of Kenya Electrical Trade and Allied Workers Union (South Rift Branch) pending the hearing and determination of the suit and restraining the 5<sup>th</sup> respondent from effecting registration of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents as officials of the Union pending the hearing of the suit.

2. The objection by the applicant is on the grounds that the Special General Meeting conducted on 1<sup>st</sup> November 2014 at Valley Bridge Kwamuhia Beach, Naivasha was null and void as no notice was served on the applicants and the applicants have denied receiving a copy of the requisition ‘PN 1’ as there is no evidence of service of such requisition on the applicants whether by way of delivery book or the applicants official stamp or endorsement by the applicants.

3. The Application is opposed by 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents who have filed written submissions on 20<sup>th</sup> April, 2015 stating that the applicants were aware and had full knowledge of the notice to call for special general meeting as requested by their members they went ahead to write protest letters to various offices

so as to defeat the call by members.

4. That out of the ten (10) Committee members, eight (8) attended the meeting. This is evidence enough that all the officials were served. Indeed some of the officials were elected back to the Union offices.

5. The purpose of the meeting was to address various grievances by the members listed in the notice that was duly served.

6. The 5<sup>th</sup> respondent, the Registrar of Trade Unions filed written submissions on 8<sup>th</sup> April, 2015 in which he states that arising from the above dispute, the change of officials has not yet been registered and now that this dispute is already in Court, the 5<sup>th</sup> respondent stopped determination of the dispute as it has been overtaken by events and will await the determination of the dispute by the Court.

7. That based on the facts stated by the 5<sup>th</sup> respondent the application is premature, unmerited and should be dismissed with costs as no registration has taken place.

### **Determination**

8. The Court is persuaded by the submissions before court by Counsel for the 5<sup>th</sup> respondent Beatrice Akuno and finds that this application is premature and unmerited and the same is dismissed.

9. The parties to proceed with the hearing of the main suit.

**Dated and Delivered at Nairobi this 8<sup>th</sup> day of July 2015.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**