



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

CAUSE NUMBER 52 OF 2015

**BETWEEN**

SULEIMAN MOHAMED ABDALA.....CLAIMANT

**VERSUS**

1. KENYA COUNTY GOVERNMENT WORKERS

UNION, MOMBASA BRANCH

2. FATIYA KOMBO

3. RASHID MUTETI MUSOMBA

4. REGISTRAR OF TRADE UNIONS .....RESPONDENTS

RULING

1. The Claimant is the Chairman of the 1<sup>st</sup> Respondent. An extract of the Register of Officers and Officials of the Trade Union from the Registrar of Trade Unions, describes him as such. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are respectively Treasurer and Secretary of the 1<sup>st</sup> Respondent. The Claimant initiated this Claim on 9<sup>th</sup> February 2015. He claims from April 2014, the Respondents refused to pay him his monthly allowances. He seeks the arrears of his allowances to-date.

2. The Respondents filed a Notice of Preliminary Objection, which is the subject of today's ruling. They state that the Claim was filed prematurely. They cite Article 21 of the Union's Constitution, which requires that whenever conflicts among Members, Officers and Officials occur, the Union must endeavour to resolve them through the alternative dispute resolution mechanisms. The Claimant has not exhausted the internal mechanisms, and his Claim is therefore premature and should be struck off with costs to the Respondents.

3. Parties agreed the Objection be considered and determined on the strength of their Submissions on record.

*The Court Finds:*

4. Article 21 above appears to suggest it is the Union, not the Members, Officials or Officers, which must endeavour to resolve conflicts through the voluntary dispute resolution mechanisms. The Union has not

shown that it has initiated such mechanisms, or endeavoured to resolve the dispute through such mechanisms, before or during the subsistence of the Claim.

5. There are letters attached to the Claim indicating the Claimant attempted to have the dispute settled before he filed the Claim. He approached the Union's Area Office on several occasions. The Area Office wrote to the Branch Secretary on 6<sup>th</sup> February 2015, advising the Branch to settle the Claim, "*never allowing the Branch to be charged in Court...*" The Respondents ignored the advice and did nothing to endeavour voluntary settlement.

6. The Union's Constitution is not violated by the filing of the Claim. Even if the Claim is premature, the Respondents should not be asking the Court to strike out the Claim; they should be asking the Court to stay its proceedings, to allow them settle, as advised by the Area Office. Honesty and fair dealing demand they seek time to negotiate, not ask the Court to strike out the Claim. The filing of the Claim does not bar the resort to alternative dispute resolution mechanism.

7. The Preliminary Objection seems to have been made in bad faith.

IT IS ORDERED: -

***[a] The Preliminary Objection is declined.***

***[b] Parties to schedule the main dispute for hearing.***

***[c] If the Parties wish to pursue voluntary settlement under their Constitution, they may still do so before the Court Hearing.***

***[d] No order on the costs.***

Dated and delivered at Mombasa this 3<sup>rd</sup> day of July 2015.

James Rika

Judge