



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 586 OF 2014

BETWEEN

- 1. MICHAEL OWINO**
- 2. BENSON KELLY NZAU..... CLAIMANTS**

VERSUS

- 1. JAMES ONKOBA TONGI**
- 2. KENYA SHIPPING, CLEARING, & WAREHOUSES WORKERS UNION**
- 3. THE REGISTRAR OF TRADE UNIONS..... RESPONDENTS**

Rika J

Court Assistant: Benjamin Kombe

The 1st Claimant appearing on behalf of himself and his Co-Claimant

The 1st Respondent, General Secretary of the 2nd Respondent, for the 1st and 2nd Respondents

No appearance for the 3rd Respondent

ISSUE IN DISPUTE: ELECTION OF THE TRADE UNION GENERAL SECRETARY

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Industrial Court sitting in Mombasa issued decree in Cause Number 30 of 2012, on 14th March 2014 declaring then General Secretary of the 2nd Respondent Union, unfit to hold the docket, and consequently declaring the gentleman, Mr. Robert O. Abwoga removed from the docket. It was ordered the Registrar of Trade Unions, causes the 2nd Respondent to hold an Annual Conference to fill the vacancy of General Secretary.

2. The Registrar gave her directive to the 2nd Respondent in a letter dated 20th March 2014, addressed to then Deputy National General Secretary of the 2nd Respondent, Mr. James Tongi, named as the 1st Respondent herein.
3. The 2nd Respondent held what the 1st Claimant terms a 'purported Annual Conference' on the 19th October 2014. The position of General Secretary was filled with the election of Deputy General Secretary James Tongi by the Congregants, as the new General Secretary.
4. The 1st Claimant who was, and still is, the Assistant General Secretary was disaffected with the proceedings and the outcome. Alleging the process violated the directive issued by the Registrar to have an Annual Conference conducted in accordance with the 2nd Respondent's constitution, the 1st Claimant approached the 2nd Claimant. The 2nd Claimant is a Member of the 2nd Respondent.
5. The 2 initiated this Claim seeking to have the Annual Conference of 19th October 2014 declared null and void; the outcome thereof declared of no effect; the 1st Respondent having been convicted in Cause No. 251 of 2014 of fraudulent and dishonest acts be declared unfit to hold the docket; and a fresh Annual Conference be held. The Statement of Claim is accompanied by an Application under certificate of urgency, containing similar prayers to the ones in the substantive Claim.
5. The 1st Respondent entered appearance for both Respondents, on the 10th December 2014. He filed a Replying Affidavit sworn by himself on 9th December 2014, and a Reply to the Claimants' bundle of documents, filed on 20th February 2015. Parties agreed to have the Application for interim measures disposed of by way of Written Submissions. These were confirmed to be filled on 7th July 2015.
6. The matter was scheduled for the ruling today but on close scrutiny of the Pleadings and Submissions, nothing would be left for trial if interim measures are granted or rejected. All grievances have been merged. The Court therefore concluded today's decision should be fully dispositive of the Claim, hence the writing and delivery of the Award, rather than a ruling.

The Claim

7. The Claimants submit that the Court directed the Annual Conference be held in accordance with the Union's constitution. The Respondent's conduct of the Annual Conference violated the constitution this way:
 - a. Rule 5[b] requires delegates receive 6 weeks' notice. Notice was issued by the 1st Respondent on 30th September 2014, received by the Claimant's Changamwe Branch on 2nd October 2014. The Annual Conference/Election were scheduled for 12th October 2014.
 - b. The venue was not indicated as per the constitution.
 - c. 8 of the 10 delegates were not employed in the shipping industry.
 - d. There was no quorum, the total number attending having been 11 Members. The Union had a total of 19 delegates entitled to vote. The quorum under the constitution is two-thirds, which results in at least 12 Members voting.
 - e. The 1st Respondent was found to have been involved in fraud and dishonesty by the Court, and therefore unsuitable to hold office.

The Response

8. The 3rd Respondent, true to character, did not participate in the proceedings.
9. The 1st and 2nd Respondents submit:-
 - a. The Court directed the Union to hold Annual Conference in accordance with its constitution and

- elect a new General Secretary.
- b. The 1st Respondent, in obedience to the order and directive, convened a preparatory meeting of the National Executive Committee of the Union, on the 24th August 2014, attended by among others the 1st Claimant.
 - c. Delegates were invited to the conference through a letter dated 30th August 2014. The 1st Claimant received and acknowledged receipt of the invitation.
 - d. The 1st Claimant as the Assistant General Secretary had the opportunity to raise issues of procedure in the meeting leading to the conference.
 - e. The 1st Claimant deliberately kept out of the meeting together with his Changamwe delegates and cannot complain about lack of quorum.
 - f. As for decisions of the Court made elsewhere, the 1st and 2nd Respondents submit these should not be introduced to the Claim as they are of no relevance here.

The Court Finds:-

10. The Annual Conference appears to the Court to have been held largely in conformity with the order given by the Court, the directive of the Registrar, and the Union's constitution. The 1st Claimant is the sitting Assistant General Secretary and attended NEC meeting which opened the way for the Annual Conference. He did not raise the issues about the suitability of James Tongi to succeed Mr. Abwoga. He did not challenge James Tongi's continued stay as Deputy to Abwoga, the so called conviction for fraud notwithstanding.

11. The suitability of James Tongi to hold office was never in issue. There are proceedings in different Courts where both James Tongi and Michael Owino have been found to have acted below the expectation of their Union's Constitution. They both are not pin-up models, of what is right with the Trade Union Movement in Kenya. It has not recommended itself to the membership of the Union that such Court findings, bar either of them to continue holding office, or ascend to bigger offices within the Union. The Court got the impression this submission by the 1st Claimant was a case of the pot calling the kettle black.

12. Notice leading to the conference initially issued on 30th August 2014. The conference was to take place on 12th October 2014, which would be within the 6 working weeks, if not calendar weeks, contemplated by the constitution. The 1st Claimant and his team complained about the notice in a letter to Tongi dated 9th September 2014. He also complained the venue had not been stated. Tongi replied, postponing the conference to 19th October 2014. If there was doubt, whether the requirement for 6 weeks' notice was satisfied by the earlier notice, the additional 1 week to 19th removed any such lingering doubts. The letter extending the notice similarly indicated the conference would take place at Shauri Moyo YMCA hall. The Court is satisfied if the initial notice fell short of the internal constitutional standards, the shortcoming was corrected in the letter subsequently extending notice, and naming the venue. The receipt hiring the venue has been exhibited by the 1st Respondent. The Claimants cannot complain there was no meeting at the said hall, or that they did not know where the meeting was to be held.

13. The complaint about the delegates, who attended and voted, is equally without merit. The structure of the representation was in accordance with the constitution. Branches of the Claimant Union were represented. The Claimants cannot question whether such delegates worked in the shipping industry, long after the conference. These are Branch Representatives. Their bona fides was a matter the Claimants could, or should, have raised before, or during the conference. It is not plausible that the Claimants did not know these Branch representatives before the conference. The Claimant opted to stay away, and keep his fellow representative from Changamwe away, with the mind to perhaps, destabilize the requirement for quorum. He perhaps again, felt the situation did not work in favour of his ambition. He stayed away to build and bolster a case against the legitimacy of the conference.

14. Lastly the Court formed the view that the Claim filed herein does not help the Union to revamp itself, reorganize, and revitalize its structures under the new leadership. Trade Unions must not be embroiled in

leadership wrangles day in day out. These wrangles are inimical to workers' representation. The Court has not observed a single case in many years, brought to Court on behalf of a worker in the Shipping Industry, by the 2nd Respondent. Most cases are about leadership wrangles. The 1st Claimant is still the Assistant General Secretary, and heading the Changamwe Branch. The next election comes in 2016. He should hold his ambition. This Court has had the opportunity in the past to preside over similar disputes, involving the same cast of players. Regrettably, the persistence of these disputes weakens the Trade Union, at a time when serious labour maritime issues, are calling for a stable and vibrant Shipping Union. It is important that Trade Unions act democratically as they are supposed to under their internal constitutions and the laws of Kenya. But the Court must also not harshly punish every minor infraction of the high standards demanded of these Trade Unions in meeting democratic objectives. Nullification of elections, removal of officials and calling for re-elections through judicial intervention every so often, destabilize the Trade Union Movement just as much as the undemocratic practices rife among the Union Leadership do destabilize the Movement. There could have been some minor departures from the ideals of the Union's constitution in the process leading to the Annual Conference and the election of James Tongi, but these are not of a fundamental nature as would lead this Court to declare the conference invalid, and its deliberations and outcome of no consequence. Trade Unions in Kenya seem not well equipped to administer their programmes to accord fully with their internal constitutions. They need to professionalize. They need to move with the times. It cannot be that every time there is some minor departure from the internal constitutions however, the Court reverses the outcome of such flawed processes. Let Mr. Owino wait for 2016 to challenge Mr. Tongi, which is what this Claim is all about; a fight for power.

IT IS ORDERED:-

[a] The Claim and the Application filed by the Claimants herein have no merit, and are dismissed in their entirety, with no order on the costs.

Dated and delivered at Mombasa this 4th day of September, 2015

James Rika

Judge