



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1628 OF 2015

KUPPET, NAIROBI COUNTY BRANCH 1ST CLAIMANT

JOHNSON MUTHAMA WAITHAKA 2ND CLAIMANT

LEONARD RUFUS OCHIENG 3RD CLAIMANT

ROBERT BARASA KARANI 4TH CLAIMANT

VERSUS

KENYA UNION OF POST PRIMARY

EDUCATION TEACHERS & 5 OTHERS..... 1ST RESPONDENT

REGISTRAR OF TRADE UNIONS 2ND RESPONDENT

MAURICE AKELLO MISORI 3RD RESPONDENT

MOSES OWITI MBORA 4TH RESPONDENT

PHYLIS S. MWACHILUMO 6TH RESPONDENT

AND

CFC STANBIC BANK LTD. 1ST INTERESTED PARTY

JAYNE NYAGOHA EMISEMBE 2ND INTERESTED PARTY

RULING

1. The Notice of Motion application dated 17th September 2015 and filed on 18th September 2015 seeks various reliefs set out in the Notice of Motion pending the hearing and determination of the suit. At the ex parte stage interim orders sought in prayers a to f were granted pending the hearing and determination of the Application.
2. At the outset the *locus standi* of the 3rd Claimant to represent the 1st Claimant Nairobi County Branch of KUPPET, 2nd Claimant Johnson Muthama Waithaka, and 4th Claimant Robert Barasa Karani, was questioned by Advocate Okwe Achiado on behalf of the 1st Respondent, Kenya Union of Post Primary Education Teachers (KUPPET).

3. It is common cause that Mr. Leonard Rufus Ochieng is not an Advocate of the High Court. From the papers filed on record, and in particular Annex '4' to the Application and memorandum of Claim, Mr Leonard Rufus Ochieng is shown to have been registered by the 2nd Respondent, the Registrar of Trade Unions as the Executive Secretary of the Kenya Union of Post primary Education Teachers, Nairobi County Branch as at 26th May 2015.
4. On this basis alone, Mr Rufus Ochieng has the *locus standi* to bring this suit, the issue in dispute being contested dissolution of the 1st Claimant by the 1st, 3rd, 4th, 5th and 6th Respondents. The other issue in dispute is between the 2nd, 3rd and 4th Claimants and the 3rd, 4th, 5th and 6th Respondent who are the elected and gazetted officials of the Nairobi Branch of Kenya Union of Post Primary Education Teachers.
5. The facts of the dispute may be summarized as follows;

This court made an order in cause No 904 of 2011 nullifying the registration of the 4th 5th and 6th Respondent as the officials of the 1st claimant on 3rd March 2015. The Registrar of trade Unions (2nd Respondent) in obedience of the said order, deregistered the 4th, 5th and 6th Respondents as the officials of the 1st claimant as at 26th May 2015. The 2nd to 3rd Claimants were registered as Executive Secretary, Treasurer, and Assistant Treasurer of the 1st Claimant respectively.

6. The Claimants allege that on diverse dates after their removal from office, the 3rd to 6th Respondents notwithstanding their knowledge of the orders of the Court removing them from office caused an account to be opened in the name of the 1st Claimant being A/C. No.0100003712855 and held with the 1st Interested Party (CFC Stanbic Bank Ltd) in violation of Article 17 of the Union Constitution which provides that such an account could only be opened by the Treasurer and signatories of the said account.
7. That the 3rd Respondent retained the 4th, 5th and 6th Respondent as signatories and obstructed the changes to the said account and the 4th – 6th Respondents continued to make withdrawals from the account which money is not accounted for. This continued notwithstanding the protest by the claimants to the interested party branch in Buruburu.
8. That subsequently, the 3rd – 6th Respondents without a procedural notice convened a National Governing Council (NGC) meeting of the 1st Respondent (KUPPET) in which the 3rd Respondent moved a motion to dissolve the 1st Claimant. That the Union Constitution does not provide for such a dissolution and therefore such powers only vest in the members of the Branch. That the 1st Interested Party continues to defy the mandate of the lawfully elected officials of the 1st claimant and continues to get instructions from other persons.
9. That the dissolution is unlawful and will deny the members of Nairobi Branch representation and remove the Claimants from office in a manner not contemplated by the Constitution.
10. The 1st and 3rd Respondents filed a replying Affidavit to the application. The Affidavit is sworn by Akelo Mitori the 3rd Respondent who is the Secretary General of Kenya Union of Post Primary Education Teachers.
11. The 3rd Respondent states that, the Claimants/Applicants have not satisfied the preliquisites of granting an injunction in that a *prima facie* case has not been disclosed. That the claimants are not likely to suffer irreparable harm and the balance of convenience favours the Respondents.
12. Furthermore, the Claimants/Applicants have concealed material facts and are therefore not entitled to the relief sought. That the 3rd Claimant is employed by Aviation and Allied Services Workers Union and the Dock Workers Union as their Industrial Relations Officer and has been representing the two unions in Court. That the 3rd Claimant is not a member of Kenya Union of Post Primary Education Teachers and having been dismissed by Teachers Service commission he had no locus standi to represent the 2nd and 4th claimants and his appearance is in violation of the Labour Relations Act and the Advocates Act.
13. The Respondent deny the averments by the claimants with regard to happenings in Cause No. 904 of 2015 heard on 17th February 2015. That the 3rd Respondent was not a party to the suit and the 4th, 5th and 6th Respondents have filed application to review the Judgment in Cause No. 904 of

- 2011 for lack of proper service on them as they did not receive notices in the matter.
14. The Respondents state that the meeting in which the claimants were elected as officials was convened in contravention of the union constitution in that no members of the union participated in it.
15. That the official change of signature to the 1st claimant occurred on 3rd July, 2015 and impugned transactions occurred between 31st May 2015 to 3rd July, 2015. Therefore no unauthorized transaction has taken place in the account. That the Buruburu Account was opened with full knowledge and approval of KUPPET, the 1st Respondent and the funds were utilized to operate the office of the 1st Claimant in the most effective accountable and transparent manner.
16. The Respondent pray that the Application be dismissed for lack of merit.
17. **Determination**

- (1) Whether the Claimant/Applicant has made a *prima facie* case.
- (ii) Whether the claimants are likely to suffer irreparable loss.
- (iii) Where the balance of convenience lies

18. ***Prima facie Case***

The conditions for grant of an interlocutory injunction are now well settled. These were set out in **Giella - vs- Cassman Brown Co. Ltd (1973) EA 358** as follows;

- (a) An applicant must show a *prima facie* case with probability of success.
 - (b) An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
 - (c) If the Court is in doubt, it will decide on application on the balance of convenience.
19. It is important to note as was observed in **May Aliwza & Okoth Mondoh v. Attorney General of Kenya and Secretary General of East African Community EACs Application No. 3 of 2010 EALS, Law Digest 2005-2011 Page 1.**

“At this stage we must of course refrain from making any determination on the merits of the application or any defence to it. A decision on the merits or demerits of the case must await the substantive consideration of the facts and applicable law after full hearing of the Reference.”

20. The Court is satisfied that the claimants have established a *prima facie* case with probability of success with regard to prayers g, j, and k of the Notice of Motion.
21. The Claimants/Applicants have demonstrated that they are likely to suffer irreparable loss if the injunction is not granted.
22. The balance of convenience also favours the grant of an injunction in terms of prayers g, j, and k of the Notice of Motion pending the hearing and determination of the main suit. The Application succeeds in that respect and grants interim relief in terms of prayer g, j and k of the Notice of Motion pending the hearing and determination of the main suit.

Dated and Delivered at Nairobi this 18th day of December 2015

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE