



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**  
**CAUSE NO. 119/2014**

(Before Hon. Justice Hellen Wasilwa on 8th July, 2014)

WINFRED OKINDA .....CLAIMANTS

**-VERSUS-**

KENYA NATIONAL UNION OF TEACHERS & 12 OTHERS.....RESPONDENTS

**RULING**

The respondents herein have raised a preliminary objection dated 10.6.2014. It is their contention that the applicant's application and entire claim is premature as the claimant is seeking orders of a temporary nature but which seem to be in perpetuity. It is the respondents' contention that the claimant has not exhausted the disciplinary appeals process as provided for under the respondents Constitution Article X(C) (L), and D(5). Under the said provision, if a person is dissatisfied with the decision of the branch, they can appeal to the National Executive Council of the Union. The power to suspend any officer is further outlined in Article X Clause D(5) pg 21 whereby any officer of the Union may be suspended from his/her office by 2/3 (two third) majority decision of all members.

It is the respondents contention that under Article X Clause E(4) the Executive Secretary is the official spokesman of the branch and that the extra general meeting was initiated by members of KNUT Bungoma East Branch. Their recommendation to suspend the applicant was made to the branch Executive Committee. The applicant attended the meeting and before the branch could deal with the recommendations, she came to court. The respondents therefore contends that this claim is incompetent and an abuse of the court process for not complying with administrative channels given in respondents Constitution.

The applicant in reply to the preliminary objection submitted that what the respondents have raised are factual matters and not points of law. The applicant also content that the respondents are relying on the Constitution of the respondents which is evidence on record and not an annexure on the application. Further, the applicants contend that the respondents have not told court which law of Kenya, the claimant applicants have breached. Further it is applicants contention that Article X(C) (L) of KNUT Constitution is not couched in mandatory terms and it is also an attempt to oust the jurisdiction of the court by declaring their decision as final. The applicants contend that the claimant is before court challenging a decision – making process in which she claims that she was not given a fair hearing. She is therefore

entitled to come to court and seek redress.

They cited **LSK VS AG & Another 2009** Eklr where exclusive jurisdiction was given to the director under the Work Injury Benefits Act, WIBA. The court declared that provision illegal. They also cited **High Court of Kenya at Bugoma, Misc. Civil Appl No. 154/2011**, where the applicant challenged the decision to suspend her by the Teachers Service Commission and she didn't wait for the Teachers Service Commission to constitute a tribunal to hear case.

Upon considering the arguments of the parties, the issue for determination is:-

1. **Whether an aggrieved party must wait for all administrative procedures to be completed before seeking redress.**

Courts are a source of redress to any aggrieved party. Judicial authority is derived from Article 159(a) of the Constitution which states that justice shall be done to all, irrespective of status. To presume that the claimant should not approach this court until administrative processes is completed is to tamper with this court's jurisdiction and a fetter on judicial authority. The provision in respondents Constitution which states that it's decision is final is therefore unconstitutional. I find that the preliminary objection has no merit and I dismiss it and order the hearing to proceed.

**HELLEN WASILWA**

**JUDGE**

**8/7/2014**

**Appearances:-**

Nyamu for claimant present

Onyando for respondents

CC. Wamache