



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NUMBER 1326 OF 2014**

1. ISAIAH ODHIAMBO
2. EVANS SENDEU
3. NAFTALI NYONGESA MAUKA

4. PAUL KINYANJUI.....CLAIMANTS

**VERSUS**

KENYA SHOE AND LATHER WORKERS UNION.....RESPONDENT

**RULING**

1. The Application before me is the one dated 11<sup>th</sup> August 2014. When the Claimants/Applicants moved Court on the said date I certified it as urgent for *inter partes* hearing on 14<sup>th</sup> August 2014. Mr. Rakoro appeared for the Claimants/Applicants while Miss Ashubwe appeared for the Respondent.

2. Mr. Rakoro urged the Application and stated that the grounds are on the face of the Application and he sought the orders in terms of prayer 2, 6 of the motion. He relied on the grounds on the face of motion and affidavit of the 1<sup>st</sup> Claimant sworn on 8<sup>th</sup> August this year. He stated that in a nutshell the Claimants are registered officials of the Union as per the extract of the Union Officials annexed to the Affidavit. He submitted that they are employees of the Respondent and are still serving as employees and therefore deserve to be paid salaries and allowances pursuant to Rule 14 of the Constitution of the Respondent. He submitted that they have not been paid their June and July salaries totaling Kshs. 117,000/- without any reason and despite being registered as employees. He stated that it is an offence under Section 18 and 17 of Employment Act for an employer to withhold salaries worked for without any cause. He urged the Court to find for the Applicants and order a release of the salaries for June and July 2014. He sought that the costs be payable personally by the bank signatories. He submitted that he had looked at the Replying Affidavit of Julius Ndombi Maina the Secretary General of the Respondent which was to the effect that the salaries of the Claimants have been stopped because they moved to Court in Appeal 8 of 2014. He submitted that Appeal has not been determined, there is no order in the Appeal directing stoppage of the salaries and that there is no extract from Registrar of Trade Unions that they are no longer officials in terms of Section 35 of Labour Relations Act. There has been no communication on the stoppage of salary either through show cause, termination or suspension. He submitted that the Respondent is a trade union, it operates by organs and Mr. Maina cannot stop salaries on his own without a resolution of the union.

3. Miss Ashubwe relied on the Replying Affidavit of Julius Ndombi Maina sworn on 14<sup>th</sup> August 2014. She submitted that the issue in question is stoppage of salary of the 4 Claimants and the Respondent has a very good reason why salaries were stopped. She referred the Court to the affidavits annexed in support and at page 4 is the affidavit of Isaiah Odhiambo Omollo the first Claimant. She submitted that in it he says that he wishes the record of the Registrar of Trade Unions be deleted so that he is not an official. She pointed out that at page 7–8 is Affidavit of Paul

Kinyanjui the second Claimant and page 9-11 is the Affidavit of Naftali Nyongesa Mauke the third Claimant. There is an affidavit sworn which states they are no longer employees of the Respondent. There is an application filed in Civil Appeal 8 of 2014. She stated that there is a declaration sought that the change of officials made on 1<sup>st</sup> February 2012 were fraudulently obtained. With this, the Respondent has to seek to ascertain the correct officials. The case is pending and the Respondent cannot continue to pay salaries to people who were involved in fraudulent elections. She submitted that this was raised in her response. On one part one says "I am not an official and in another one says I am an official". Paragraph 6 of the supporting affidavit states they were not paid salary for January 2014 and August 2014. They seek salary for month of August and the salaries are paid in August and the Respondent has annexed payment details from January up to June 2014. She stated that it is important to note that 4<sup>th</sup> Claimant states he represents the Union Branch of the Respondent. She submitted that is not true because the changes were effected by the Registrar. He cannot claim to be official of the Branch. They wrote on 5<sup>th</sup> May 2014 to Registrar of Trade Unions to remove their names on the record as the officials of the Union. The evidence on record shows they are not officials of the Union. She submitted that stoppage of salaries is not managed by Secretary General alone. There is a committee and therefore it is not true the salary was stopped by Mr. Maina alone as they were in office unlawfully.

4. Mr. Rakoro in his brief rejoinder submitted that there is nowhere the Claimants have stated they are no longer officials. He stated that they had exhibited an extract showing these are officials of the Union. There is no extract showing they are not officials then they deserve to be paid. He stated that the appeal referred to is before a Court of competent jurisdiction. He finally stated that the Court had been told Secretary General is not the one who acted unilaterally yet there are no documents showing the resolution of officials. There is no communication on stoppage of salaries and the Court has not stopped the salaries. Until order of Court is granted, the Claimants deserve salary as ordered. He thus sought payment of salaries pending the resolution of the Appeal.

5. I reserved the Ruling to today 9.00am and proceed to render it. What is up for determination is whether the Claimants are entitled to the order for payment of salaries. While there has been very good arguments by both sides, I am afraid the contest is in the wrong arena. I am being asked to make a determination that will in all likelihood have an impact on the pending appeal which involves parties herein being Appeal No. 8 of 2014. I would be encouraging duplicity of suits and a clogging of the fountain of justice if I allowed the matter to proceed under this suit. The proper forum to agitate the issues in the instant application is not a new suit but the dispute already existing. In the premises I will dismiss the Application but make no order as to costs.

Orders accordingly.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of September 2014**

**Nzioki wa Makau**

**JUDGE**