



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT MOMBASA
CAUSE NO. 40 OF 2014

1. CARILIUS B. OCHIENG

2. AUGUSTINE M. MULWACLAIMANTS

VERSUS

MAMA MARIA OBURA & 11 OTHERSRESPONDENTS

J U D G M E N T

INTRODUCTION

1. The claimants have sued the respondents seeking declaration that the disbandments of Tailors and Textile Workers Union Changamwe Branch was unfair and improper. They also seek for reinstatement of branch of the union. The basis of the suit is that the decision to disband the branch was in contravention of the law and constitution of Tailors and Textile Workers union (union).
2. The respondents are the National Executive Committee (NEC) of the union and the union itself. They have denied liability and averred that the disbandment of the Branch was done in accordance with the Section 29(1) of the Labour Relations Act (LRA) and Rule 10&21 of the Union's constitution. The defence also raised objection to the suit on grounds that the suit was prematurely brought before first lodging a complaint to the Registrar of the Trade Unions.
3. The suit was heard on 1/7/2014 and 1/9/2014 when the 1st claimant testified as CW1 on behalf of the claimants while the 4th respondent testified on behalf of the defence as RW1.

CLAIMANTS CASE

4. CW1 was elected Branch Secretary for the unions Changamwe Branch on 9/1/2011. He told the court that the Branch has 25 members from several companies including Hantex Garments (EPZ) and Ashton Apparel. In December 2013 CW1 went to Nairobi to get an extract of official register but he was told that the Branch had been disbanded on 3/5/2013. The Registrar of Trade Unions confirmed to him (CW1) by letter dated 21/1/2014 that indeed the Branch had been disbanded and gave him minutes of the NEC that dissolved the branch and the letters dated 28/3/2013 by the General Secretary asking the Registrar to de-register the branch.
5. CW1 denied knowledge of the dissolution of the branch until he went to Nairobi in December 2013. He also denied receipt of both notice of the dissolution and the letter dated 27/2/2013 by the General Secretary which purportedly invited him (CW1) him to Union's Head Office at Nairobi to discuss the disbandment of the branch. According to him the branch had 25 members in March

2013 when it was disbanded. He produced lists of 25 branch members showing remittances of union dues by Hantex Garments (EPZ) Ltd and Ashton Apparel (EPZ) Ltd for January- May 2013 as exhibits. He also produced Banking slips for February and March 2013. He prayed for the branch to be reinstated.

6. On cross examination by the defence counsel, CW1 maintained that he was never served with the letter dated 27/2/2014. He further explained that he was not aware of the requirements to first challenge the disbandment before the Registrar of Trade Union before coming to court. As regards the payment of dues, he clarified that it was remitted by cheques issued by the respective employers.

DEFENCE CASE

7. RW1 is the Assistant General Secretary of the union and also the branch secretary for Mombasa Branch. On 27/2/2013 he received a letter from the General Secretary of the union inviting him to hear a case for the dissolution of the Changamwe Branch and discipline a former official. RW1 attended the meeting as a member of the union's NEC. According to RW1 the union's Accountant confirmed to the NEC that the Changamwe Branch was not remitting union dues. As a result the NEC resolved to disband the branch because under rule 21 of the union's constitution the NEC had the power to disband, dissolve or discipline a branch. After disbandment the General Secretary wrote notice to the Registrar of Trade Unions and copied to all branches.
8. According to RW1, the officials of the branch were not summoned to attend the meeting because they were not NEC members. In addition, RW1 explained that the NEC believed that there were no members in the branch because there were no union dues being remitted from the branch to the NEC Bank account Number 0013194009 Transnational Bank City Hall Way Branch.
9. In October 2013, RW1 was instructed by the General Secretary to start recruiting members for Changamwe branch. By November 2013, RW1 stated that he had recruited over 1000 members whose union dues are remitted to the union head office by the employers directly. According to RW1, Kapric Apparel employees had over 1000 union members.
10. He denied existence of any CBA between the union and Ashton Apparel and maintained that if there were any union members for the branch, then CW1 knows where the money for union dues went.
11. On cross examination by the claimant's counsel, RW1 explained that the union's accountant on 23/3/2013 was Mr. Silas Otwala. RW1 confirmed that he was the one taking the minutes for the NEC meeting of 23/3/2013 and he did not record that the union's Accountant did attend the NEC meeting and said that the Changamwe branch was not remitting any dues. He contended that the branch was disbanded for lack of members and for being a burden in terms of monthly pay for its branch secretary. RW1 did not know whether the branch secretary received the letter inviting him to attend the NEC meeting on 23/3/2013.
12. RW1 stated that the General Secretary is the one who oversees the union branches countrywide. RW1, however confirmed that he has never seen the General secretary visit his Mombasa branch since 1994 when he (RW1) became the branch secretary. He further confirmed that the union members working for Kapric Apparel are members of Changamwe Branch but presently were under his oversight. He contended that the Registrar of Trade Unions had advised that before the branch could be revived, the union should recruit members from at least 3 companies in the industry.
13. After the close of the hearing, both parties filed written submissions of which the court has carefully considered alongside the pleadings and the evidence adduced.

ANALYSIS AND DETERMINATION

14. There is no dispute that the Changamwe branch of the union was disbanded by the NEC of the union on 23/3/2013 for lack of members and failure to remit union dues to the union. It is also not in dispute that the branch officials and members were never heard before the disbandment of the branch. It is also not in dispute that the NEC of the union has the power to disband the union branch under the union constitution.
15. What is in dispute is whether the disbandment of the branch on 23/3/2013 was unfair and in

contravention of the law and the union's constitution. The court is also called upon to determine whether the reliefs sought should issue and especially whether the branch should be reinstated.

Unfair and unlawful disbandment

16. The disbandment of the branch was allegedly done under rule 21 of the union's constitution. The rule provides that ;

“(a) The National Executive Committee shall decide the place where a Branch shall be established.

(b) should the membership of any Branch fall below twenty (20) members for a period of three (3) months, such branch may be disbanded by the National Executive Committee and its members transferred to another nearest branch.”

17. The union's constitution does not provide for the procedure to be followed before the disbandment of the union branches. Likewise, the labour Relations Act does not also provide for any specific procedure to be followed except that under Section 25(3) of the Act the union is required to give 30 days notice of the dissolution of any branch to the Registrar through its authorized representative. Consequently, this court finds that the procedure of dissolving the union's branch is left to the discretion of the NEC.

18. The said discretion is however subject to the rules of natural justice that require fairness in the form of due process. Due process in this court's view would require reasonable notice to the branch and a hearing before making the decision to disband the branch. In this case due process was not followed. RW1 did not prove that the letter dated 27/2/2012 was served on the CW1 or any other member of the branch. The alleged evidence of non-remittance of union dues was not recorded in the NEC minutes of the day. The decision was also made before NEC or GS visited the branch to verify that there were indeed less than 20 members in the branch for a period of 3 months.

19. In this case therefore the court finds that the NEC of the union abused its discretion when it denied the branch hearing before disbanding it and by not notifying the branch about the decision of its disbandment.

In addition the court finds that the NEC did not act on any valid evidence as a basis for the disbandment. The court is persuaded by the evidence adduced by the CW1 to the effect that the branch had 25 members from January 2013 to May 2013 whose union dues were remitted to the union by employers cheques.

RELIEFS

20. In view of the foregoing finding the court makes declaration that the disbandment of the Changamwe branch of the union was unfair and improper. The court has considered the unconfirmed allegation by RW1 that between October and November 2013, he recruited over 1000 members from Kapric Apparel for the defunct Changamwe Branch. That proves that the branch had the potential to grow and be able to represent its members. So far its members are under the watch of the RW1. RW1 has not followed up the 25 members who work for Ashton EPZ and Hantex EPZ. The court therefore is of considered opinion that the Changamwe branch may have suffered bad leadership due to lack of oversight by the General Secretary and the NEC. The reason for this view is that since 1994 the General Secretary has never visited RW1's Mombasa Branch of the union. The court therefore is of the opinion that the Changamwe branch ought to not to have been disbanded. Instead it is the leadership of the branch which needed to be removed or motivated. Consequently, the court orders and directs that the Changamwe branch of the Tailors and Textile workers union be reinstated forthwith.

21. The court also directs that the General Secretary of the union to conduct elections of an interim branch committee for the Changamwe branch to care for the branch until the next quinquennial

General meeting. The said elections shall be held within 60 days of today and should include the new 100 and 25 old members to ensure that there will be no fall out from the new membership. This judgment overrides any alleged advise from the Registrar of Trade Unions that the revival of the branch shall be done after recruitment of members form 3 employers. In any case, the court has noted that the branch membership is already drawn from 3 employers namely Kaparic Apparel, Ashtom EPZ and Hantex EPZ. This mater shall be mentioned after 90 days hereof to confirm compliance with the direction herein above.

DISPOSITION

22. For the reasons above stated judgment is entered for the claimants

- (a) declaring that the disbandment of the Tailors & Textile workers union Changamwe branch was not fairly and properly done.
- (b) ordering that the said Tailors & Textile union Changamwe branch is reinstated.
- (c) directing the General Secretary of the Tailors and Textile workers union to conduct within 60 days hereof election of an interim branch committee officials for the reinstated Changamwe branch which shall take care of the said Changamwe branch until substantive officials are elected by next Quinquennial General meeting for the branch,
- (d) This case to be mentioned after 90 days of today to confirm compliance with the direction given hereinabove.
- (e) each party to bear his or her own costs.

Dated, signed and delivered this 7th November 2014.

O. N. Makau

Judge