



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 2081 of 2012

IN THE MATTER OF THE LABOUR RELATIONS ACT

**IN THE MATTER OF THE REGISTRATION OF THE AMENDED CONSTITUTION OF
TRADE UNIONS PURSUANT TO SECTION 27 OF THE LABOUR RELATIONS ACT**

**INT EH MATTER OF THE REGISTRATION OF THE CONSTITUTION OF THE KENYA
UNION OF POST PRIMARY EDUCATION TEACHERS (KUPPET) ON 2ND DECEMBER 2010**

**IN THE MATTER OF CHANGE OF OFFICERS OF BRANCHES, NAME OF BRANCHES,
DISSOLUTIONS OF BRANCHES, BETWEEN 4TH FEBRUARY, 2011 AND 29TH JUNE, 2011**

BETWEEN

JOHN OYUCHO 1ST CLAIMANT

ERASTUS WABOLINGA2ND CLAIMANT

CHARLES ONDIEKI3RD CLAIMANT

AND

REGISTRAR OF TRADE UNIONSRESPONDENT

AND

**KENYA UNION OF POST PRIMARY EDUCATION
TEACHERS (KUPPET) INTERESTED PARTY**

KUPPET KIAMBU

BRANCH INTENDED 2ND INTEREST PARTY

RULING

The matter herein commenced by way of Notice of Motion filed under Certificate of Urgency dated 10th October 2012 by the claimants seeking urgent orders directed at the interested party and for stay of process and the amendment of the constitution of the interested party pending the hearing of the application. Further the claimants were seeking to suspend the operation of the amended constitution of the Interested Party until the matter herein was heard and determined.

This application is supported by the affidavit of John Oyuch, Charles Ondieki and Erastus Wabolinga, the 3 claimants and was on the grounds that the Interested Party was in the process of amending the

constitution that had been illegally registered and that this was a culture that had been adopted without seeking the views of members which had prejudiced the applicants. That by so doing the Interested party had deprived the applicants their constitutional rights as under Article 22 of the Constitution and stood to suffer and would be prejudiced if stay of the amendment process is not granted.

The application came for hearing on 28th November 2012, but the same did not proceed. The applicants were absent. There was nobody to prosecute the application.

On 19th December 2012 Mr. Oduor appeared for the applicants, prosecuted the application and court granted interim orders of stay the process of amendment of the Interested Party constitution pending the hearing of the application inter-partes. Hearing was to proceed on 18th January 2013 and a Hearing Notice to Issue to the Respondents and Interested Party.

On 16th January 2013, Mr. Oduor appeared in court and had the interim orders extended to 23rd January 2013.

On 23rd January 2013 Oduor for claimants and Mr. Mariaria for interested Party appeared and were granted adjournment to enable him put in his responses as he had been served late. A Mr. Njenga, the National Treasurer of the Interested Party was in court but was not formally on record. The Court however directed the parties to exchange their documents put them on record and appear for hearing on 25th February 2013 and the Respondent, the Registrar of Trade unions was to be served with the Application.

On 25th February the matter came for hearing but parties had not complied with court directions given on 23rd February and a mention date was given for the 8th of March 2013.

On 13th February 2013, the Interested Party filed their Replying Affidavit dated 4th February 2013 sworn by Akelo M.T. Misori the Secretary General of the interested party. On the same date the Interested Party filed their Preliminary Objection on a Point of Law.

On 22nd March 2013, the Intended 2nd Interested Party filed their Supporting Affidavit as sworn by Wicks Mwethi Njenga the Executive Secretary of the Kiambu County Branch of KUPPET.

On 8th March 2013, Mariaria for Interested party, Oduor for Claimants were present in court when the court directed the Claimants to file their Further Affidavit in 7 days and the PO raised by the interested party to proceed for hearing first on 25th March 2013.

On 25th March 2013 only Mariaria for the Interested Party was in Court. All the other parties were absent. He had filed an affidavit of service of the PO and returns filed by Mr. Henry Masimba.

Interested Parties argued the Preliminary Objection on the grounds that the parties that have filed the claim herein are not members of the Union/KUPPET, this was argued in the Replying Affidavit of Mr. Akelo M.T. Misori the Secretary General of the Union and Interested Party herein and he proceeded to attach the register of their members which does not include the names of the claimants and their contention therefore is that they lack the capacity to challenge the provisions of the Constitution of the Interested Party under any law.

Other grounds are that the cause as filed is time barred by limitation of time as under Section 30 of the Labour Institutions Act, a person who wishes to challenge the decision of the Registrar of Trade Unions must do so in 30 days and what is herein being challenged is an election that took place 30 days before the claimants came to court. That this suit should have been filed by 25th November 2011 when elections were held.

That the prayers in the claim have been overtaken by events by the Court being asked to hold the Registrar of Trade Union from registering an amended Constitution of the Union. That the claim was filed on 10th October 2012, served on the Interested Party on 18th January 2013 while the constitution of the

Interested Party was registered on 10th October 2012. Hence the matter had not been brought to the attention of the interested party precluding them from undertaking their mandate and therefore it cannot be said that the interested party or the Registrar of Trade Unions is in contempt.

Other ground is that under Section 30 of the labour Relations Act, any challenge to a constitution must be made to the Registrar of Trade Unions. That the Union Constitution was registered on 2nd December 2010 and elections held from January to July 2011 for all the Union branches. That the constitution being challenged on 10th October 2012 defeats the application of Section 30.

That the applicants had participated into the amendment of the constitution, were parties to the elections and subsequent delegates conference. That by challenging the same constitution, they are not honest. That they are aware the Registrar of Trade Unions has already registered the Union Constitution and by coming to court to stop the process they are not honest.

The Interested Party therefore asked that the Notice of Motion be dismissed with Costs.

The claimants Notice of Motion filed on 10th October 2012 is very specific. The same seeks for orders of stay of the registration of the Interested Party constitution by the respondent. Interim orders were granted, the same were extended and despite new dates being agreed upon by consent and the Court confirmation of the same for the claimant to argue their application on merit they failed to attend or send their representative. There being the Preliminary Objection by the Interested Party the Court considered it hence this RULING.

Capacity to file claim

Time barred

Overtaken by events

Not delegates of Interested Party

I note the Respondent legal Notice No. 12737 issued on the 7th of September 2012 in relation to Section 27 (4) of the Labour Institutions Act, which Legal Notice was issued to all members of the Interested Party on the change of their Constitution. Objections to the changes were to be submitted to the Respondent in 21 days. This Legal Notice was therefore to lapse on 5th October 2012. Under the Labour Relations Act Section 30;

30. Any person aggrieved by a decision of the Registrar made under Act may appeal to the National Labour Court against that decision within thirty days of the decision.

Under Section 2 of the Labour Relations Act, “National Labour Court” has been defined as the National Labour Court established under the Labour Institutions Act. That National Labour Court is outlined under section 11 of the Labour Institutions Act as the industrial Court of Kenya which has jurisdiction as outlined in Section 12 and 16 to arbitrate over matters like herein all over Kenya.

By filing the Notice of Motion on 10th October 2012, the claimants were within the legal timeframes allowed to challenge the respondent in the decision to accept the constitution of the Interested Party for purposes of registration. Whether the 21 days issued in the notice was utilized by the claimants for that purpose or not, they had a provision of 30 days under the same law to submit their appeal to this Court.

That then resolves Interested Party objections outlined as No. 2 and 3.

On capacity to file this claim, I note the claimants describe themselves as registered pursuant to Teachers Service Commission Act, Cap 212, teaching at Various Post Primary Institutions/Secondary Schools and members of the Interested Party. The Affidavit in support of the Notice of Motion is sworn by all these claimants and avers that they are members of the Interested Party and have appended their signatures

under oath. In the Replying Affidavit of Akelo M.T. Misori, the Secretary General of the Interested Party, he avers that at paragraph 5 contests that only the 2nd applicant is not a member of the Interested Party. It is also stated that the claimants participated in the elections, amendment of the constitution of the Interested Party, which is indicative of the fact that in one way or the other they were members of the Interested Party and therefore had a right to contest any changes through the laid down legal procedures. Whether they complied with the internal processes of the interested party, which is an issue to be canvassed at a hearing and not at a preliminary stage.

Based on these averments of both parties, I find these are matters of evidence that can only be contested at a hearing. On the merits of the case, the Court should hear all the parties.

On issue 4 objection, the Constitution of the Interested Party does not rank in priority to written law. Any objections to changes of any Union Constitution are also governed by applicable law. Any member of the Union dissatisfied with any amendments or change of name, can appeal to the Court and on good grounds the court based on evidence hear and determine such a matter.

I therefore find the preliminary objections lack merit and will dismiss the same and direct the parties to take dates for the hearing of the other pending issues. The same to be determined on merit.

Delivered in open Court this 10th day of May 2013.

**M. MBARU
JUDGE**

In the presence of:

Jacob Kipkirui: Court Clerk

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