



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 842 OF 2012

BETWEEN

BENTER AKINYI OPAN.....
.....CLAIMANT

VERSUS

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS.....
.....1ST RESPONDENT

AKELO MISORI, SECRETARY GENERAL.....
.....2ND RESPONDENT

WICKS MWETHI
NJENGA.....3RD
RESPONDENT

Rika J

CC. Leah Muthaka

Mr. Oduor instructed by Oduor Henry John Advocates, for the Claimant

Mr. Wicks Mwethi Njenga for the Respondents

RULING

The Respondents have filed an application dated 3rd May 2013. The application was prosecuted on 27th May 2013 by Mr. Wicks Njenga, National Treasurer of the 1st Respondent.

The application seeks to review and set aside the Award delivered in favour of the Claimant on 12th April 2013.

The Respondents allege they did not author the Statement of Response said to have been filed by the Respondents on 15th June 2012.

They claim they have never been served with the Summons to Enter Appearance. The 1st Respondent's National Chairman Omboko Milemba, who appeared in Court on 1st August 2012 to fix the hearing date of the main Claim, did not have the authority of the General Secretary to act for the 1st Respondent.

Without imputing improper motive on the part of his Chairman, Mr. Njenga submits that it was possible some Officers of the 1st Respondent colluded with the Claimant, leading to *ex parte* proceedings on 19th November 2012.

The application is opposed. The Claimant filed a replying affidavit, sworn on 10th May 2013. She reiterates that all Court Processes were served upon the Respondents at the 1st Respondent's Offices. The National Chairman attended the Court in answer to a mention Notice on 1st August 2012, and took the 19th November 2012 as the hearing date. There was no attendance on the part of the Respondents at the hearing.

The Court finds the position given by Mr. Njenga unconvincing. His Chairman Omboko Milemba attended Court on 1st August 2012. It is preposterous to argue that he needed the authority of the General Secretary to taken procedural directions in Court, and that because he did not have such written authority, the procedural orders given on 1st August 2012 did not bind the Union.

There is adequate evidence the Respondents were served with Summons to Enter Appearance. They filed a Statement of Response, which was served upon the Claimant. Mention Notices were served, and it was not by chance, that the Chairman attended Court and took a hearing date. Mr. Njenga alluded to the presence of collusion between the Claimant and some Officers of the 1st Respondent, to deny the Respondents a hearing. There were no affidavits sworn by the Chairman or the General Secretary, explaining their respective roles in this dispute, particularly in light of the suggestion by Mr. Njenga of the presence of collusion.

There may well be factions within KUPPET, but these cannot be allowed to affect the expeditious hearing and disposal of disputes at the Industrial Court. The Chairman, the General Secretary and the Treasurer need to get their act together in facilitating the administration of justice.

There are no grounds to excuse the absence of the Respondents from the Court when *ex parte* proceedings took place. *IT IS HEREBY ORDERED:-*

- (a) The application dated 3rd May 2013 is refused;**
- (b) Interim Stay of Execution is lifted;**
- (c) No order on the costs.**

Dated and delivered at Nairobi this 28th day of June 2013

James Rika

Judge