



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**CAUSE NO. 53/2013**

(Before Hon. Justice Hellen Wasilwa on 4<sup>th</sup> December, 2013)

ROBERT MASESE & 2 OTHERS ..... CLAIMANTS

**-VERSUS-**

THE TAILORS & TEXTILES WORKERS UNION .....  
RESPONDENTS

**R U L I N G**

The claimants herein Robert Masese & 2 others filed their Memo of Claim dated 16.6.2011 on the 17.6.2011 through the firm of Wambua, Kigamwa & Co. Advocates. The case was initially filed under certificate of urgency with an application dated the 16.6.2011. This application was finally withdrawn and the parties agreed to proceed with the main suit.

The claimants later sought and were granted leave to file an amended statement of claim which they filed on 2.7.2013. The respondents were also given leave to file their amended statement of response which they filed on 31.7.2013.

The claimants case is that they are members of the respondents union which has a branch in Eldoret. The claimants are employees of Ken – Knit/Rupa Mills Ltd in Eldoret and are entitled to be members of the respondents branch union of Eldoret.

The claimants aver that by dint of the Labour Relations Act Section 4(1)(a) they are entitled to:-

**(a) Participate in the affairs of the union.**

**(b) The services of duly elected office bearers every 5 years through secret ballot in accordance with Section 34(2)(b) of the Labour Relations Act 2007.**

**(c) To present themselves for election and contest any post in the Constitution of the Union in accordance with Section 4(2) of the Labour Relations Act 2007.**

**(d) To free and fair elections of office bearers of the union in accordance with Section 4(2) (b) of the Labour Relations Act 2007.**

**(e) To participate in union affairs devoid of harassment from the employer.**

**(f) To hold the past office holders accountable for their actions.**

**(g) To be given proper notice of elections in accordance with Rule 21(e) of the union's constitution.**

**(h) To branch office bearers leadership that is devoid of interference from the national office of the union.**

It is the claimants' contention that the respondents have flouted their rights and treated them with contempts for the reason that:-

**(a) No free and fair election have been held for the last 15 years.**

**(b) No proper notices of duly convened elections of the branch were ever issued as stipulated in the respondents Constitution.**

**(c) The respondents' current office bearers tenure in office lapsed long ago hence they hold office illegally.**

**(d) The respondents' current office bearers to perpetuate their illegal stay in office they have colluded with the claimants employer to frustrate their participation in union activities such as elections.**

**(e) The mandate to convene meetings to hold elections having been bestowed upon the respondent's secretary by the constitution of the union which has been used as a weapon to exercise oppression unto the claimants.**

**(f) The respondent persists in collecting union dues through the check off system from the claimants' salaries but has not scrutiny.**

**(g) The claimants have been barred from taking part in free and fair elections.**

**(h) The respondent through the Eldoret Branch officials whose tenure has lapsed intend to present a false notification to the Registrar of Trade Unions of office bearers without any free and fair elections having been held.**

**(i) The respondent's branch officials have colluded with other members of the union to institute proceedings in the chief magistrate court at Eldoret which is devoid of jurisdiction to halt the carrying out of any elections in order to maintain their hold in the office.**

The claimants have exhibited before this court evidence of their membership of the union by showing their payslips wherein union dues have been deducted. They have also exhibited the chronology of events leading to the elections for their union that was rescheduled to 19.1.2011 at Kipchoge Stadium then an order from the PM's Court Eldoret of 18.1.2011 stopping the election altogether and then an extract from the Registrar of Trade Union of 28.6.2011 indicating the officials of the respondents. Of course the interference of the claimants' employer in this election is also apparent with a warning that the 19.1.2011 is a normal working day and employees who fail to report on duty in pretext of elections will be dealt with as per the law.

It is the claimants' contention that they were denied a chance to participate in the union elections and therefore seek a declaration that the respondents current office bearers at Eldoret branch are not legally in office as their term of 5 years lapsed long ago and no valid election have ever since been held in tandem with respondents Constitution and the Labour Relations Act No. 14 of 2007.

The claimants therefore seek an order to nullify the elections purportedly held on 26th June 2011 and the registration of the respondents' current office bearers of Eldoret Branch as contained in the notice of change dated 28.6.2011 be canceled. They also want this court to direct the respondents Eldoret branch to convene elections in tandem with the Constitution forthwith. They also pray that this court orders the

current office bearers of the respondents Eldoret branch restrained from continuing to discharge the functions of the respondents' trade union pending the conducting of free and fair elections.

The respondents filed their amended statement of response on 31.7.2013 through the firm of J. A. Guserwa & Co. Advocates. They denied the claimants averments and the fact that the claimants are members of the respondents' union and neither have they paid their union dues. They further aver that the respondents activities were carried out in accordance with the Labour Relations Act and the Union Constitution. They submitted that the current union officials were elected on 26th June 2011 and registered by the Registrar of Trade Unions. They contend that there is no basis and/or justification for another election being called and/or held and ask court to dismiss this claim.

I have considered the evidence of both parties and their submissions. The issues for determination are as follows:-

1. **Whether claimants are members of the respondents union.**
2. **Whether the union elections were held in a free and fair atmosphere if any.**
3. **Whether the current office bearers are in office legally.**
4. **Whether the prayers sought by the claimants can be awarded.**

On the 1st issue, the claimants have exhibited before court their payslips for the month of January 2012 and December 2010. In the payslips there is an indication of union dues deduction by the claimants employer, the relevant union in this case being the respondents. The respondents have exhibited a pay roll for 2011 showing that the claimants were never members of the union. However, the respondents did not exhibit this information during the hearing but just filed it with their submissions. This document was introduced without court's leave and after the hearing and its authenticity was not tested. I will therefore ignore it and I expunge it from the record.

From the payslips produced by the claimants, they have proved they contributed to the union and the union here is the respondents by virtue of the letter their employer wrote asking them to attend work even as union elections were being carried out.

On the second issue, the manner in which the union elections were held is not shown. No notice of the same was produced. It is just the results that are exhibited with the extract from the Registrar of Trade Unions. The manner in which the elections were carried out is therefore clouded in mystery and therefore cannot be authentic. I therefore find that no proper elections were held on 26th June 2011 as alleged. The purported officials elected are therefore in office illegally. I therefore make the following orders:-

1. **A declaration that the respondents current office bearers at it's Eldoret branch are not legally in office and no valid elections have been held in tandem with respondents union's Constitution and Labour Relations Act 2007.**
2. **I hereby restrain the purported current office holders from continuing to discharge the functions of the respondents trade union's pending the conducting of free and fair election.**
3. **I direct the respondents Eldoret branch to convene elections in tandem with it's Constitution within 3 months.**
4. **Respondents to pay costs of this suit.**

**HELLEN WASILWA**

**JUDGE**

**4/12/2013**

**Appearances:-**

Claimants present

N/A for respondents

CC. Doreen