



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE 1040 OF 2012

NAIROBI COUNTY BRANCH OF KUPPET.....CLAIMANT

Vs

LAWRENCE NJOROGE & 5 OTHERS.....RESPONDENT

RULING

The genesis of the application before me is a Ruling delivered on 23rd August 2010 by this Honourable Court.

The key part of the ruling was as follows:

In the final result, the Application succeeds in terms of the unamended prayer 3 and prayer 4 of the Notice of Motion dated 23rd July 2012. And *ex abundanti cautela*, for avoidance of doubt, Benter Akinyi Opande is reinstated as branch Secretary of KUPPET Nairobi County Branch and an Order of specific performance is the natural consequence to Nairobi KUPPET Branch to ensure the reinstatement is done immediately. Costs of this Application will be borne by the 1st, 2nd, 3rd and 4th Respondents.

In essence, the Court was taking parties back to the prayers in the Notice of Motion dated 13th June 2012 by Benter Akinyi Opande. In it the prayers were as follows:

3. THAT this Honourable Court be pleased to issue interim orders of injunction against the 1st, 2nd, 3rd, and 4th Respondents from transacting the business of the Claimant including, with the Bank account, held at Equity Bank, Fourway Branch, or any other account in the name of the claimant herein until this application is heard and determined.

4. THAT this Honourable Court be pleased to issue interim orders of injunction against the 5th and 6th Respondents from convening and putting into agenda of the National Governing Council for discussion any conduct relating to this claim until this claim is heard and determined.

These prayers were sought to be amended by adding the words **and claim** after the word **application** in prayer 3. After the Court deleted the amendments in the Amended Notice of Motion dated 23rd July 2012, the prayer numbers 3 and 4 would have read as reproduced above. It would seem that the Order extracted on 27th August 2012 was erroneous as it placed new words in the Order extracted and deviated from the prayers as stated in my Ruling.

Counsel must be dissuaded from making such attempts at being clever by half. The Court deprecates the situation where parties draw up decrees or orders and without seeking approval or input of the opposite

side make haste for the Registry and extract Orders that were not granted.

As a consequence of the foregoing, this Court cannot allow an illegality to stand. The Court order extracted on 27th August 2012 is vacated and in its place the following Order is made.

0. Benter Akinyi Opande be and is hereby is reinstated as branch Secretary of KUPPET Nairobi County Branch and consequently an Order of specific performance do and is hereby issued to the Nairobi KUPPET Branch to ensure the reinstatement is done immediately.
0. An order of injunction do and is hereby issued against the 1st, 2nd, 3rd, and 4th Respondents from transacting the business of the Claimant including, with the Bank account, held at Equity Bank, Fourway Branch, or any other account in the name of the claimant herein.
0. An order of injunction do and is hereby issued against the 5th and 6th Respondents from convening and putting into agenda of the National Governing Council for discussion any conduct relating to this claim.
0. Costs of this Application will be borne by the Counsel for the Claimant **personally**.

It is so ordered.

Dated and delivered at Nairobi this 26th day of September, 2012

Nzioki wa Makau

JUDGE