



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO.463 OF 2011

BENTA AKINYI OPANDE1ST
CLAIMANT/APPLICANT

PHILIS SAMBI MWACHILUMO.....2ND
CLAIMANT /APPLICANT

MONICA NJOKI KINGURU GITHINJI.....3RD
CLAIMANT /APPLICANT

BEATRICE M. AMEMBA.....4TH
CLAIMANT/APPLICANT

MOSES OWITI MBORA.....5TH
CLAIMANT/APPLICANT

LAWRENCE

NJOROGE.....6THCLAIMANT/APPLICANT

VERSUS

KUPPET NAIROBI BRANCH.....1ST
RESPONDENT

SECRETARY GENERAL KUPPET.....2ND
RESPONDENT

REGISTRAR OF TRADE UNIONS.....3RD
RESPONDENT

MATTER IN ISSUE: APPLICATION DATED 29TH APRIL 2011.

Ms Benta Akinyi Opande and 5 others represented by Mr. Oduor, Advocate, shall hereinafter be referred to as “the Applicants”. Kuppet Nairobi Branch represented by Mr. Ochieng, Kuppet and Registrar of Trade Unions shall hereinafter be referred to as “the Respondents”. The application was heard in Court sitting at Nairobi on the 3rd may 2011. The Applicant relied on the notice of Motion, the affidavit in Support and the representatives of the parties made oral submissions.

RULING

The Applicants filed a Notice of Motion dated 29th April 2011 under the provisions of section 12 of the

Labour Institutions Act and other enabling provisions of the law. The application was filed under a certificate of urgency.

The application sought several prayers including that the application be certified as urgent and be heard ex-parte. Other prayers were that the court do reinstate the suit which has been dismissed on 28th April 2011 for non-attendance, and for reinstating the orders which had been issued on 31st March 2011 and any other orders which the Court may deem fit. The application is supported by an affidavit sworn by Oduor Henry John. He depones that he is the Advocate for the Applicants and is well acquainted with the matter. He depones that when the matter was called in Court on 28th April 2011, he was not aware that it was the matter where he was the Advocate as the Advocate who had held his brief in the morning was not known to him. He depones that this fault was not deliberate as he was in Court and was prepared to proceed with the matter. He prays for reinstatement of the matter so that the dispute may be heard and determined on merit.

Mr. Ochieng who represented the 1st Respondent used points of law to oppose the application. He submitted that the application for review is brought under wrong provision of law and stated that review application should be brought under provisions of section 26 of the Labour Institutions Act. He also stated that the Respondents have scheduled elections for 28th May 2011.

The other Respondents did not appear for the hearing and did not file any affidavits of reply.

In his oral submissions, the advocate for the Applicant submitted that this was not an application for review but was for reinstatement of a matter which had been dismissed for non attendance and relied in provisions of section 12(5) of the Labour Institutions Act.

The Court has carefully considered the application in particular and matter in general.

In a memorandum of claim dated 24th March 2011, the applicants have sought orders that the 3rd Respondent; that is, the Registrar of Trade Unions be restrained from adopting Form Q which contained results of an election for 1st Respondent held on 5th April 2011; that the elections for 1st Respondent held on 5th March 2011 be declared null and void and that the elections of the 2nd Respondent be held as stipulated in the union constitution of the 2nd Respondent. The 1st Respondent has filed a Memorandum of Defence dated the 20th April 2011. When this dispute was scheduled for hearing on 20th April 2011 the representatives of the parties did not attend Court at 10.00 O'clock in the forenoon. It has emerged from a perusal of the affidavits in support of this application that both representatives of the parties had gone to the High Court for hearing of an application for judicial Review in Nairobi HCC miscellaneous Civil application No. 86 of 2011. They were represented by advocates who held briefs on their behalf. The court directed that the dispute be heard in the afternoon when the matter was called in the afternoon the Court used the names of the advocates who held brief in the morning sessions. This observation corroborates the deposition made by the advocate for the applicant. He could be excused for not being prompt in answering to the call for representation.

It is observed that section 12 of the Labour Institutions Act, 2007 grants to this Court wide jurisdiction in handling issues referred to the Court. Section 34(4) of Labour Relations Act 2007 provides that disputes arising directly or indirectly from union elections may be referred to this Court. Accordingly the dispute arising from elections of the 1st Respondent is properly before this court.

Section 12(5) of the Labour Institutions Act provides
“In deciding on a matter, the Industrial Court may make an order it may deem necessary to promote the objects of this Act”.

Accordingly the Court has powers to make orders as sought by the Applicants.

Upon careful consideration of the application, the affidavit in support and the oral submissions made by the representative of the Applicant and of the 1st Respondent, the court finds and holds that the Applicant

have established the need for exercise of discretion by the court. Accordingly the application as made is allowed. The order issued on 28th April 2011 dismissing this dispute be and is hereby vacated and set aside. The dispute shall be heard and determined on merit on a date to be fixed. The order stopping the elections for the 2nd Respondent for ninety (90) days is hereby re-issued. The 3rd Respondent is hereby restrained by an Order of injunction from implementing Form Q which sought to change the officials of the Nairobi Kuppet Branch until hearing and determination of this dispute.
Costs shall be in the cause.

Dated in Nairobi this 5th day of May 2011

Hon. Mr. Justice Isaac E.K. Mukunya

JUDGE

Nashon N. Udoto

J.M. Kilonzo

MEMBER

MEMBER

The Industrial Court of Kenya

National Social Security House

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NAIROBI