



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 285 OF 2019

JOHN MARINGA.....CLAIMANT

VERSUS

HARAMBEE SACCO.....RESPONDENT

RULING

The matter for determination is on Notice of Motion dated 24.5,2019 being determined together with application dated 26.8.2019. The application dated 24.5.2019 filed on 28.5.2019 seeks the following orders;-

- 1. This application is extremely urgent and should be heard Ex-parte at the first instance.*
- 2. The Honourable Tribunal be pleased to issue an Order of Injunction compelling the defendant not to conduct Harambee Sacco Kirinyaga Branch Treasurer elections scheduled on 27.5.2019.*
- 3. The Honourable Tribunal be pleased to issue an Order compelling the defendant not to allow occupancy for the specific seat of Harambee Sacco Kirinyaga Branch Treasurer.*
- 4. The Honourable Tribunal be pleased to issue an Order compelling the defendant to reinstate the plaintiff back to the position he held immediately prior to this court.*
- 5. The Honourable Tribunal be pleased to direct the defendant to pay General damages for psychological torture, trauma and apprehension for his life.*
- 6. The Honourable Tribunal be pleased to issue an Order directing the Chairman and the Directors of the defendant see to it that the Orders are enforced.*
- 7. Costs be provided for.*

Based on the grounds on the face of the application and supported by an affidavit of John Maringa, the claimant herein.

The application is opposed vide the replying affidavit of Rose Mary Ouko, the delegates relationship officer filed on 12.6.2019. And the supplementary affidavit filed on 20.6.2019.

The application filed a further affidavit dated 10.6.2019.

parties canvassed this application by way of written submission.

The Notice of Motion application filed on 26.8.2019 seeks for leave to file a supplementary affidavit in support of the application dated 24.5.2019. The same is opposed by the Replying Affidavit filed on 11.9.2019. We note that the later application was filed after the parties had filed their written submission and the ruling date had already been issued for 21.8.2019 that the ruling was not ready. And the applicant filed that application, we will advise this issue later in the ruling.

Applicant's written submission filed on 27.6.2019 submit that the applicant was elected as a delegate of the respondent and treasury in February, 2017. That in 2019, the respondent held an Annual General Meeting and he was never invited withstanding that he was the Treasurer.

That no explanation was given to the applicant as to why he was not invited to the Annual General Meeting.

That, therefore he was denied his monthly allowance for the months February, March, April and May. That he had worked for 2 years with the respondent with no unfavorable performance.

That he was not issued with any notices prior to being discharged by the respondent.

The applicant therefore seeks injunctive order against the respondent in prayer 2 not to hold elections on 27.5.2019 a prayer which is over taken by events noting that the application was filed on 28.5.2019. Therefore this prayer is spent.

He also sought injunctive order compelling the respondent not to allow occupancy of the treasuries seat (prayer 2) and for reinstatement back to the position he held (prayer 3), general damages for psychological trauma and apprehension for his life (prayer 5).

That he has established a prima facie case with the probability of success. And other principles held in **GIELA .VS. CASSMAN BROWN AND CO. LTD (1973) EA**, 358. That he was on annual leave when he was terminated as a delegate and was not invited for the elections. Yet he was the standing treasurer.

The respondent in the written submission filed on 10.7.2019 have submitted that the applicant lost his position when he was transferred from Kirinyaga branch to Mathira East sub county on 16.7. 2018 and this was in line with the by - laws clause 39(60) which provides that the delegates term shall be 3 years and eligible for re-election thereafter unless transferred from the electoral zone or ceases to be salaried.

That the said transfer was for the effect that he lost the right to attend the respondent's 2019 annual delegates meeting.

That the members of the branch participated in the by - elections held on 29.5. 2019 without any complaints and accordingly replaced the claimant with no complaints whatsoever. That the branch chairman vide his letter dated 30.4.2019 while informing the members of the elections dated for 27.5.2019 clearly indicated that the elections culminated as a result of the transfer of the branch Secretary and the branch treasurer.

That the claimant was not barred from defending his position. That essentially the claimant's prayers have been overtaken by events owing to the fact that elections were held on 27.5.2019.

That the claimant did not produce any documents to counter the transfer but only produced his scholarship documents. That there was no complaint by any other members of Kirinyaga Branch concerning the by- elections to replace the claimant.

That the application of the applicant has no merit and should be dismissed.

The application filed on 26.8.2019 by the applicant seeks leave to file a supplementary affidavit after parties had already filed written submission and the ruling date issued. The application is opposed by the replying affidavit filed on 11.9.2019.

The gist of the application was that the respondent alleged that the claimant was no longer stationed in Kirinyaga County but had been transferred to Mathira East, therefore he does not hold any position of an official at the Kirinyaga Branch. That the allegations of his transfer were untrue and bogus. That he had requested inspector general of police to confirm his work station but did not receive a reply until the 20.8.2019, hence the reason he was seeking leave to have the said matter admitted.

In reply the respondent submitted that the claimants application was an afterthought, since the tribunal had served a ruling date for the application dated 24.5.2019. On 21.8.2019 and the same was deferred. That the claimant during mention to confirm filing of submission did not inform the tribunal of his intention to file further documents.

That a replacement of the claimant was procedural and on 16.7.2018 the claimant was granted permission by the deputy Inspector General to travel to Hungary for his scholarship and he was given travel clearance to leave Kenya on 11.9.2018 and travel back on 31.12.2022 as per annexure JN04. That in such circumstances he would not have been able to perform his duties as provided in the by-laws clause 39.8.

That the letter marked RO3 dated 1.6.2019 informed the respondent that the claimant had been transferred from Mathira East Sub County to Mandera East.

That all the annexed letters have been overtaken by events since the claimant is no longer stationed at Kirinyaga County. That the allegation that the claimant has received the house allocation schedule to confirm his house allocation was obtained on 21.8.019, when the matter was before the tribunal pending a ruling.

That the said letter JNO2 is neither dated nor signed nor certified by the allocation officer. Hence the same is not authentic.

We have carefully considered in regard to Notice of Motion application dated 26.8.2019 and since the parties have already filed the documents and the response, we accordingly deem the affidavit as properly on record and leave is granted for both parties to be in the matter and the same affidavits are admitted as on record. This has no prejudice to any party in the matter noting that the Co-operative Tribunal is restricted by the law of evidence and technicalities as provided in Section 78(1) and Rule 3 and 4 of Co-operative Tribunal Practice and Procedure Rules 2009.

In essence the application dated 26.8.2019 is granted as prayed with costs in the cause,

On the application dated 24.5.2019 we have carefully considered the evidence on record and submission of the parties. We have also looked at the by-laws of the respondent on the governance structure and electoral zone as provided for in clause 39. Specifically clause 39.6(iii) indicates that "*every members of the delegate shall belong to any electoral zone based on his place of employment and it is the delegates responsibility to inform the board of any change of Electrol Zone/Employment.*"

Clause 39.6(iv) is also clear that "*the term of the delegates SHALL be three years and they are eligible for re-election thereafter UNLESS transferred from the Electrol zone.....*"

In this regard we have noted the letter dated 16.7.2018 for deployment of administration police personnel addressed to the claimant informing him of his transfer to Mathira East Sub County and requiring him to report not later than 20.7.2018. (Annexure RO1). The same letter is minuted that the claimant reported on 28.8.2018 and deployed accordingly. There is also a letter dated 1.6.2019 indicating the deployment of the claimant to Mandera County.

We note that the notice for election was issued by the Chairman on 30.4.2019 and elections were carried out on 27.5.2019., almost one year after the transfer of the claimant.

The by-Laws of the respondent are clear in the circumstances and since the claimant was already re-deployed when the election were held on 27.5.2019, we find that the submission and the orders sought by the claimant have not met the threshold for issuance of an injunction as held in GIELA Case(supra).

We therefore find that these prayers are far fetched. We have noted all the documents filed in the matter and nothing shows that

there was any unfairness or irregularity by the respondent.

We note that the applicant in the main suit seeks for similar orders as these in the current application as per the plaint filed on 28.5.2019. However we also note that there is a counterclaim filed by respondent.

In light of the above discussions we find that the Notice of Motion application dated 24.5.2019 and filed on 28.5.2019 has no merits and dismiss the same with costs.

Read and delivered in open court, this 7th of November 2019

In the presence of:

Claimant: Mbuthia holding brief for Okato for the claimant.

Respondent: None appearance.

Court Assistant: Leweri and Buluma

B.Kimemia - **Chairman-signed**

R.Mwambura - **Member-signed**

P.Swanya - **Member-signed**



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