



Case Number:	Petition E012 of 2021
Date Delivered:	20 Apr 2022
Case Class:	Civil
Court:	Employment and Labour Relations Court at Kisumu
Case Action:	Ruling
Judge:	Radido Stephen Okiyo
Citation:	Jason Ochieng Kibondo & 3 others v John Ogutu & 4 others [2022] eKLR
Advocates:	E.A. Ochieng & Co. Advocates For 1st, 2nd, 3rd and 5th Respondents, Leonard John Co. Advocates
Case Summary:	-
Court Division:	Employment and Labour Relations
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Petition dismissed
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. E012 OF 2021

IN THE MATTER OF TRADE DISPUTE BETWEEN

JASON OCHIENG KIBONDO.....1st
PETITIONER

EDWARD OKUMU
WANJIRA.....2nd PETITIONER

CHARLES OTIENO
CHILA.....3rd PETITIONER

BEATRICE ADHIAMBO
OTIENO.....4th PETITIONER

VERSUS

JOHN
OGU
TU.....

.....1st RESPONDENT

FRANCIS
WANGARA....

.....2nd RESPONDENT

JOYCE ANYANGO
ODERO.....3rd RESPONDENT

COUNTY LABOUR
OFFICE.....4th RESPONDENT

KENYA UNION OF SUGAR PLANTATION & ALLIED WORKERS.....5th RESPONDENT

RULING

1. On or around, the Kenya Union of Sugar Plantation & Allied Workers (the Union) gave notice of branch elections for its branches including Awendo Sony branch.
2. Joyce Anyango Odero (3rd Respondent) offered herself for the position of 2nd Assistant Secretary-General. The elections were set for 30 January 2021.
3. The Petitioners felt that the 3rd Respondent did not meet the eligibility/qualifications, and they moved the Court on 10 February

2021, seeking to interdict the branch elections.

4. The Court declined to grant any injunctive orders and directed that the Petition and Motion be served and that the parties file and exchange responses and submissions ahead of judgment on 26 May 2021.

5. On 9 March 2021, the Petitioners filed another application seeking various interlocutory orders. The Court declined to allow the application on 16 March 2021, and the Petitioners were granted leave to file and serve an Amended Petition.

6. The 1st, 2nd, 3rd, and 5th Respondents filed a Response to the Petition on 12 March 2021.

7. The Amended Petition was filed on 22 March 2021.

8. On the same day, the Petitioners filed an application seeking an order to reinstate the 4th Petitioner to the office of branch treasurer. Other orders were also sought. The Court granted an order reinstating the 4th Petitioner to office.

9. When this application came for an *inter-partes* hearing on 16 April 2021, the Petitioners withdrew the application filed on 9 March 2021. The Court directed the Respondents to respond to the Motion filed on 22 March 2021 and the Amended Petition within set timelines.

10. The Respondents filed a Preliminary Objection to the application on 22 April 2021, and on 17 June 2021, the Court directed the Petitioners to serve Hon Attorney- General on behalf of the 4th Respondent. The Respondents were also directed to serve the Preliminary

Objection.

11. The Court further directed the parties to file and exchange responses and submissions on the Preliminary Objection and that a Ruling would be delivered on 15 December 2021.

12. On 29 June 2021, the Petitioners filed a contempt application alleging that the Respondents had not reinstated the 4th Petitioner to office.

13. On 6 December 2021, the Court declined the Preliminary Objection and directed the Respondents to file a proper preliminary objection devoid of disputed facts and arguments.

14. The Respondents complied and filed a Notice of Preliminary objection dated 9 December 2021, contending:

(i) THAT this Honourable Court lacks jurisdiction to hear and determine this suit, as the suspension of the 4th Petitioner, which the 4th Petitioner is aggrieved about should be addressed within the provisions of the Constitution of the 5th Respondent and not before the Honourable Court.

(ii) THAT the Petitioners' suit has been prematurely brought to Court before exhausting the alternative avenues for resolving the 4th Petitioners grievance as within the 5th Respondents constitutional provisions particularly under Rule 15(h)(iv) of the 5th Respondents constitution.

(iii) THAT the Petitioners suit and application offends the entire constitution of the 5th Respondent and more specifically Rule 15(f) and Rule 15(h)(iv) and for the benefit of the Court, which states in part that: Rule No. 15(f) The Branch Committee shall be responsible for the administration of the branch subject to the control of the National Executive Board... Rule No 15(h)(iv) Any branch officer may be suspended from office by a three quarters (3/4) majority decision of the Branch Executive Committee which shall have powers to appoint one of its members being among the office-bearers therein to act in his place pending the decision of the Annual/Special Conference as to whether subject to appeal by a suspended officer, he should be removed altogether.

(iv) THAT the Petitioners suit and application offend Article 41(4)(a) of the Constitution of the Republic of Kenya, 2010 and for the benefit of this Court, which states that: Article 41(4) every trade union and every employers' organisation has the right – (a) to determine its own administration, programmes and activities.

(v) THAT the Petitioners suit and application offends section 8(a) of the Labour Relations Act, 2007 and for the benefit of this Court which states: Rights of trade unions, employers' organisations and federations

(vi) THAT the 1st – 3rd Petitioners are strangers before this Honourable court and do not have any locus standi to be before this Honourable Court as they do not have any cause of action against the Respondents, and neither are they complaining of any of and/or affected by the decision alleged to have been committed by the Respondents in any manner whatsoever as the alleged decision to suspend the 4th Petitioner was against the 4th Petitioner alone and which process they were not a party to.

15. The Court gave directions on 31 January 2022. During the same session, the Court removed the 1st Petitioner from the proceedings upon receiving information from his advocate that he had passed away.

16. The Respondents filed their submissions on 25 February 2022, while the Petitioners submissions were not on record by 28 March 2022 as directed.

17. The Court has considered the material placed before it.

18. The Petitioners outlined two primary disputes in the Amended Petition.

19. First was the question of the eligibility and qualification of the 3rd Respondent to vie for the office of Assistant Secretary-General of the Union. The Petitioners asserted that the 3rd Respondent did not meet the integrity test because she had not been elected at the branch to qualify for a national position.

20. Second, the Petitioners challenged the suspension of the 4th Petitioner as the branch treasurer.

21. The 3rd Respondent was elected and assumed the office of Assistant Secretary-General upon registration by the Registrar of Trade Unions on 30 January 2021.

22. In objecting to the jurisdiction and competence of the Petition, the Respondents cited Rule 6 and 15 of the Union's constitution and the legal provisions governing the administration and operations of trade unions.

23. The Court has examined the aforesaid provisions of the law and the Union's constitution.

24. The constitution of the Union has not set out any dispute resolution avenues in respect of complaints regarding complaints arising from elections to offices within the Union.

25. Rule 15 of the Union constitution is in general terms, and the Court is of the view that it cannot be used to restrict a judicial challenge to the election of union officials.

26. On the question of the suspension of the 4th Petitioner from the office of branch treasurer, the Union's constitution merely gives the power to suspend but does not outline the avenues open to the person suspended.

27. Court redress cannot, therefore, be limited based on general provisions.

28. The Court finds the Preliminary Objection without merit, and it is dismissed with costs to the Petitioners.

Delivered through Microsoft teams, dated and signed in Kisumu on this 20th day of April 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioners

E.A. Ochieng & Co. Advocates

For 1st, 2nd, 3rd and 5th Respondents,

Leonard John Co. Advocates

For 4th Respondent did not participate

Court Assistant Chrispo Aura



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