

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 280 OF 2013

UGANDA NURSES & MIDWIVES UNION (UNMU) ::: PLAINTIFF

VERSUS

NASSUNA EDITH::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff, The Uganda Nurses and Midwives Union (UNMU) represented by M/s Tuhimbise & Co Advocates filed this suit against one Nassuna Edith.

After service of process onto the defendant failed, court ordered that she be served by substituted service. This was done on 9th November 2012 through the Daily Monitor Newspaper. Nevertheless the defendant did not file a defence. Court allowed the plaintiff to proceed ex parte.

Facts constituting this suit as can be deduced from the evidence of PW1, PW2 and PW3 are that the plaintiff is a Labour Union composed of Nurses and Midwives of Uganda. In November 2002 upon completion of the plaintiff's constitution, an interim executive committee was elected to assist in the registration of the plaintiff as a Labour Union. The

said committee was also mandated to organise a formal election which was never done. The interim executive committee comprised of Catherine Iwolu as National Chairperson, Nassuna Edith (the defendant) as General Secretary, Peligrio Mbabazi as Deputy General Secretary Ursula Kizza as the National Treasurer, Atim Joyce Lucy as Vice National Treasurer, the late Bataringaya Patrick as Secretary for health and safety, Achieng Florence as Secretary for Gender, Mufumba Emmanuel as Organising Secretary, Mutabazi Jemimah as Secretary for Research and Ethics and Otule J. Florence as a representative to NOTU, and Black Zahayo Masereka as Vice Chairperson.

The interim Executive committee was also mandated with organising formal elections for new office bearers within two years from 22nd November 2002 which was never done due to the alleged conduct of the defendant who refused to convene meetings in consultation with the Chairperson as mandated under Article 15(iii)(vii) of the plaintiff's constitution. The plaintiff however alleges that the defendant failed, neglected or refused to perform her duties but carried out several unlawful acts such as opening an unlawful Bank account in the names of the plaintiff in Stanbic Bank Wandegaya branch. When summoned to attend meetings to discuss her misconduct, the defendant refused to attend. As a result in its meeting of 14th January 2009, the executive committee relieved the defendant of her duties because:

- i) She had been appointed as a Senior Principal Nursing Officer.
- ii) She had failed to call executive meetings for over 3 years.
- iii) She had failed to call the annual General Meeting for a period of five years.
- iv) She had failed to call for a General Delegates Conference for a period of nine years.
- v) She forged minutes of an alleged Executive Meeting dated 8th July 2006 which she used to open a bank account in the names of the plaintiff.

In its meeting of 19th February 2009, a new executive committee meeting was elected by $\frac{2}{3}$ of the members who subscribe to the plaintiff and the removal of the defendant was approved. Prior to this, the defendant called an earlier meeting on 29th January 2009 which she transformed into a delegate's conference at Rwizi Hotel Mbarara which elected and returned the defendant as General Secretary of the plaintiff and the defendant has continued to hold out as such transacting business on behalf of the plaintiff which is said to be unlawful and contrary of the constitution of the plaintiff and the law governing Trade Unions.

The plaintiff avers that the defendant's acts have caused it inconvenience for which it claims general damages.

The plaintiff therefore prays for judgment against the defendant for:-

- (a) A declaration that the defendant is not the General Secretary of the plaintiff.
- (b) A declaration that all the acts of the defendant since her removal are unlawful and therefore null and void.
- (c) A declaration that all meetings called by the defendant since her removal are unlawful and therefore null and void.
- (d) A permanent injunction restraining the defendant from holding out as General Secretary of the plaintiff and pursuing the unlawful acts and meetings be granted
- (e) An order that the defendant returns the plaintiff's property such as the Registration Certificate in her possession.
- (f) General damages.
- (g) Punitive damages.
- (h) Costs of the suit.

At the commencement of the trial of this suit, the following issues were framed for resolution:

1. Whether the removal of the defendant from office was lawfully done.
2. Whether the acts of the defendant are unlawful and therefore null and void.
3. What remedies are available.

After a careful consideration of the evidence adduced by the plaintiff's witnesses and the exhibited documents marked P1 to P11 and considering the law applicable as well as the submission by Mr. Tuhimbise for the plaintiff I will go ahead and resolve the issues as listed starting with issue 1.

Issue 1:

According to the evidence of PW1 and PW2, on the 14th January 2009, during the plaintiff's executive meeting it was resolved that the defendant be relieved of her duties of General Secretary of the plaintiff. This is indicated in the minutes and letter tendered in evidence and marked Exh. P2 and P3 respectively. The justification for the defendant's removal from office is documented.

According to the evidence of PW1 which is corroborated by that of PW2, in November 2002 upon completion of the plaintiff's constitution an interim executive committee composed of among others Nassuna Edith (the defendant) as General Secretary, PW1 as Vice Chairperson and PW2 as National Chairperson was elected to assist in the process of Registration of the plaintiff as a Labour Union. The interim executive committee was mandated to organise formal elections for new office bearers within two years from 22nd

November 2002. This was never done and the defendant was responsible. The defendant had, under Article 15(iii)(vii) of the plaintiff's constitution Exh. P1, to convene meetings as and when necessary in consultation with the Chairperson which she refused to do. She also failed to call Executive meetings for a period of three years. She failed to call the Annual General meeting for a period of five years and a general meeting for a period of five years and a General delegates conference for a period of nine years contrary to the law S. 33(1)(a) of the Labour Unions Act, 7 of 2006 provides that:-

“A registered organisation shall in addition to any other meeting, hold a general meeting which shall be its annual general meeting in each calendar year!!

I agree with learned counsel for the plaintiff that by failing to call for an annual general meeting for a period of five years, the defendant acted contrary to S. 33 of the Labour Unions Act.

The uncontroverted evidence adduced by the plaintiff reveals that the defendant carried out several unlawful acts for example she forged minutes (Exh. P. 14) of an alleged Executive meeting which she used to open a Bank account at Stanbic Bank Wandegeya in the name of the plaintiff. On the said minutes she included names and signatures of PW1 and PW2 as members of the executive who had attended yet they did not attend the said meeting.

A close look at the first page of Exh. P14 shows that among the members present for the meeting was Catherine Iwolu PW2 in her capacity as Chairperson. It also shows one Katusiime V as a Committee Member. However the same Katusiime V is indicated as Chairperson. When it came to signing the Minutes, PW2 allegedly signed the minutes in her capacity as Chairperson. However it is the evidence of PW1 and PW2 that they did

not attend the alleged meeting and PW2 did not sign the said Minutes. The actions of the defendant contravened Article 29 of the plaintiff's Constitution which stipulates that:-

“The union shall have a current account or savings accounts in any Bank in Uganda, to be operated under the joint signatories of the Chairperson, the National Treasurer and the National General Secretary”.

Although PW2 was the Chairperson she was not signatory to the account yet she was supposed to be a mandatory signatory. Instead the account is being operated by Katusiime. V who has never been the plaintiff's Chairperson.

One of the reasons the defendant was removed from office was that she had been appointed as a senior civil servant. She was appointed Senior Principal Nursing Officer yet under Article 15(iii)(v) of the plaintiff's Constitution;

“The General Secretary shall be a full time employee of the Union after having been elected to the office.....”

Section 31(3) of the Labour Union Act, 7 of 2006 provides that:-

“A person shall not hold office in a registered organisation on full time basis if he or she is employed in another institution where he or she is paid a salary.”

Therefore it was illegal for the defendant to hold the office of General Secretary when she was a full time and paid Civil Servant. This court cannot sanction what is illegal. If this court does not declare that by holding that office the defendant offends S. 31(3) of the

Labour Union Act, 2006 it would be sanctioning an illegality. See **APPOLLO NYANGASI & ANOTHER Vs HON SAM LYOMOKI HCCS 208 OF 2008.**

As a full time General Secretary, the defendant was earning a salary from the plaintiff as well as earning a salary from Government. This is unlawful. It has been shown by evidence that after her removal from office, the Nurses who are Members of the plaintiff and the general public were notified as per Exh. P6. The defendant was removed from the office in a meeting held on 19th February 2009 (Exh. P 9 & 8).

As evidenced in the testimonies of both PW1 and PW2, during the Extra-ordinary delegates congress meeting of the plaintiff a new executive committee composed of Janet D. Obuni as president, Florence Rwabahima as Vice President, the late Patrick Bateganya as General Secretary, Black Zakayo Masereka as Deputy General Secretary, Joyce Lucy Atim Treasurer, Catherine Iwolu as Representative to Labour Centre, Gerald Amandu as Secretary for Research, and Ethics, Justus Cherop as Secretary for Gender and Theopista Kabaliisa as Welfare were elected by $\frac{2}{3}$ of the subscribing members of the plaintiff. When Patrick S Bateganya passed away he was replaced by Zachayo Masereka as General Secretary.

With the above uncontroverted evidence, I am satisfied that the defendant was relieved of her duties as General Secretary lawfully. This was done by properly constituted bodies basing on sound reasons. The defendant was accorded a right to be heard through invitations for meetings but she refused to attend.

Consequently I will find that the removal of the defendant from office of General Secretary of the plaintiff was lawful.

Issue 1 is answered in the affirmative.

Issue 2:

There is evidence on record from the testimonies of both PW1 and PW2 that on 29th February 2009, the defendant called an unlawful meeting which she transformed into a delegates conference at Rwizi Arch Hotel Mbarara. The said meeting was attended by non-legitimate members of the plaintiff as indicated in Exh. P5. PW3 Sarah Masete attended the said meeting and confirmed that a meeting which was called as an emergency was converted into an Extra-ordinary (special) Delegates conference. According to PW3, in that meeting a new Executive Committee was purportedly elected and the defendant was returned as General Secretary of the plaintiff yet at the time the meeting was called, the defendant had been removed from office. In view of my holding in issue 1, this move was not only unlawful but also null and void. When PW3 realised that the meeting was unlawful, she disassociated herself from the same. Despite all this, evidence has it that the defendant has continued to hold out as General Secretary for the plaintiff. According to the evidence of both PW1 and PW2 the defendant went ahead and signed a recognition agreement between Government and the plaintiff on behalf of the plaintiff (Exh. P11) and has continued to unlawfully retain the plaintiff's original certificate of Registration.

I agree with learned counsel for the plaintiff that this caused the plaintiff great inconvenience.

In the result, I will find that actions of the defendant have all along been unlawful and null and void. I will also answer issue 2 in the affirmative.

Issue 3:

Since I have answered both issues 1 and 2 in the affirmative, I will find that the plaintiff has proved on a balance of probabilities that it is entitled to the following remedies which I accordingly grant.

- (a) A declaration that the defendant Nassuna Edith is not the General Secretary of the plaintiff having lawfully been removed from that office.
- (b) A declaration that all the acts of the defendant since her removal from office are unlawful and therefore null and void.
- (c) A declaration that all the meetings called by the defendant since her removal from office of General Secretary are unlawful and therefore null and void.
- (d) A permanent injunction to issue against the defendant restraining her from holding out as General Secretary of the plaintiff.
- (e) The property of the plaintiff in possession of the defendant including the original certificate of Registration should be returned to the plaintiff.

(f) Regarding a claim for general and punitive damages, I am unable to grant the same since the plaintiff has not proved on a balance of probabilities that it is entitled to the same. There has been no proof of any injury to the plaintiff, the latter being comprised of numerous members many of whom did not testify.

(g) The plaintiff shall however get the taxed costs of this litigation.

Stephen Musota

J U D G E

11.12.2013