



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 452 OF 1981**

**OMONDI.....APPELLANT**

**VERSUS**

**SECRETARY GENERAL KENYAMANAGEMENT**

**STAFF ASSOCIATION.....RESPONDENT**

**JUDGMENT**

By his plaint, the plaintiff claims that he was the full-time registered office holder of the office of National Organizing Secretary of the Kenya Management Staff Association, a registered trade Union under the Trade Unions Act (the Act) having been elected to that office at the Association's annual conference held on October 12, 1980, and that he was paid a salary of Kshs 700 plus allowances.

Paragraph 4 of the plaint contains an extract from the Association's registered constitution. Under paragraph 5 of the plaint, the plaintiff asserts that the defendant's letter dated January 24, 1981, referring to minutes of a meeting convened by the defendant on January 23, 1981, purporting to remove the plaintiff from his office was in contravention of Section 9(f) of the constitution of the Association. The plaintiff argues that the intended removal from office was null and void because no Executive or Central Council existed, only the Central Council was empowered to remove a National official and no notice of the meeting to discuss the removal was served on the plaintiff. Paragraph 9 of the plaint mentions the prayers sought by the plaintiff.

The salient features of the plaintiff's evidence were that at the annual meeting of the Association held on October 12, 1980, no Executive or Central Committee was elected, that his appointment was revoked and he has not worked for the Association since January 24, 1981.

Cross-examined, the plaintiff replied, *inter alia*, that it was his duty to recruit members, that he did not have a letter from the Treasurer authorizing him to receive money on behalf of the Union, that it is not true that he was not employed full time and that he still is the National Organizing Secretary of the Association.

Mr Nowrojee for the defendant made a submission of no case to answer and said he would not adduce any further evidence. The first submission was that the plaintiff was not an employee of the Association as he was not approved as required under Section 29 of the Act. Secondly, that as a paid employee, as one holding certain powers, the plaintiff has no cause of action. Thirdly that the plaintiff has sued a non-existent entity; there being no legal provision for suing the Secretary-General. Fourthly, that it had not been shown that Adell has not acted otherwise than as an agent or servant of the Association, that the

Union should have sued and, finally, that the suit is misconceived as against the Secretary-General.

No evidence was adduced to show that there was in existence at the material time a Central or an Executive Council for the Association as is provided in the Constitution of the Association. It is however clear from the material Constitution that the General Secretary is empowered to assign duties to the National Organizing Secretary. It follows that the General Secretary can properly question the acts or decision of the National Organizing Secretary and that in so doing, the General Secretary would be acting on behalf of the Association.

It is relevant and significant that the office of General Secretary is an elective one.

The plaintiff attended the meeting of January 23, 1981. The purpose of the meeting was explained to the plaintiff and he was asked to defend himself against specific allegations directed at him. The record of the meeting shows that the plaintiff defended himself. Not once did the plaintiff question the legality of the meeting. It cannot be proper or just for the plaintiff to urge that no valid business was carried out at the meeting wherein it was resolved that the plaintiff's powers be revoked and his full-time employment be terminated.

The substance of the allegation against the plaintiff was of importance to the Association in so far as the revenue of the Association was affected. It would appear that the plaintiff's explanation and defence were not satisfactory. I would hold that the plaintiff's casual and argumentative answers prompted the meeting to resolve as it did.

The plaintiff and another were appointed as full-time employees of the Association after the sanction granted under Section 29(i) (ii) of the Act. The plaintiff was paid a salary and allowances by the Association. The Association's employer could therefore under the contract of employment dismiss or discipline the plaintiff and the meeting of January 23, 1981, attended by the Officials of the Association including the Secretary-General discussed the plaintiff's role and conduct in the Association. On any fair view of the matter, it cannot be said that that meeting was a private one doing private business.

On the evidence and on my appreciation of it, the matter relating to the full-time employment of the plaintiff could be discussed and determined at the meeting of January 23, 1981. Any decision reached would be binding on the Association. With respect, Section 9 (f) of the Constitution could not apply to the full-time employment of the plaintiff. The plaintiff was notified of the complaint against him and as the records indicate, the plaintiff did not hesitate in replying. The meeting on January 23, 1981, was not a group of people; the officials who met were not instigated by the Secretary-General to sack the plaintiff. Having seen the plaintiff, I am able to say that he would have protested vigorously if he had fear or suspicion that the officials and the trustee had no authority to discuss the allegations leveled against the plaintiff.

A submission was made on behalf of the defendant that the plaintiff had not received the necessary clearance for this full-time employment. That is an incorrect view. The plaintiff's full-time employment must be deemed to have commenced on March 28, 1980 - the date of the letter whose contents were approved by the Registrar of Trade Unions on April 11, 1980.

The suit should have been filed against the Association which is liable under Section 25 of the Act on any contract entered into by it or by an agent acting on its behalf. I have already held that the Secretary-General and the others who held the meeting of January 24, 1981, were agents acting on behalf of the Association.

The title of the defendant is really a misnomer. The intention of the plaintiff was to sue his employer for wrongful removal from his employment. That must be why the defendant is described as: Secretary-General, Kenya Management Staff Association.

Because the description of the defendant was no more than an error, the suit has proceeded against the trade union - see *Matharu v Italian Construction Co* [1964] EA page 1. Obviously, the trade union was in

the circumstances justified in regarding itself as the proposed defendant. The plaintiff was properly removed from his employment. The suit is dismissed.

No order as to costs. Leave to appeal.

**Dated and delivered at Nairobi this 5th day of October, 1982.**

**J.O NYARANGI**

**JUDGE**