



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**APPEAL NO 20 OF 2016**

**SAMUEL KITHOME (MEMBER).....1<sup>ST</sup> APPELLANT**  
**ALFRED MUKALO (MEMBER).....2<sup>ND</sup> APPELLANT**  
**AMOS NANDWA (MEMBER).....3<sup>RD</sup> APPELLANT**  
**TITUS W. KHAEMBA .....4<sup>TH</sup> APPELLANT**  
**EDWARD S. MUKORO.....5<sup>TH</sup> APPELLANT**  
(Suing in their names and on behalf of the dissolved Airport Branch of the interested party)

**VERSUS**

**REGISTRAR OF TRADE UNIONS .....RESPONDENT**

**AND**

**TRANSPORT WORKERS UNION KENYA.....INTERESTED PARTY**

**JUDGEMENT**

1. By a Memorandum of Appeal filed on 16<sup>th</sup> September, 2016 the appellants stated that:

- a. The appeal relates to the decision of the Registrar of trade unions to dissolve the airport branch of the Interested party vide letter dated 18.8.2016. .
- b. The Appellants state that for unknown reasons the secretary general again issued another election notice dated 1.3.2016.
- c. The 4<sup>th</sup> Appellant state that after the death of the then general secretary on 16.8.2014 he temporarily assumed the position of the general secretary of the interested party and as it approached the election period the said position attracted serious competition which ended up in court vide Cause No 1265 of 2014 on whether as a deputy secretary general I was supposed to act as a general secretary. The court ruled that there was no such position as acting general secretary in the Unions' constitution.
- d. The appellant state that they went on to hold a by election and the current general secretary Mr Dan Mihadi was appointed. He contested the appointment vide cause No 1265 of 2014. Since then Appellants have had a bad relationship with the current general secretary.
- e. That immediately the current General Secretary resumed the office, the Appellants have been made a target for removal from office unlawfully on several occasions.
- f. The Appellant state that to actualize his unlawful intentions and in collusion with the Respondent herein, the current Secretary General and some officials of the interested party has illegally sanctioned the disbandment of the airport branch where the 4<sup>th</sup> Appellant was the branch secretary vide letter dated 18.8.2016 aimed at illegally removing them from office.
- g. The appellants state that in the purported disbandment, which is not provided under the law or the Unions' constitution, the

respondent made a variety of allegations among them failure to keep proper records but failed to invite them to clarify or defend themselves on the allegations levelled against the branch contrary to Section 25 of the Labour Relations Act, 2007.

h. The Appellants aver that while allegedly disbanding the airport branch vide letter dated 18.8.2016 the respondent raised the following as grounds of the alleged disbandment yet she had not invited the Appellants to defend themselves on the issues raised therein. These were; that they did not operate a bank account for the branch, that they did not keep a wage book for the employees of the airport branch, that they did not present a collector's receipt book and that they did not keep a record of receipt book.

i. The Appellants state that having failed to invite them to defend themselves against the allegations prior to issuance of the letter dated 18.8.2016 and also contradicted herself as per the letter date 3.8.2016 the respondents acted maliciously, in breach of the rules of fair hearing and acted illegally and is therefore in breach of her statutory powers as the Appellants have not violated any of the Interested party by then.

j. That in accordance with Section 25 (4) of the Labour Relations Act 2007, the respondent has no power in law to disband a branch of a Trade Union without investigation from members and even if such powers exist the same must be done in accordance with the law and the rules of fair hearing.

k. The Appellant avers that they were duly elected with the other officials in an election held on 23.4.2016 and the same was registered by the respondent on 20.7.2016 after the general secretary unsuccessfully disputed the registration of some of the new officials who has been elected on 23.4.2016.

l. The Appellants aver that on 4.7.2016 the respondent wrote to the sub-county labour officer who supervised the elections to substantiate the allegations raised by the general secretary of the interested party. The sub-county officer labour in his letter dated 18.7.2016 responded confirming that the officials elected on 23.4.2016 were genuine members of the interested party.

m. The election was conducted on the strength that there were members who attended and voted, but immediately after the registration the respondent received resolution of the Central Council of the 20<sup>th</sup> July 2016 to disband the Airport Branch although the resolutions was not availed to the Appellants.

n. The Appellants state that even if such resolutions existed the same was illegal and maliciously resolved to illegally remove us from the leadership of the union at all costs.

o. The Appellants further state that as per their knowledge and contrary to the respondent and interested party's allegations on lack of branch membership, the airport branch had more than 200 members from one single employer that Euro Craft Agencies Ltd.

2. In opposition to the Appeal the Interested Party filed a replying affidavit and reply to the memorandum of appeal in which its General Security Mr Dan Mihadi averred among others that:

a. That the appeal is not merited as required in Law. An appeal shall only lie:

i. On matters of law

ii. If there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the ruling was passed.

b. That the appellant's application is serialized on the purported elections of the Airport Branch and other non-issues; hence missing the salient point of the branch membership which led to the disbandment/dissolution.

c. That the said Companies where the Appellants purport to draw its membership is misleading. All the mentioned companies were organized by the Nairobi branch of the interested party herein; many years before the registration of the branch in the year 2008.

d. That the mentioned companies falls under the jurisdiction of Nairobi branch of the interested party and have no relationship with Airport Branch.

e. That the Appellants are required to provide concrete evidence to support their claim of membership of the disbanded branch; but not merely and casually mention the said company(s) without justification.

f. That Section 25(3), (4) (b) of the Labour Relations Act-2007 and Section 21(b) of the Union (interested party) Constitution provides for dissolution/disbandment of a Branch where there are no members or where membership has gone below the constitutional required.

g. That the issue of the branch membership was also subject to another application in this Hon. Court under Cause No 351 of 2016 where the court ruled under item 14(c) that; "the 1<sup>st</sup> respodnent (herein the Interested party) to resolve through the Executive Board the issue of who qualifies to be members of its Airport Branch"

h. That notwithstanding the above the 1-3<sup>rd</sup> Appellenats have never been members of the disbanded Airport Branch but are members of the Nairobi branch of the Interested party.

i. That the 1-3<sup>rd</sup> Appellants work for Commercial Transport Ltd which is situated at Industrial Area outside the jurisdiction of the disbanded Airport branch.

j. That the 4-5<sup>th</sup> appellants are former official of the Airport Branch and have no mandate to file this suit as per interested party constitution.

k. That due process to disband/dissolve the airport Branch was done in accordance with the interested party constitution and as per the law. Proper notices were issued to all members including the 4<sup>th</sup> Respondent- Mr Titus Khaemba who has signed the Appellants affidavit.

l. That 4<sup>th</sup> Respondent (former branch secretary of the disbanded branch) likewise attended and participated fully in the meeting of 20.7.2016 whose agenda among other things was to disband the Airport Branch of the Union.

m. That the issue of the Airport Branch not having members is not new to the interested party herein and the Appellants being former officials. They are aware that returns for the last three years which have been filed by the Union with the Registrar of Trade Unions indicate the correct position of the Union. Reports from 2013, 2014 and 2015.

n. That minutes and resolution of the Central Council meeting were filed to the Registrar of Trade Union.

3. Rule 21 of the Interested Party's Constitution provides in part as follows:

#### BRANCH ORGANIZATIONS

a. The Central Council shall decide the place where the Branch of the Union shall be established provided that no Branch shall be established if the number of members is less than fifty (50).

b. Should the membership of any Branch fall below fifty (50) members for a period of three (3) months, such Branch may be disbanded by the Central Council and the members transferred by the National Executive Committee to another Branch.

c. The Central Council may suspend or disband any Branch which fails to comply with the Constitution and Rules of the Union or decisions of the Delegates Conference, Special Delegates conference, Central Council, National Executive Committee and financial Committee and thereafter the National Executive Committee may transfer the members of any Branch so suspended or disbanded to another branch.

4. The returns for the Interested Party filed for the years 2013, 2014 and 2015 consistently indicated that the Airport Branch did not have any members. Through a letter dated 18<sup>th</sup> August, 2016 in response to the appellant's objection to the disbandment of the Airport Branch, the Registrar of Trade Unions, the respondent herein informed the appellants that a scrutiny of records in her custody indicated that the Airport Branch had no members. The Registrar further observed that the register of members was not updated, no collectors receipt book and wages book was kept no bank account was operated. These according to the Registrar corroborated the claim of lack of membership.

5. The minutes of the meeting of the Central Council meeting of the Interested Party held on 20<sup>th</sup> July indicated that one of the agenda of the meeting was disbandment of the Airport Branch. The 4<sup>th</sup> Appellant who was the General Secretary of the Airport Branch was recorded present and contributed to the agenda by seeking more time to enable the Branch reorganize itself since the Branch officials had been registered by the Registrar on 20<sup>th</sup> July 2016 hence it would be unfair to disband the branch. A note was taken on the issue and sixteen voted for disbandment against one. A resolution was therefore passed for the disbandment of the Airport Branch.

6. Rule 21 of the Interested Party's Constitution referred to earlier in the judgement allows for the disbanding of a Branch by the Central Council on grounds of lack of the requisite membership. From the evidence referred to above, the airport Branch had no members hence the Interested Party exercised its powers as per the constitution properly while disbanding the Airport Branch.

7. The appeal is therefore found without merit and is hereby dismissed with costs.

8. It is so ordered.

Dated at Nairobi this 17<sup>th</sup> day of May 2019

**Abuodha J. N.**

**Judge**

**Delivered this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**