



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW NO. 1 OF 2014**

**AVIATION & AIRPORT SERVICES WORKERS UNION.....APPLICANT**

**VERSUS**

**REGISTRAR OF TRADE UNIONS.....1<sup>ST</sup> RESPONDENT**

**KENYA AVIATION WORKERS UNION.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 19<sup>th</sup> May 2015 was filed on the same date. The Application is founded on the grounds set out on the notice of motion in paragraphs a – b. The Application is further supported by supporting affidavit of Bonne Nicholas Barasa the Secretary General of the Aviation & Airport Services Workers Union (Applicant).

2. The nub of the Application is that the applicant filed the Judicial Review application at the High Court in Nairobi and the same was transferred to this Court. The Court in a ruling delivered on 11<sup>th</sup> June 2011, allowed the application to amend its pleadings to conform with Section 30 of the Labour Relations Act, 2007.

The amended application was filed and duly served on the Respondent, and a hearing date was fixed on 13<sup>th</sup> October 2016.

3. On the 13<sup>th</sup> October 2011, the matter was not listed in the cause list and the advocates on record for the applicant wrote to the Deputy Registrar to avail the file before Court.

4. When the advocate appeared in Court, he found that Mr. Rob B. Abkula had filed a notice of change of advocates and he was to act on behalf of the applicant herein. The said notice filed on 19<sup>th</sup> September 2014 was not served upon the advocates for the applicant in accordance with the law.

5. That Mr. Rob B. Abkula is not a member of the applicant union and has since joined Kenya Aviation Workers Union, the 2<sup>nd</sup> respondent, herein. Annexure '13 N 2' is a copy of a letter from Kenya Civil Aviation Authority showing members of the applicant union marked '13 N 2'.

6. That on 13<sup>th</sup> October 2011, Mr. Rob B. Abkula appeared for the applicant with Mr. Okwe Achiado for the 2<sup>nd</sup> interested party before Justice Nduma J.

7. That Rob B. Abkula and Mr. Okwe Achiado informed the Court that they had by consent agreed to withdraw Judicial Review Application No. 1 of 2014.
8. The Court recorded a consent order withdrawing the entire suit and marked the file as closed.
9. The applicant union states that Mr. Rob B. Abkula acted without the instructions of the applicant union. That this was collusion by the two persons without the consent of the union which in terms of its constitution is lawfully represented in Court by the General Secretary as is reflected in Annex '13 N-1' extract from the Registrar of Trade Unions showing union officers, trustees and committee members in the year 2013. That Mr. Rob B. Abkula is reflected in the extract as the Deputy Secretary General whereas the Secretary General was Bonne Nicholas Majimbo Barasa.
10. That the Court file thereafter went missing until it was later found following a complaint lodged by the applicant to the Judicial Service Commission. That Mr. Rob B. Abkula has no loyalty to the applicant union and has been acting with the instructions of the 2<sup>nd</sup> respondent to interfere with judicial processes involving the 2<sup>nd</sup> respondent.
11. That the withdrawal of the application was an act of misrepresentation, dishonesty, collusion, conspiracy and fraud to defeat justice.
12. The application has been responded to vide a replying affidavit of Rob B. Abkula who deposes that he is the acting General Secretary of the applicant union. That Mr. Bonne Nicholas Barasa, who purports to be the General Secretary of the applicant was suspended at a meeting of the National Executive Committee (NEC) meeting held on 1<sup>st</sup> March 2014 at City Cabanas. The minutes of the meeting are attached to the replying affidavit and marked 'RAI'.
13. In terms of minute No. 7 thereof, titled "*suspension from office*" Mr. Bonne Nicholas Barasa, General Secretary, Mrs Perpetua Mponjiwa, National chairperson and Mr. Robert Lichoro, National Treasurer were suspended from office by two thirds majority of the members present.
14. The meeting was attended by eight (8) out of the eleven (11) officers, trustees and committee members in the extract of 27<sup>th</sup> November 2013. The three were suspended pending the hearing and determination of their case involving the loss and misappropriation of union funds amounting to more than Ksh. 10 million in terms of Section 12 (f) of the Constitution.
15. The minutes also indicate that, the NEC appointed Mr. David Kisindai as the acting chairman, Mr. Edwin Wakoli, as acting General Secretary. Mr. Mark Spinks Okelo, as acting National Treasurer, Mr. Wakoli as acting Branch Secretary K.A.A. and Mr. Gresend Malia as acting Branch Secretary – ground handling.
16. From the typed minutes, the name of Rob Abkula is inserted by pen to be acting General Secretary. It is not indicated when the change was made and by who since there is no note assigned to the change nor is the correction signed against.
17. Mr. Rob Abkula states in his replying affidavit that he was as at 13<sup>th</sup> October 2014, the acting General Secretary and that Mr. Barasa, remained suspended. It is acknowledged in the minutes that the Registrar of Trade Unions, the 2<sup>nd</sup> Respondent had not made any changes to the register of officials, trustees and committee members to reflect the changes made by NEC on 1<sup>st</sup> March 2014.
18. On 4<sup>th</sup> April 2014, the Registrar wrote to Mr. Rob Abkula, informing him that she had been served with a Court order restraining her from effecting the changes pursuant to the suspension of officials pending the hearing and determination of Industrial Cause No. 68 of 2014. An order of the Court is also attached to the replying affidavit of Mr. Rob B. Abkula.

## **Determination**

19. From the foregoing it is apparently clear that as at 13<sup>th</sup> October 2014, when Mr. Rob B. Abkula appeared before me and represented himself as the acting Secretary General of the applicant union, the purported position had not been officially recognized by the 1<sup>st</sup> respondent and therefore Mr. Bonne Nicholas Majimbo Barasa remained the Secretary General of the applicant union as at that date.

20. Furthermore, the dispute regarding the registration and / or endorsement of any changes with regard to the Aviation Union was pending in **Industrial Cause No. 68 of 2014 at Kisumu** and interim orders had been granted on 2<sup>nd</sup> April 2014, by the Kisumu Court pending the hearing and determination of the suit.

21. These were matters not disclosed to the Court when Mr. Rob B. Abkula purported to compromise and withdraw **Judicial Review NO. 1 of 2014** before me on behalf of the applicant union on 13<sup>th</sup> October 2014.

22. The replying affidavit by Moses Ndiema for the 2<sup>nd</sup> respondent does not take this matter any further since the complaint is against the conduct of Mr. Rob B. Abkula for misrepresenting to the Court that he had authority to compromise JR No. 1 of 2014 on behalf of the applicant union. The preliminary objections by Mr. Okwe Achiado for the 2<sup>nd</sup> respondent are mere technicalities detracting from the subject matter of the application and are not upheld.

23. The application to set aside the consent order of the Court entered into on 13<sup>th</sup> October 2014 is allowed and the suit is duly reinstated.

24. The costs of this application to be borne by Mr. Rob B. Abkula in person for misrepresenting his status in Court and material non-disclosure.

**Dated and Delivered at Nairobi this 15<sup>th</sup> day of January, 2016.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**