



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

APPEAL NO. 6 OF 2016

CONSOLIDATED WITH PETITION 82 OF 2016

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 19TH DECEMBER, 2016)

KENYA NATIONAL UNION OF NURSES....APPELLANT/APPLICANT

VERSUS

REGISTRAR OF TRADE UNIONSRESPONDENT

AND

JOPHINUS MUSUNDI

SAMMY B. CHESEREK

LAWRENCE KINYUA

ARPHAXAD KEMBOI

LILLIAN O. OSUNGA

LYDIA W. NGARI

JOSEPH K. WADEREVA.....INTERESTED PARTIES

**HILARY KIBIRITI (BRANCH SECRETARY OF KENYA NATIONAL UNION OF NURSES,
KIAMBU COUNTY BRANCHINTERESTED PARTY**

JUDGMENT

1. This Appeal is consolidated with Petition No. 82 of 2016.

2. The Appellant filed their Memorandum of Appeal on 14th April, 2016, in which the issues in dispute are declining the Registration of the Appellant duly elected union officials by the Respondent, Contravention of the Constitution of Kenya Article 2, 41, and Chapter 6 by the Respondent and Contravention of the Labour Relations Act Section 34 by the Respondent.

3. They state that on 25th November, 2015, the Respondent wrote a circular to all registered Trade Unions, Employers Organizations and Federations reminding them to hold Branch and National elections by 30th March and 30th June, 2016.
4. In response to the said circular the Appellant wrote the Respondent on 17th December, 2015, and indicated to her that her directives were in contravention of Articles 2 and 41 of the Constitution of Kenya 2010 and Section 34 of the Labour Relations Act No. 14 of 2007.
5. The Appellant states that on 21st December, 2015, the Respondent invited them for a meeting to discuss issues raised in response to the circular which were allegedly hindering the Appellant from carrying out elections. They state that while discussions were still ongoing it was resolved by the Appellant's National Executive Council to carry out branch and National elections.
6. It is also the Appellant's contention that on that on 5th January, 2016, it issued a notice of Elections and subsequently carried out elections for the various branches which continued upto 30th June, 2016. They state that there were no elections for National Officers and 39 branches for the reason that they were unopposed.
7. The Appellant states that they submitted the names of the officials of the branches to the Registrar of Trade Unions for registration which the Respondent has to date failed to do. Upon enquiry as to why registration had not been effected, they learnt that it was due to the Appellant failing to attach the Labour Officers' report to the registration forms.
8. The Claimant states that their appeal is based on the following grounds:

“That the circular directing all trade unions to carry out elections at a particular time and in a particular manner is in contravention of Section 34(1) of the Labour Relations Act No. 14 of 2007 which provides”.

“34(1)the election of officials of a trade union, employers’ organization or federation shall be conducted in accordance with their registered constitutions.”

9. They further state that the Respondent's circular of 25th November, 2105, is in contravention of section 34(3) of the Labour Relations Act as the circular did not put into consideration the provisions of the various Registered Trade Unions. It provides as follows:

“34(3) Notice of election of officials under this section shall be given to the registrar in the prescribed form within fourteen days of the completion of election.”

10. The Appellant further states that the circular of 25th November, 2015, was in contravention of Article 2(6) of Constitution which provides:

“(6) Any treaty convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

11. That in respect to the above provision, Kenya ratified ILO Convention No. 98 which provides inter alia:

“1)Workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other or each other’s agent or members in their establishment functioning or administration.

2) In particular, acts which are designed to promote the establishment of workers’ organizations under the dominations of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the object of placing such

organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article."

12. It is also the Appellant's contention that by refusing to register the officials elected by the members and as submitted to her, acted in contravention of Section 4(1)(2) of the Labour Relations Act which provides inter-alia:

"4(1) every employee has the right to:-

- a. Participate in forming a trade union or federation of trade unions;**
- b. Join a trade union; or**
- c. Leave a trade union.**

(2) every member of a trade union has the right, subject to the constitution of a trade union to –

- a. participate in its lawful activities;**
- b. participate in the elections of its officials and representatives;**
- c. stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and**
- d. Stand for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the provisions of this act or a collective agreement."**

13. The Appellant further aver that the Respondent has acted in violation of Article 41(2) and 4(a)(b)(c) which provide:

"2) Every worker has the right-

- (c) to form, join or participate in the activities or programs of a trade union; and**

4. Every trade union and every employer's organization has the right:-

- a. determine its own administration, programs and activities;**
- b. to organize; and**
- c. to form and join federation."**

14. Further the Appellant states that the Respondent's action are contrary to the principles set out in Cause No. 1650 of 2011 between **Aloise A. Otiende vs. Boniface M. Munyao:-**

"...The Court has not seen anything in the Union Constitution and the Labour Relations Act, that calls for the mandatory joinder of the Registrar or his designates, in trade union elections disputes. Their omission is not fatal to the Claim. Public Authorities attend to trade union elections at the invitation of the trade unions. The presiding role of Ministry of Labour officials in such elections is good practice, but not the law. The Trade union is at liberty to invite Church Ministers, public Servants and any other persons to preside over its electoral processes. This is the essence of freedom of association. The role of the Registrar of Trade Unions under Section 31 of the Labour Institutions Act No. 12 of 2007, and section 34 of the Labour Relations Act is to register and regulate trade unions and not to conduct their elections or determine their electoral disputes."

15. The Appellant avers that the actions of the Respondent have hampered the Appellant's ability to fully represent its members by the officials of their choice. They state that if the prayers sought are not granted they shall be locked out of COTU – (K) elections scheduled for 21st May, 2016. The Appellant therefore prays:

1. That this Honourable Court directs that the circular from the Respondent dated 25th November, 2015, is unconstitutional, unlawful null and void.

2. That this Honourable Court directs that the Respondent's letter to the appellant rejecting change of officials contravenes Article 41 of the Constitution of Kenya and Section 34 of the Labour Relations Act hence null and void.

3. That this Court orders the immediate registration of officials as elected and as submitted to the Respondent in Forms "Q" be effected on various dates and or as will be submitted.

4. That this Honourable Court issues a Permanent Injunction restraining the Respondent from interfering in elections of Trade Unions by directing them to carry out elections in any other manner other than in accordance to their Registered Constitution and the Law.

5. That this Honourable Court issues a Declaratory Order that the Registrar of Trade Unions has no legal mandate to direct Labour officers to conduct, supervise and or influence Trade Union elections.

6. That the Registrar of Trade Unions Ms. Elizabeth Gicheha is unfit to hold Public office for contravening the constitution of Kenya Article 2, 41 and Chapter 6 as well as Labour Relations Act 2007 section 34.

7. That the Honourable Court be pleased to grant any other Order it may deem fit and just to grant.

16. The Registrar of Trade Unions opposed the appeal by filing a Replying affidavit wherein they state that it issued a circular to the Appellant amongst other stakeholders requiring them to hold elections. That the Appellant wrote a letter raising concerns over the said circular to which the Respondent called for a meeting to try and resolve the concerns raised. That the Appellant sought to postpone the election timelines to which the Respondent was not amenable to and instead directed the Appellant to amend its constitution.

17. The Respondent further avers that the Appellant failed to comply with the contents of the circular of 25th November, 2015, and thus could not register the elected officials. That the purported elections by the Appellant were not even supervised by Labour officers and as such were irregular.

18. In response to the Replying Affidavit the Appellant filed a supplementary affidavit in which they state that they complied with the circular by conducting elections at both branch and national levels. They then proceeded to forward Form Q to the Respondent for registration of officials which the Registrar refused to do. They pray that that the Appeal be allowed as drawn.

19. In Petition 82 of 2016, the Petitioner states that a Notice of elections dated 5th January, 2016, is unlawful as it is discriminatory in relation to section 34(2) of the Labour Relations Act 2007. Furthermore, the said notice is said to be unconstitutional as it introduces application fees and a non-designated account which is meant to defraud the members.

20. He contends that failure to constitute an election board and submit the same is a contravention of the Union Constitution. That the Appellant also failed to communicate the venue for the National Elections of the union which is in contravention of rules set out by the regulator.

21. He also states that the Appellant submitted returns on 26th February, 2016, before elections which were to be held on 2nd March, 2016, proving that no elections took place.

22. It is his contention that the Appellant's actions have prejudiced the rights of Kenya National Union of Nurses to elect their leaders. That the Kenya National Union of Nurses Constitution has been rendered obsolete. He further avers that if the Respondent herein proceeds to register the purported officials the members' fundamental rights and freedom to vote will be infringed.

23. He also states that he has suffered injury as a result of failure by the Appellant/Respondents to offer assistance following his dismissal and continued issuance of defamatory remarks.

24. The Petitioner therefore prays for:

1. That pending hearing and determination of the petition this Honourable Court grants interim Orders of prohibition restraining the 1st Respondents herein and anyone purportedly elected through the notice of election dated 5th January, 2016, either by themselves or agents from discharging in any manner with the work of the Kenya National Union of Nurses.

2. That this Honourable Court directs the 2nd Respondent to issue a notice of elections extending the deadline of branch elections.

3. That a declaration is hereby made that the Notice of Election dated 5th January, 2016, is unconstitutional and purported elections are null and void.

4. That a declaration is hereby made that the actions of the 1st Respondent are an infringement of the Petitioner's right and fundamental freedoms of fair Labour practice as enshrined in Article 41 of the Constitution of Kenya, 2010.

5. That an order is granted for the respondents to pay the petitioner general and aggravated damages.

6. That costs of this petition be borne by the 1st Respondent in any event.

7. Or that such other order(s) as this Honorable Court shall deem fit.

25. It is also his contention that the election notice issued by the Appellant herein has deprived him of rights and fundamental freedoms as stated in Article 38(2) which is to the effect that:

“every citizen has a right to free, fair and regular elections based on universal suffrage and free expression of the will of the electors.”

26. The Petitioner states that failure by the Appellant to submit the list of electoral board members and communication of the election venue by the electoral board as stated in the Registrar of Trade Unions circular dated 25th November, 2015 is an infringement of the Petitioner's rights under Article 35(1) which states:

“every citizen has a right of access to information held by state and information held by another person and required for exercise or protection of any right or fundamental freedom”.

27. The 1st Respondent filed a replying affidavit to the petition in which he denies all the averments in the petition and states that the notice of elections which is said to be discriminatory was issued by the Kenya National Union of Nurses and he is not responsible for its contents. He also denies having knowledge of any declaration by the Petitioner to contest elections for the position of General Secretary.

28. Further the 1st Respondent states that the Court has no jurisdiction to deal with defamation raised by the Petitioner. He also contends that the Petitioner is vexatious and is a busy body in these proceedings.

29. The 1st Respondent has also filed grounds of opposition in which he states that he is wrongly enjoined in the suit and as such any claim against him should be dismissed. The 1st Respondent further states that the Petitioner does not have *locus standi* as he is not a member of the union and as such lacks authority to challenge Union elections. Further that the Petition offends the subjudice rule as the subject matter of the petition is subject to the instant appeal.

30. That the purport by the Petitioner that the suit is filed in public interest is misdirected as he does not disclose which section of the public is affected by the Appellant elections. He prays for the Petition to be dismissed with costs.

31. The matter was disposed of by way of written submissions.

32. The Appellant submits that the Notice of Elections issued by the Respondent offends the mandatory provisions of Section 34(1) of the Labour Relations Act, and as such unlawful. The said section provides:

“34.(1)The election of officials of a trade union, employers’ organisation or federation shall be conducted in accordance with their registered constitutions.

(2)The constitution of a trade union, employers organisation or federation shall:-

a. not contain a provision that discriminates unfairly between incumbents and other candidates in elections; and

b. provide for the election, by secret ballot, of all officials of a trade union at least once every five years;

(3) Notice of the election of officials under this section shall be given to the Registrar in the prescribed form within fourteen days of the completion of the election.

(4) Disputes arising from, or connected directly or indirectly to, elections held under this section may be referred to the Industrial Court.

(5)The Registrar may issue directions to a trade union, employers’ organisation or federation to ensure that elections are conducted in accordance with this section and their respective constitutions.”

33. The Appellant’s constitution also provides as follows:

“Except or as otherwise herein expressly provided that all officials and representatives of the union shall be elected at the end of every one term of five years through a secret ballot in a general elections, elections shall be done concurrently at all levels.”

34. The Appellant submits that the last time they conducted elections was on 7th September, 2014, which officials were to stay in office for a period of five years. In light of this the Appellant states that they wrote to the Respondent explaining that the notice of elections issued did not fit into their circumstances as they had carried out elections only three years prior. It is their contention that the notice was unlawful.

35. On refusal to register the Appellant’s registered officials as submitted they submit that the same was unlawful and unconstitutional as the grounds cited for non-registration are not supported by the law nor the constitution of the Appellant. The Appellant therefore urges the Court to quash the letter of the Registrar dated 14th March, 2016.

36. The Appellants further submit that the Respondent's mandate is well defined and it does not include handling of disputes arising or connected directly or indirectly to Trade Unions Elections. They state that the mandate of handling any dispute is the preserve of the Court as provided under Section 12 to the Industrial Court Act. So the allegation that the Respondent failed to register the officials' names forwarded to her on grounds of complaints from dissatisfied members is misplaced in law.

37. They rely on the case of **Aloise A. Otiende vs. Bonface M. Munyao of Local Government Workers Union** Cause No. 1650 of 2011 wherein Rika J. held:

“...the Court has not seen anything in the Union Constitution and the Labour Relations Act, that calls for the mandatory joinder of the Registrar or his designates, in trade union disputes. Their omission is not fatal to the Claim. Public Authorities attend to trade union elections at the invitation of the trade unions. The presiding role of the Ministry of Labour officials in such elections is good practice, but not the law. The Trade union is at liberty to invite Church Ministers, Public servants and any other persons to preside over its electoral processes. This is the essence of freedom of association. The role of the Registrar of Trade Unions under Section 31 of the Labour Institutions Act No. 12 of 2007, and section 34 of the Labour Relations Act is to register and regulate trade unions and to conduct their elections or determine their electoral disputes.”

38. The Appellant in submissions in support of the Preliminary objection against the Petition they state that the Petitioner lacks *locus standi* and is just a busy body. They state that the law and the Constitution contemplate the rights of workers and members of trade unions which the Petitioner is not.

39. The 1st Respondent in the Petition states that he has been improperly enjoined and seeks to for his name to be struck out based on the fact that the Kenya National Union of Nurses is a body corporate capable of being sued in its own name as provided under Section 21 of the Labour Relations Act. He also submits that the Preliminary objection is unopposed and should be dismissed with costs.

40. The Respondent in submissions states that the Appellant's elections were not democratic, free and fair. They submit that the Appellant's constitution in chapter XVIII provides:

1. Except as otherwise herein expressly provided, all officials and representatives of the Union shall be elected at the end of every one term of five years through a Secret ballot in a General Election, elections shall be done concurrently at all levels.

2. Applications for nominations for the National Governing Council or National Executive Council officials, branch officials and institutional representatives shall be submitted in writing to the National Elections Board, pursuant to the elections by laws.

3. Chapter XIX which deals with voting provides that the founding officials of the Union shall not be subjected to an inaugural election.

41. The Respondent states that the Union Constitution is discriminatory by not subjecting founding officials of the Union to an inaugural election for instance makes it difficult to ascertain whether the election was free and fair. They also state that this is contrary to section 4(2) of the Labour Relations Act.

42. It is the Respondent's contention that it would be difficult to ascertain that an election was free and fair if the members of the election board for the Appellant was not constituted and the election rules not formulated.

43. The Respondent states that they wrote to the Appellant to provide a list of the members but the letter was not responded to. It is their contention that members are entitled to know the identity of the election board members and the rules to inspire confidence in the process. This they state is a right guaranteed under Article 35 of the Constitution on Access to information.

44. As to supervision of elections by an Independent Party they submit that this dates back to 1965 set out in the Policy on Trade Union Organization in Kenya which inter alia provides that the elections be supervised by Government. Failure to involve the government in the elections has not been explained by the Appellant which contributed to non-registration.

45. The Respondent concludes their submissions by stating that an election that infringes on the rights of members who are entitled to vote and vie is not a fair and just election and pray for the applications to be dismissed with costs.

46. Interested Parties in the proceedings have also filed submissions wherein they state that they are members of the Appellant and state that the Respondent's directed that elections be held between March and June 2016 in the presence of a legal officer. This they state is not the law but it has been accepted over the years as fair labour practice whose effect has been to reduce labour disputes.

47. The Interested Parties further submit that no elections were conducted and if the same were conducted they were not in accordance with the Appellant's Constitution as the returns filed by the Appellant are full of contradictions.

48. They further submit that there was no election body formed to conduct the purported elections and if one was formed the members thereof are unknown. Furthermore, they contend that only twenty one days notice was given to Applicants to file their applications whereas the Union Constitution allows for three months.

49. The Interested Parties are of the view that the directive of 25th November, 2015, by the Respondent has already been overtaken by events as elections have already been held and as such the Orders sought suspending the directive will not serve any purpose. The interested parties support the Registrar's submission that the Court orders for fresh elections to be supervised by an independent body whose outcome the parties should respect. They pray for the Appeal to be dismissed.

50. Another Hillary Kibiriti was also enjoined in the suit and has filed submissions and states that the Appeal should be dismissed for the reasons that the appeal is fatally defective and a misrepresentation of the facts. That the several election notices purported to have been sent out were falsehoods meant to mislead the public. No elections were carried out and as such the Appeal must fail.

51. Having considered submissions of both the Petitioner, Appellant and Respondent in both Petition and Appeal, the issues for determination are as follows:

1. Whether the letter by the Registrar of Trade Unions (RTU), the Respondent, in the Appeal for the Appellants dated 25/11/2015 was unconstitutional, null and void.

2. Whether the decision by the Registrar of Trade Unions to decline registration of Union officials as submitted in Forms 'Q' was done within her mandate.

3. Whether the Petitioner has locus to file the Petition herein.

4. Whether 1st Respondent is properly enjoined in this Petition.

5. Whether elections held by the Union were free and fair.

6. What orders to grant in the circumstances.

52. On the 1st issue, the Registrar of Trade Unions wrote a circular to all Trade Unions dated 25/11/2015 urging them to conduct their elections at National and branch level by 30th March 2016 and 30th June 2016 respectively.

53. She also insisted that such elections shall be supervised by officers of the Department of Labour.

54. The letter further informed the Trade Union that they must operate with properly constituted committees in accordance with their constitutions during the said elections and their names filed with her office in accordance with the provisions of Section 35(2) of the Labour Relations Act.

55. The Duly Constituted Committees were to communicate in writing to the Commission of Labour and the Registrar of Trade Unions the venue of the elections at least 21 days of the elections. This is the letter the Appellants complain is unconstitutional, null and void by dint of Article 2 and 41 of the Constitution and Section 34 of the Labour Relations Act No. 14 of 2007.

56. As submitted by the Appellants above Article 41 of the Constitution provide that every employee has the right to participation in trade union activities including elections subject to the constitution of the Trade Union Article 41(4) of the Constitution in particular provide that:

“every trade union and every employer organization has the right:

a. To determine its own administrative programmes and activities.

c. To organize, and

c. To form and join a federation”.

57. The Appellants contend that by the Registrar of Trade Unions insisting on who should supervise their elections and when and how to hold the said elections, the Registrar of Trade Unions was contravening the Constitution Article 41.

58. I do agree with this position that every Union has a right to determine its own administration programmes and activities and elections are such programmes and activities.

59. In Cause No. 1650 of 2011 – **Aloise A. Otiende vs. Boniface M. Munyao** (supra) the Learned Judge Rika stated that:-

“.....the Court has not seen anything in the Union Constitution and the Labour Relations Act, that calls for the mandatory joinder of the Registrar or his designates, in trade union disputes. Their omission is not fatal to the Claim. Public Authorities attend to trade union elections at the invitation of the trade unions. The presiding role of the Ministry of Labour officials in such elections is good practice, but not the law. The Trade union is at liberty to invite Church Ministers, Public Servants and any other persons to preside over its electoral processes. This is the essence of freedom of association. The role of the Registrar of Trade Unions under Section 31 of the Labour Institutions Act No. 12 of 2007, and Section 34 of the Labour Relations Act is to register and regulate trade unions and to conduct their elections or determine their electoral disputes.”

60. I do agree with my Learned colleague that indeed the Registrar of Trade Unions has no right to insist on who oversees the elections of the trade union. Indeed even Section 34 of the Labour Relations Act is clear on how trade union elections are to be held and Section states that:

1. “The election of officials of a trade union, employers’ organization or federation shall be conducted in accordance with their registered constitutions.

2. The constitution of a trade union, employers’ organisation or federation shall:-

a. not contain a provision that discriminates unfairly between incumbents and other candidates in elections; and

b. provide for the election, by secret ballot, of all officials of a trade union at least once every five years.

3. Notice of the election of officials under this section shall be given to the Registrar in the prescribed form within fourteen days of the completion of the election.

4. Disputes arising from, or connected directly or indirectly to, elections held under this section may be referred to the Industrial Court.

5. The Registrar may issue directions to a trade union, employers' organisation or federation to ensure that elections are conducted in accordance with this section and their respective constitutions".

61. In this regard, the only provision in law is that Trade Unions should give a notice of the election of officials to the Registrar of Trade Unions within 14 days of completion of the election and should issue direction or conduct of elections in accordance with the Unions' respective Constitutions.

62. Under Section 5(5) above, it is good practice but not mandatory that the Registrar of Trade Unions issues directions to ensure that elections are conducted in accordance with the law and respective Constitutions. To expect a Trade Union to therefore conduct elections in a particular way other than as per their Constitution and as per the members agreed norm is to interfere in the running of the affairs of the Union and is therefore against ILO convention 98 on Freedom of Association and of the right to organize.

63. It is the finding of this Court therefore that the circular by the Registrar of Trade Unions of 25/11/2015 was unconstitutional and null and void to the extent of waiting to micro manage the affairs of the Appellant and insisting on who should supervise the elections without consideration of the Unions Constitution and provisions of the law and I declare it so.

64. On 2nd issue, under Article 34(3) of Labour Relations Act:

"Notice of the election of officials under this section shall be given to the Registrar in the prescribed form within fourteen days of the completion of the election"

65. The Notice of the elected officials is given to the Registrar of Trade Unions. This is given in Form 'Q' set out in the second schedule of the Labour Relations Act. Once given, the Registrar of Trade Unions may after an inquiry and if satisfied register the proposed changes or corrections or refuse to register the changes in the register. The Registrar of Trade Unions can only refuse to register the charges after an inquiry.

66. Accordingly to the Appellants, the Registrar of Trade Unions refused to register the changes because the Appellant refused to comply with the contents of the circular dated 25th November 2015.

67. I have already indicated that the circular contravened provisions of the law and Article 41 of constitution and was therefore null and void to that extent. The Registrar of Trade Unions could therefore not rely on that reason to refuse to register the elected officials of a union.

68. In relation to this act is the contention in the Petition 82/2016 by the Petitioner and Interested Parties (issue No. 6) where the Petitioners contend that the elections were not properly conducted in accordance with the Appellant's Constitution.

69. They have averred that no election body was even formed and if there was one, the members were unknown. They also aver that they were given 21 days to file their applications whereas the Union Constitution allows for three months.

70. On this issue, the Appellant and 1st Respondent argue that the Petitioner has no *locus* even to file the

Petition as he is not a member of the Union.

71. It is not clear whether the Petitioner has *locus* or not because under the Constitution of the Appellants, Membership of the Union is open to all employed nurses and who pay their fees. There is a provision for honorary membership.

72. Under Chapter XVIII of the Appellants Constitution only union members will be eligible to elect their officials after 5 years.

73. There is however evidence that the Petitioner had been dismissed from service as a nurse. The Appellants were registered in 2013 as they have explained in their pleadings.

74. For the Registrar of Trade Unions to insist they conduct election in 2016 was premature before the expiry of the 5 years period. It is for this reasons that the Notice of the election was stated to retain the servicing officials who had not served for 5 years.

75. This fact coupled with the complaint by the Interested Parties of the law not being followed and even the reasons given by the Registrar of Trade Unions in her refusal to register the Union officials show that the way the Registrar of Trade Unions intended to have elections held would have aided even those not eligible to participate in the elections and denied the Appellant officials their right to hold their elected posts for 5 years as per their Constitution.

76. I therefore in answer to issues No. 2 and 6 state that the decision not to register the Union officials for posts held for less than 5 years was against the law and therefore null and void.

77. On issue No. 3, I find the Petitioner had *locus* to file the Petition. On issue No. 5, I believe the Petitioner ought to have sued the Union and not its Secretary General and so choosing to enjoin the Secretary General in person was improper.

78. Having found as above, I find that the decision made not to register the Union Officials as submitted in form 'Q' by the Registrar of Trade Unions was unfair and unjustified and I hereby order the Registrar of Trade Unions to proceed forthwith and register the said officials as submitted, in any case within 7 days.

79. I find the Petition has no merit and I dismiss it accordingly with costs.

80. The Registrar of Trade Unions will pay costs of the Appeal.

Read in open Court this 19th day of December, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kigeni for Appellant – Present

Musundi - Interested Party – Present

Kibiriti – Interested Party – Absent

Petitioner – Absent