



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 161 of 2011**

**JIM NHLAPO MASEGE.....CLAIMANT**

**VS.**

**SECRETARY GENERAL, AVIATION & ALLIED**

**WORKERS UNION.....1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF TRADE UNIONS.....2<sup>ND</sup> RESPONDENT**

Mr. Kitheka for the Claimant

Mr. Nyaben for the Respondent

**JUDGMENT**

The Claim arose out of a failure by the 1<sup>st</sup> Respondent to complete 'Form Q' of the Second Schedule to the Labour Relations Act, 2007 to include the Claimant's name as the Branch Secretary of the Airlines Branch of the Aviation and Allied Workers Union.

It is common cause that the Airlines Branch of the Union held its elections on 5<sup>th</sup> February, 2011 which were presided over by the Ministry of Labour Officers.

The Claimant submitted Exhibit 1, which is a list dated 29<sup>th</sup> January, 2011 of the contestants for the various positions at the Airlines Branch. The Claimant is listed as a candidate for the position of Branch Secretary.

Though he was not a member of the Union he told the court that he qualified to vie by paying Kshs.10,000/= in terms of Clause 20(d) of the Union Constitution. He submitted an application letter dated 27<sup>th</sup> January, 2011 and the payment receipt as exhibits 2'a' and 'b' respectively.

Clause 20(d) of the Union Constitution titled Branch Offices reads;

*“Any fully paid up member who has been a member of the Union for a minimum of twelve(12) consecutive months prior to the election date or any non-member wishing to contest for the position of the Branch Secretary shall be eligible for election subject to the following conditions;*

(i) *An application indicating his/her intention to stand for election and deposit have been received by Branch Secretary not later than seven (7) days before the date of election-----*

(ii) *That the candidate has paid to the Union's National Treasurer through branch treasurer non-refundable deposit of Kshs.10,000 for the position of Branch Secretary if the candidate is an outsider".*

The Claimant was the founder of the Respondent Union which was a break-away from the Transport & Allied Workers Union. In 2009, he had left the Union under controversial circumstances wherein he was charged with theft of Kshs.7 million from the Union in **NRB.CM Criminal Case No.1127 of 2010**. He was however, acquitted of the charges leveled against him. The Union also alleges that at the time he left the union, in 2009, he refused to hand over to the incoming Secretary General.

For these reasons, the Respondent alleges in its Replying Affidavit that the Claimant was ineligible to be elected as a Branch Secretary of the Union or any other position for that matter. In that respect, the Respondent allegedly wrote a letter to the Claimant dated 3<sup>rd</sup> February, 2011 informing him of his ineligibility to vie for the Office of the Airline Branch Secretary. The Claimant denies that he received such a letter from the General Secretary of the Union. Indeed the letter has no address but is marked c/o Airline Branch, Nairobi. Clearly at the time the Claimant was no longer part of the Union and therefore it was not reasonable to address the said letter to the Airline Branch, Nairobi.

It is not in dispute that the elections were duly conducted on the 5<sup>th</sup> February 2010 at the East African School of Aviation and was supervised by an officer of the Ministry of Labour. It is also not in dispute that the Claimant was duly elected as a Branch Secretary for the Aviation Branch, Nairobi. The results of the election were transmitted to the Registrar of Trade Unions by a letter dated 8<sup>th</sup> February, 2011 by Mr. R.J. Twanga, District Labour Officer, Industrial Area, Nairobi. The letter and the list of the elected officials is attached to the Memorandum of Claim.

However, the Secretary General of the union who is the 1<sup>st</sup> Respondent in this matter submitted Notification of elected officials form 'Q' to the Registrar of Trade Unions, having omitted the name of the Claimant from the list of elected officials. Consequently the Registrar of Trade Unions, who is the 2<sup>nd</sup> Respondent in this matter did not register the Claimant as the Branch Secretary of the Aviation Branch of the Union in terms of the elections conducted on 5<sup>th</sup> February, 2011.

Indeed, the extract of the registered officials, which is not in dispute, is annexed to the Memorandum of Claim and shows the position of Secretary as vacant. The Secretary General has not demonstrated that he has any lawful authority to nullify the outcome of an election conducted in terms of Section 34(1) of the Industrial Relations Act, 2007.

Notice of the elected officials of the Aviation Branch of the Union were notified in terms of Section 34(3) in the prescribed form within fourteen days of the completion of the election. Any dispute ensuing from such election could only be resolved by reference to the Industrial Court in terms of Section 34(4).

The Registrar of Trade Unions having received the results in the prescribed form from the returning officer was obliged to register all the elected officials, including the Branch Secretary, as the officials of the Branch. Any contrary action is not only unlawful but badly reflects on the integrity of the Office of the Registrar who is duty bound to act according to the law and not in any other manner. No wonder, the Registrar did not file any response to this Claim. It would have been embarrassing to do so, to say the least.

The conduct of the Secretary General, in omitting the name of the Claimant in Form 'Q' is mischievous to the extreme, and contrary to the Union Constitution and the Labour Relations Act 2007. Personal vendetta should not be brought into administration of public offices. This is what appears to be the case in this matter.

It is without hesitation that the court declares that the Claimant was the lawfully elected secretary of the Airlines Branch, Nairobi of the Aviation & Allied Workers Union on 5<sup>th</sup> February, 2011 and should be

registered as such by the Registrar of Trade Unions forthwith. The Registrar is directed to do so within 7 days of this Judgment.

The 1<sup>st</sup> Respondent is to pay the costs of this suit.

**It is so ordered.**

**Dated and Delivered** in Nairobi this 17<sup>th</sup> day of May, 2013.

Mathews N. Nduma

**PRINCIPAL JUDGE – INDUSTRIAL COURT**