



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1433 of 2012

JIMI NHLAPO MASEGECLAIMANT

VERSUS

AVIATION & ALLIED WORKERS UNION.....1ST RESPONDENT

NOAH K. SITIENEI.....2ND RESPONDENT

REGISTRAR OF TRADE UNIONS3RD RESPONDENT

RULING

By a Notice of Motion dated 21st August 2012, the Claimant herein **JIMI NHLAPO MASEGE** applied for temporary injunction restraining the 2nd Defendant **NOAH K. SITIENEI** from assuming or remaining in office, issuing notices, convening meetings and transacting any business in the name of or on behalf of the Airlines Branch of the Aviation & Allied Workers Union pending the hearing and determination of the application. The application which was under Certificate of Urgency was heard by Hon. Justice J. Rika on 22nd August 2012 and he made the following orders:

- 1. THAT the matter be and is hereby certified urgent and heard ex-parte in the first instance.**
- 2. THAT a temporary injunction be and is hereby issued restraining the 2nd Respondent, Noah K. Sitenei, by himself, his servants, agents and/or representatives, from representing himself as a branch secretary the Airlines branch, of the Aviation and Allied Workers Union.**
- 3. THAT the 2nd Respondent be and is hereby restrained from assuming and/or remaining in office, issuing notices, convening meetings and transacting any business in the name of or on behalf of the Airlines branch, of the Aviation and Allied Workers Union pending the hearing and determination of this application.**
- 4. THAT pending the hearing and determination of this application and/or until further orders of this court, the changes effected on 30th July 2012 by the 2nd Respondent on the position of the branch secretary of the Airlines branch, of the Aviation and Allied Workers Union made on 13th July 2012 and the operation of any extracts issued subsequent to the said changes, are hereby stayed and the status of the branch Executive Committee as at 12th July 2012 should be maintained.**
- 5. THAT the Cause No. 1433 of 2012 be and is hereby consolidated with Cause No. 161 of**

2011. Cause No. 161 of 2011 to be the reference file.

It is these orders that the 2nd Respondent has applied to set aside, vary or revise by its application filed under certificate of urgency dated and filed in court on 3rd September 2012. The application is supported by the Affidavit of one **BONNE NICHOLAS BARASA**, the General Secretary of Aviation and Airport Services Workers Union (Kenya). It is submitted for the 2nd Respondent that the effect of the orders made on 22nd August 2012 is to terminate the contract of employment of the 2nd Respondent with the 1st Respondent at interlocutory stage without giving him an opportunity to be heard. A copy of the employment contract is annexed as appendix BNB 3.

I have read the application dated 21st August 2012 and the court record of the proceedings of 22nd August 2012. The application was entirely based on the appointment of the 2nd Respondent as Branch Secretary of the Airline Branch of the Aviation and Allied Workers Union. There is no mention of his employment. The court order therefore does not touch on the 2nd Respondent's employment but on his irregular election as Branch Secretary in contravention of a court order. The court will not hesitate to make orders preserving its authority where parties have flagrantly disobeyed such orders. As clearly stated in the proceedings of the court on 22nd August 2012, there are orders of this court made on 23rd February prohibiting the 1st Respondent from holding elections until Cause No. 161 of 2011 is heard and determined. The said case is pending for ruling before Hon. Justice Abuodha. These are the orders that were contravened by the Respondents in this case and in respect of which the court stated as follows:

“The application dated 21st August 2012 reveals the subsistence of Industrial Court Cause No. 161 of 2011. The Cause relates to the same substantive issues in dispute in Cause 1433 of 2012. A ruling is due to be delivered by Hon. Justice Abuodha J in Cause No. 161 of 2011.

In the meantime, a rival group led by the 2nd Respondent convened a meeting, held an election removing the claimant from office and replaced him with the 2nd Respondent.

The Court does not encourage parties to file multiple claims, but in this case, it is clear there is a mischief in the making. Parties appear to want to cause confusion in the period when the Court is preparing to settle down to work. It is a mischief that should not be allowed to blossom.”

I could not agree more with the Judge. The court cannot come to the aid of a party who has acted in deliberate contravention of its orders.

FOR THESE REASONS I find no merit in the application filed by the Applicant herein. The application by the 2nd Respondent dated 3rd September 2012 is dismissed.

Orders accordingly

DATED AT NAIROBI THE 5th DAY OF SEPTEMBER 2012.

Read in open court and signed on 5th September 2012.

**HON. LADY JUSTICE M. ONYANGO
JUDGE**