

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN JOHANNESBURG**

CASE NO: J 2252/09

In the matter between:

UNITED PEOPLES UNION OF SOUTH AFRICA

Appellant

And

REGISTRAR OF LABOUR RELATIONS

Respondent

JUDGEMENT

MBILENI AJ.

Introduction

[1] This is an appeal brought by the appellant – United Peoples Union of South Africa (“**UPUSA**”) against the decision of the respondent – Registrar of Labour Relations (“**Registrar**”) in terms of Section 111(3) of the Labour Relations Act 66 of 1995 as amended (hereinafter referred to as the “**LRA**”).

[2] The respondent cancelled the registration of the appellant as a trade union on the 2 October 2009 and published such cancellation in the Government Gazette on the 16 October 2009. The registration of the appellant as a union was cancelled for the following reasons:

- According to the records of the respondent, the appellant failed to comply with the provisions of Sections 98, 99 and 100 of the LRA [Section 106(2A)(b)].
- The appellant had ceased to function in terms of its constitution.
- The appellant had ceased to operate as a genuine trade union.

Grounds of Appeal

[3] The appellant's grounds for appeal are summarized as follows:

- Prior to June 2009, the respondent never issued a written notice to the appellant requiring it to comply with Sections 98, 99 and 100 of the LRA. The appellant has not failed to comply with same.
- The notice of intention to cancel the registration of the appellant published by the respondent in the Government Gazette was hopelessly premature because the respondent had not complied with Section 106 (2A) (b) of the LRA. The cancellation is therefore ultra vires.
- The financial statements of the appellant were provided by its auditor to the respondent on the 18 August 2009 for the financial year ended February 2007 and February 2008.

- At the time of cancellation, the respondent did not provide the appellant with reasons for such cancellation. The respondent merely reiterated the LRA in Section 106(2A) (b). The respondent failed to furnish the appellant with any facts upon which its conclusion and findings were based. It had therefore not exercised its discretion and powers honestly and properly.
- The respondent has failed to explain the aspects in which the appellant has ceased to operate in terms of its constitution, as a genuine trade union and the aspects on which it has allegedly failed to comply with Sections 98, 99 and 100 of the LRA.
- The reasons provided by the respondent on the 18 November 2009 are not the same reasons upon which he had relied at the time of deregistration.

Background Facts

[4] On the 9 June 2009 the respondent wrote to the appellant advising it that he intended to cancel its registration as a trade union and such notice would be published in the Government Gazette on the 19 June 2009. The notice was duly published in the Government Gazette on the said date.

[5] The notice published in the Government Gazette was calling upon any interested party to make representation as to why the appellant should not be deregistered. A letter was received by the respondent from members of the appellant wherein they appealed to the respondent not to cancel the appellant's registration as a trade union because inter alia the

appellant: *“has promoted and protected the rights and interests of its members”*. The letter further purported to give an undertaking to comply with Sections 98, 99 and 100 of the LRA by the 19 August 2009.

- [6] On the 2 October 2009, a letter was dispatched to the appellant by the respondent informing the appellant that its registration had been cancelled with effect from the same date. Further that such cancellation was to be published in the Government Gazette on the 16 October 2009.
- [7] On the 20 October 2009 the appellant requested reasons for the cancellation of its registration in terms of Section 111(2) of the LRA. The reasons were furnished to the appellant by the respondent on the 18 November 2009. The appellant appealed against the respondent’s decision on the 20 November 2009 to this court.
- [8] The reasons provided by the respondent to the appellant in terms of Section 111(2) of the LRA were merely details of the reasons already given during the cancellation of registration. The letter written by the respondent to the appellant on the 18 November 2009 regarding the reasons for cancelling its registration as a result that its organization has ceased to function in terms of its constitution reads as follows:

“In terms of clause 9.1.2 of the Union’s constitution, the National Executive Council of UPUSA consist of the following: President, Vice President, National Treasurer, General Secretary, Assistant General Secretary and two National Organisers. Names and addresses of office-bearers and officials submitted to this office were never submitted on the basis provided for in the constitution. There appears to be only one (1) office-bearer in the union namely Mr Osman Abdallah,

the President of the union. All other positions in the union are held by officials and officials are making decisions in this union. No or very little worker participation could be traced in the normal operations of the union. The Vice President is Mrs Veronica Luthuli, the wife of Mr Luthuli, who is a paid official of the union and can in terms of the approved constitution not hold the position of Vice President. Mr Abdallah is President as well as Treasurer of the union; this is also improper and contrary to good governing principles and could also be a conflict of interest.

Mr Elphas Luthuli occupies two positions, one is provided for in the constitution and the other is not. He is the National Organiser and at the same time the National Chairperson. The latter mentioned position and its duties are not provided for in the current Constitution registered with the Registrar's office. Mr. Luthuli has acted in both capacities on many occasions and also wrote letters in both capacities. Any action taken as National Chairman would be unconstitutional.

According to information received Mr Luthuli further acted unconstitutionally by terminating the membership of nine (9) shop stewards who were working at Sasol Mining in Secunda.

In essence the constitution of the union requires that a member should be given an opportunity to state his case before that member may be acted against. It is the appropriate committee that can determine on whether to terminate or not to terminate union membership, not an individual. Mr Luthuli disregarded the

provisions of the constitution and acted unilaterally by claiming the powers of such committee. This is another indication that the union is not operating in terms of its constitution and is totally under the control of an individual.

Furthermore it has been alleged under oath by the Union's General Secretary (Mr Thathezakhe Xulu) and the President (Mr Osman Abdallah) that the Union is not operating in terms of its constitution when it comes to holding its meetings. For example in their application to the Durban High Court the two have cited the Union and the new NEC members as respondents (case no. 14865/08). They have approached the High Court in KZN to declare the holding of the National Congress and its proceedings on 26 and 27 September 2008 in Durban Coastlands Hotel conference facilities, invalid and with no effect. They claim that the Congress was unconstitutional, as the Union disregarded clause 8.3.1 of the constitution which accords the President power to call the National Congress upon resolution by the NEC.

I also received a telephonic complaint from an individual that indicated that the union did not want to pay her settlement money over to the individual unless she came to the union office to physically collect the money. It was only after my intervention and that of the Provincial Office of the Department of Labour in Johannesburg that Mr. Luthuli agreed to pay over $\frac{2}{3}$ of the settlement amount to the individual concerned. It was Mr. Luthuli's explanation that a $\frac{1}{3}$ of the money would be retained and paid over to SARS on her behalf. This individual who was

not a member of the union, had to pay an amount upfront before the union was willing to represent her.

This is also an indication that the union is operating outside the ambit of its constitution; this should be a union only for members and not a consultancy for members of the public.

The representations made by Cliffe Decker & Hofmeyr Attorneys confirm the above. They provided proof that the Union claims fees to institute proceedings on behalf of “members”. UPUSA claims a fee of R2 000 from a member before it will consider instituting or lodging a dispute. A copy of UPUSA’s constitution attached as an annexure to the recognition agreement concluded between Air Chefs (Pty) Ltd and UPUSA (during November 2004) clearly shows that the union is not operating in terms of its approved constitution. This constitution claims that the union may claim fees from members. Clause 13.3(a) of this constitution states:

‘In any legal action taken by the union on behalf of the members the Union shall deduct twenty (20) per cent from a member as compensation in any Court ruling in any settlement.’

The constitution that was submitted to the employer is not the union’s official constitution that has been approved by the Department on 23 July 1998. This constitution is part of the misrepresentation of the union to its members and the public. This is proof of the fact that the union is acting unconstitutional. This

action is also construed as activities that officials' of a non-genuine union would do in order to enrich themselves at the cost of their unsuspecting and vulnerable members.

All the financial statements that were submitted to the Department were not audited in terms of the constitution of the union. According to clause 14.3.2 of the union's constitution the financial year end is 31 December and all the statements reflect a financial year end of 28 February.

The organization did not comply with the provisions of sections 98, 99 and 100 of the Act [section 106(2A) (b)]

The constitution of the union and the LRA demand that the obligations outlined in sections 98, 99 and 100 of the Labour Relations Act be complied with, within timeframes and in a prescribed manner, by all registered trade unions. The Union failed to comply with these constitutional and legal obligations for most of its existence.

- *Total Membership figures per sector has to be submitted before 31 March of the following year. For the years 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008 the figures were only received in August and September of 2009.*
- *The names and addresses of the appointed or elected "national office bearers" were only submitted during 2009 after requests from the Department.*
- *Financial statements for 2008 are still outstanding.*

The financial statements submitted for 2000, 2001, 2002 and 2003, did not comply with the requirements of the Act and a letter was forwarded to the union, stating that the statements were not audited by a qualified auditor, and do not meet the requirements, but to date the statements were not corrected; and on several instances the auditor indicated that he was not able to perform an audit.

The Union thereafter did not take the issue of non-compliance seriously as they ignored letters from this office, and continued to operate outside the ambit of the constitution and the law. The statements and audit reports that have been submitted is rejected as it serves no purpose for the members or for the Department. The audit reports have a number of serious qualifications. This clearly indicates that the union is not following its constitution and that it has no financial control over its affairs.

The auditors in the qualified reports state:

‘In these circumstances we were unable to perform audit procedure or obtain all the information and explanations we considered necessary to satisfy ourselves that proper accounting records have been maintained with respect to employee costs. The union also did not have a fixed asset register.’

A major part of the union’s income comprises of subscription fees received from members, however there was no system of control over such fees on which they could rely upon for the purpose of their audit, and there were no satisfactory auditing procedures that they could perform to obtain reasonable assurance that all fees received were properly recorded”.

[9] Regarding the reason that the organization has ceased to operate as a genuine trade, the letter of the respondent stated the following:

“In addition to what has been described above and which conduct can be regarded as that of a union that has ceased to operate as a genuine trade union, I compare some of the activities with some of the guidelines for trade unions:

***Item 18(c)** of the guidelines for registration of trade unions and employers’ organizations cites the employment of family members of the officials and office-bearers as one of the factors that indicates that the trade union is operating for the gain of certain individuals. In the case of UPUSA this has been brought up several times from different individuals.*

From the information at hand it is evident that this union is operated by family members for gain. The following close family members occupy prominent positions within the Union, Mr Elphas Luthuli as the National Organiser and National Chairperson, his wife Veronica Luthuli is Vice President and sometimes as Vice Chairperson, it is alleged that she is now a National Treasurer, Thokozane Luthuli and Cyril Luthuli (alleged nephews to Elphas Luthuli) as Senior Officials of the Union provided for in the Constitution.

The latest financial statements that were submitted to the Department were also signed by Mr E Luthuli as president of the union. This is a clear indication that there is a disregard for rules and regulation in this union. Mr Luthuli is central to all activities undertaken by the union and has surrounded him by his relatives so that he can control the union and manipulate it in the way that he desires.

Item 21 of the guidelines refers to the financial arrangements made with members of a trade union on behalf of whom litigation, particularly dismissal disputes, is instituted is also an indication of whether the trade union is genuine or operating for gain. It has been established by this office that the Union is representing non-members of the union at a fee in dispute resolution institutions.

It is inconceivable that a trade union which is supposed to safeguard or protect the rights and advance the interests of its members can violates them by indicating that UPUSA cannot be held responsible for any consequences members have suffered for participating in an alleged unlawful industrial action. This is another indication that this union was never established to assist employees during the time of need, but is being run by one individual (Mr Elphas Luthuli) who can hire (family members) and fire as he pleases.

From the above discussion it is therefore clear that this is not an association of employees but a family business and an association for gain of certain individuals.”

The Applicable Legislation

[10] In order to properly consider the merits of this appeal, it is important to set out the legislation that has relevance to the issues at hand. Section 106 of the LRA deals with cancellation or registration of trade unions and employers organisations. The relevant subsection is (2A) (b) of the same section which states the following:

“(2A) The Registrar may cancel the registration of a trade union or employers organisation by removing its name from the appropriate register if the Registrar:

(a) Is satisfied that the trade union or employers organisation is not or has ceased to function as a genuine trade union or employers’ organisation, as the case may be; or

(b) Has issued a written notice requiring the trade union or employers’ organisation to comply with sections 98, 99 and 100 of the LRA within a period of 60 days of the notice and the trade union or employers’ organisation has despite the notice, not complied with these sections

(2B) The Registrar may not act in terms of subsection (2A) unless the Registrar has published a notice in the Government Gazette at least 60 days prior to such action:

(a) Giving notice of the Registrar’s intention to cancel the registration of the trade union or employer’s organization; and

(b) Inviting the trade union or employers’ organisation or any other interested parties to make written representations as to why the registration should not be cancelled.”

[11] The question becomes what is a genuine trade union? Or put differently when can it be said that a trade union or an employers’ organization has “ceased to function as a genuine organization”? In this regard section 95(8) of the LRA is relevant. In terms of section

95(8) The Minister is empowered to issue guidelines in consultation with NEDLAC regarding factors the registrar should consider in determining the genuineness of a trade union or employers' organisation. The Minister has indeed published such guidelines in the **Government Gazette under GNR 1446 in Government Gazette number 25515 of 10 October 2003**. Item 3 thereof provides as follows:

“In order to determine whether an organisation is genuine, it will be necessary for the Registrar to examine the actual operation of the organisation.... In the case of an existing organisation, attention will have to be paid to its actual activities and functioning. In evaluating whether a trade union or employers organisation is genuine, the Registrar must take into account all relevant factors.”

[12] **Section 100 of the LRA** provides as follows:

“(1) Every registered trade union and every registered employers' organisation must provide to the Registrar:

(a) By 31 March each year, a statement certified by the Secretary that it accords with its records showing the number of members as at 31 December of the previous year and any other related details that may be required by the Registrar.

(b) Within 30 days of receipt of its auditor's report a certified copy of that report and of the financial statement;

- (c) Within 30 days of receipt of a written request by the Registrar, an explanation of anything relating to the statement of membership, the auditor's report or the financial statements;*
- (d) Within 30 days of any appointment or election of its national office-bearers, even if their appointment or election did not result in any changes to its office-bearers; and*
- (e) 30 days before a new address for service of documents will take effect, notice of that change of address.*

[13] Sections 98 and 99 of the LRA place a duty on trade unions and employer's organisations to keep records of its income, expenditure, assets and liabilities, in accordance with generally accepted accounting practice principles and procedures. Further to have such financial statements audited. It also specifies the type of records to be kept [Section 98(1)(b)(i) and (ii) of the LRA and Section 99].

Analysis

[14] The appellant's grievance regarding its deregistration is inter alia the fact that the respondent issued a notice to cancel its registration without first complying with Section 106(2A) (b) of the LRA. The appellant stated that prior to June 2009 the respondent did not issue a notice calling upon it to comply within 60 days. I accept that the notice in terms of Section 106 (2A) (b) of the LRA is a different notice from that issued in terms of Section 106(2B) of the LRA. A notice in terms of section 106(2A) (b) envisages a situation where the Registrar has called upon the trade union or employers' organisation

to comply with Sections 98, 99 and 100 of the LRA and 60 days has lapsed from the time that such notice was issued, and the organization has still not complied.

[15] The question is whether the respondent had issued such a notice prior to issuing a notice in terms of Section 106(2B) on the 9 June 2009. The respondent does not address the issue in its answering affidavit and arguments. I have however gone through the record filed with this court and the following is evident:

- On the 30 March 2004, the respondent informed the appellant through a registered letter that in its 2001 financial statements, the auditor was unable to conduct a proper and meaningful audit because of insufficient records and office administration to maintain proper books. The appellant was further called upon to explain what steps it intended to take in order to rectify the situation.

[16] Subsequent to the above letter the appellant did not respond within the specified time or at all. The appellant also failed to address the questions raised by the respondent. On the 28 June 2004, the respondent wrote another letter to the appellant regarding its financial statement for the year ending February 2003. The respondent informed the appellant that the auditor's report does not comply with Section 98(2) (b)(i) of the LRA and that the auditor's report indicated that since the inception of the appellant, there were no sufficient records and office administration to maintain proper records. The appellant was called upon to respond within 14 days and state how it intended to rectify the situation. No response was given by the appellant to the respondent.

- [17] In essence every year from 2001 the respondent issued the appellant with a letter calling upon it to comply with Section 98 or 100 of the LRA. I accept that such letters did not constitute notices in terms of Section 106(2A) (b) of the LRA in that none of them gave the appellant 60 days within which to comply. The letter of the 23 January 2006 however was issued in accordance with Section 106(2A) (b) of the LRA in that it called upon the appellant to comply by no later than the 31 March 2006. The letter further reminded the appellant that it is in its interest to comply to avoid cancellation of its registration in terms of Section 106(2A) of the LRA.
- [18] On the 10 October 2006, the appellant through its auditors caused a letter to be written to the respondent responding to the letter of the 23 January 2006 by the respondent. In terms of the said letter, an extension was being sought to file the financial statements by the 25 October 2006. It is important to note that the extension was sought only about 7 months after the deadline for compliance, indicating that there was no compliance with Section 100(a) (b) (c) and (e) of the LRA by the 31 March 2006.
- [19] The appellant contends that it never received the letter dated the 23 January 2006. Further that the respondent did not remind it in 2006 to comply with Sections 98, 99 and 100 of the LRA. It further denied that the letter written by its auditors in October 2006 was a response to the respondent's request of the 23 January 2006. The fact that this allegation was made in 2009 is unfortunate. The respondent has no duty to remind trade unions and employers' organisations to comply every year. The only obligations placed on the respondent to inform trade unions or employers' organisations to comply is in terms of Section 106(2A) (b) of the LRA. It is indeed unfortunate that the letter written to the

appellant on the 23 January 2006 was the only letter not received by the appellant while all other correspondence issued to the appellant by the respondent in the same manner was received. This assertion is rejected as improbable. I further find that the auditor's request for extension was occasioned by the same letter, because none of the previous letters were responded to simply because the appellant was aware that the letter of the 23 January 2006 complied with Section 106(2A) (b) of the LRA and that it has serious implications for it.

[20] It is correct that subsequent to the notice of the 23 January 2006 the respondent did not issue another notice until the 9 June 2009. There is nothing in the LRA that suggest that the respondent should cancel the registration of a trade union or employers' organisation immediately upon its failure to comply, after a notice in terms of Section 106(2A) (b) has been issued. The fact that the respondent did not issue the notice in terms of Section 106(2B) of the LRA in 2006 does not mean that the respondent had waived its obligations in terms of Section 106(2A) of the LRA.

[21] The question is whether the appellant complied with sections 98, 99 and 100 of the LRA, now that it has been established that a Section 106(2A) (b) notice was issued prior to June 2009. None of the appellant's papers answers the question of whether it complied or not. There is no evidence to show that it complied at the time of the cancellation of its registration on the 2 October 2009.

[22] The issue of compliance with Sections 98, 99 and 100 of the LRA is a legal requirement. The appellant therefore had a legal duty to comply with the said sections. From 1999 until 2003 the financial statements submitted by the appellant did not comply with

Sections 98 or 100 of the LRA. The auditor's report was largely that there were no proper records and there were no proper record keeping systems in place.

[23] As stated above, Section 98 places an obligation on every registered trade union and every registered employer's organisation to keep books and records of its income expenditure, assets and liabilities in accordance with generally accepted accounting practice, principles and procedures.

[24] The **King Report III on Corporate Governance, Chapter 6** addresses the issue of compliance with laws, rules, codes and standards. **Item 3 of chapter 6** states:

“Corporate governance is the expression of ethical values and standards. As such compliance should also be understood to be an ethical imperative for the governance of companies...”

There is no difference in terms of record keeping and reporting between a company for gain and an organisation not for gain. **Item 4** states:

“Compliance with applicable laws should be understood not only in terms of the obligations that they create, but also for the rights and protection that they afford.”

[25] The obligations placed on trade unions and employers' organisations in terms of Sections 98 and 99 of the LRA are intended for the protection of the rights of members of the said organisations. The respondent has been afforded monitoring powers in terms of section 100 of the LRA.

- [26] There would be no point to Section 100 of the LRA if Section 106 of the LRA did not exist. The purpose of Section 106 (2A) and (2B) is to give powers to the Registrar to deal with those organisations which fail to comply with Section 100 of the LRA.
- [27] Which brings me to the appellant's argument regarding the unconstitutionality of Section 106 and the guidelines issued in terms of Section 95(8) of the LRA. According to the appellant's argument, the fact that the Registrar has power to investigate, accuse, prosecute and sentence is an infringement on the appellant's right to equality before the law conferred by Section 9(1) of the Constitution.
- [28] The purpose of the guidelines is explained in clause 1 of published Government Gazette 23611. These were further referred to by the **Honourable Judge Francis** at paragraph 11 of his judgement in the case of **NEWU v Minister of Labour & Others** supra. I will therefore not expand further on this issue save to indicate that I concur with his decision when he states that the said guidelines and Section 106(2A) and (2B) of the LRA are not inconsistent with the constitution.
- [29] The appellant contends that the respondent did not state the reasons it was cancelling the registration prior to cancellation, rather the reasons were only given after they were demanded by the appellant. The reasons were different from the ones given prior to cancellation of the registration of the appellant. Section 111(2) regulates when and how the reasons should be given. Section 111(1) states that:

“Within 30 days of the written notice of a decision of the Registrar, any person who is aggrieved by the decision may demand in writing that the Registrar provide written reasons for the decision.”

Section 111(2) states that:

“The Registrar must give the applicant written reasons for the decision within 30 days of receiving a demand in terms of subsection (1).”

[30] The appellant further argued that it was not invited to make written representations subsequent to receiving the written reasons from the respondent on the 18 November 2009. The fact is that no such procedure is provided for in the LRA. The written reasons are issued subsequent to a demand in terms of Section 111(1) of the LRA. The reasons are meant to assist an aggrieved party to decide whether it wishes to appeal or not, they are further not meant to allow an aggrieved party to persuade the Registrar.

[31] A further question is whether the written reasons issued by the respondent on the 18 November 2009 are the same reasons given on the 2 October 2009 when the appellant was deregistered. The respondent stated 3 reasons for cancelling the registration of the appellant. The reasons are:

- The organisation has ceased to function in terms of its constitution.
- The organisation has ceased to operate as a genuine trade union.
- The organisation did not comply with the provisions of Sections 98, 99 and 100 of the LRA.

[32] I have outlined in detail the reasons given by the respondent above. These are the same reasons given on the 2 October 2009 and 18 November 2009. I will only deal with the responses to the reasons and make an assessment as to whether or not the respondent was

correct to take the decision to cancel the registration on the basis of the information before him.

[33] According to the respondent, the constitution of the appellant does not provide for a position of National Chairman, yet Mr Luthuli occupies the position of National Chairman and National Organiser. His wife Mrs Veronica Luthuli occupies the position of National Treasurer and they are both members of the Executive Committee of the appellant. Other office-bearers are officials of the union and not members. Two of the senior officials are members of Mr Luthuli's family.

[34] The above averments are not disputed by the appellant and it is stated by it that there is a provision in its constitution for a position of Chairperson of the Branch General Meeting and a Chairperson of all shop stewards meetings. Interestingly, none of the said provisions for chairpersons referred to by the appellant are provisions for a National Chairperson. The position is therefore not provided for in the constitution and the position cannot exist simply because a resolution was passed creating it. It has to be included in the constitution and the amended constitution should be duly registered with the respondent. It was further argued that office-bearers are voted in terms of a secret ballot. If members chose to vote for members of Mr Luthuli's family so be it.

[35] The above argument however is short sighted in that it fails to take cognisance of the fact that the said members of Mr Luthuli's family were employed and brought in as officials by him. They are allowed to stand for election in executive positions even though they are officials and not members.

[36] The appellant does not address the issue which was raised by the respondent regarding the constitution submitted to an employer – Air Chefs (Pty) Ltd. In terms of the said constitution, which is not the one approved and registered by the respondent: clause 13.3 (a) of the said constitution states:

“In any legal action taken by the union on behalf of the members, the union shall deduct twenty (20) per cent from a member as compensation in any court ruling or in any settlement.”

[37] According to the respondent, the above clause is not contained in the constitution approved by the Department of Labour on the 23 July 1998. The appellant merely stated that the constitution of the 23 July 1998 is its approved constitution in terms of which it operates. It did not say anything regarding whether or not the above clause is contained in the constitution. The reason of the respondent in that regard stands unchallenged. The respondent's contention is that apart from the fact that the above clause is unconstitutional, it falls within those activities which indicate that a trade union is not genuine but operates to enrich certain officials without any convincing explanation from the appellant regarding the above, and in consideration of clause 21 of the Guidelines for Registration of Trade Unions and Employer's Organisations, issued in accordance with section 95(8) of the LRA and published under **GNR 1446 in GG 25515**, the conclusions drawn by the Registrar regarding the genuineness of the appellant are justifiable.

[38] Regarding the termination of the membership of some shop stewards of the appellant, I agree that it is an internal matter of the appellant. The same applies to the dispute between Mr Abdallah, Mr Xulu and the appellant. The dispute may well have arisen as a

result of the fact that Mr Xulu and Mr Abdallah were not re-elected. The information which the respondent relied upon in this regard is not conclusive and could not lead to a situation where the respondent is “satisfied” that the appellant is not a genuine trade union.

[39] The issue of non-payment of the settlement amount of one member to her and the alleged deduction of certain amounts by the appellant from the said settlement amount lacks substance in my view. The appellant has given a plausible explanation of the deductions. An amount of R300 000 was the settlement reached between parties. The employer – Air Chefs (Pty) Ltd deducted R99 614.40 for tax and paid it over to the South African Revenue Services (SARS). The balance was paid into the account of the appellant by error. This was confirmed by the attorneys who had acted for Air Chefs (Pty) Ltd at the time of the said settlement. The appellant subsequently paid the amount over to the employee. This ground is accordingly dismissed.

[40] The question remains however whether the decision of the respondent to cancel the registration of the appellant was correct in terms of the powers given to him by the LRA and the conclusion he came to after considering certain information provided to him by the appellant.

[41] My conclusion is that the respondent’s decision was correct. Even on the issues of non-compliance with Sections 98, 99 and 100 of the LRA alone the appellant stood to be deregistered.

[42] I am satisfied that the respondent, prior to cancelling the registration of the appellant, properly invoked the provisions of Section 106(2A) (b). He further afforded the appellant

sufficient opportunity to comply with the law as it was obligated to do, but the appellant failed. The appellant cannot be allowed to continue operating in circumstances where it completely disregards the law and its own constitution.

[43] The appeal therefore stands to be dismissed. There is no reason why the cost should not follow the results.

Order

[44] I therefore make the following order:

1. The appeal is dismissed with costs.

Mbileni AJ

Date of Hearing : **30 November 2010**

Date of Judgment : 15 February 2011

Appearances

For the Applicant : **JS Mphahlani**

Instructed by : **Baloyi Attorneys**

For the Respondent : **M Gwala**

Instructed by : **State Attorney**

LABOUR COURT