NATIONAL AIRWAYS WORKERS UNION

and

AIR TRANSPORT UNION

versus

AIR ZIMBABWE HOLDINGS (PRIVATE) LIMITED

and

AIR ZIMBABWE (PRIVATE) LIMITED

and

THE MASTER OF THE HIGH COURT

HIGH COURT OF ZIMBABWE

MAKONI J

HARARE, 18 October and 15 November 2012

**Opposed Matter**

*C. Mucheche*, for the applicants

*T. Magwaliba*, for the 1st & 2nd respondents

MAKONI J: The applicants approached this court seeking an order placing the first and the second respondents under provisional judicial management. The basis for the application is that:-

1. By reason of mismanagement or for any other cause, the first and the second respondents are unable to pay their debts or are being prevented from becoming a successful concern.
2. That there is a reasonable probability that if the company is placed under judicial management, it will be able to pay its debts or meet its obligations and become a successful concern.
3. It will be just and equitable to do so.

The application was opposed by the first and the second respondents. They raised three points *in* *limine* viz:-

1. The deponents to the founding affidavits have no authority to depose to the affidavits.
2. The applicants have no authority to institute the present proceedings.
3. The proceedings were instituted prematurely.

I will deal in points 1 and 2 at the same time as they are interlinked and

then point 3.

Point 1 and 2

It was submitted on behalf of the respondents that the deponent to the main affidavit Elijah Chiripasi has no authority to depose to the affidavit on behalf of the applicants. He says in para 2 of the founding affidavit that he derives his authority from his position as the first applicant’s vice president. The same applies to the affidavit deposed to by Alexander Ngoni Guchu who represents the second applicant. He says he is authorised to depose to the affidavit by virtue of his position as chairman of the second applicant. They did not produce a resolution authorising them to do so. They produced voluminous affidavit in the form of Annexure A and Annexure B. The deponents to the Annexures do not claim to have attended a meeting where it was resolved that deponents had authority to depose to the affidavits and that the applicants are authorised to institute the proceedings.

In response Mr *Mucheche* for the applicants submitted that the deponents had the requisite authority by virtue of their positions. The applicants had *locus standi* to institute the proceedings as they are organisations which champion and protect the interests of workers within their jurisdiction. They were mandated by the workers to institute the proceedings. The respondents also owe the applicants dues that were deducted from the employees salaries and were not remitted to them. Mr *Mucheche* in support of his contention cited *Telone* (*Pvt*) *Ltd* v *Communications and Allied Services Workers Union* SC 26/06, *Zimbabwe Textile Workers Union* v *Merlin* (*Pvt*) *Ltd t/a Merspin and Anor* HB 194/11, *National Airways Workers Union & Anor* v *The Mini of Transport, Communication and Infrastructure Development* (*N.O.*) *and Ors* HH 92/12.

As was determined in Telone (Pvt) Ltd at p 6 *supra* registered and certified trade unions and employer organisations are capable of suing and being sued in terms of s 29 of the Labour Relations Act [*Cap 28:01*]. There is therefore no doubt that the applicant could sue and be sued on issues concerning their members. The issue then is whether the members of the applicants authorised them to institute the present proceedings and the deponents to the founding affidavits to depose to the affidavits. In Telone *supra*, the members had authorised the respondent to institute proceedings in terms of document which has signed by the various employees.

The applicants did not attach any documents that support their contention that they had authority to the founding papers. They attached two sets of documents as Annexure A and B to the answering affidavits. Annexure A consists of 160 documents signed by members. They read:-

“I, the undersigned, employee of Air Zimbabwe Holdings (Pvt) Ltd and Air Zimbabwe (Pvt) Ltd Hopewell T. Gonyori, Pay/Staff No 600320

do hereby unequivocally authorise/mandate the National Airways Workers Union (NAWU) and Air Transport Union (ATU) hereinafter referred to as the “unions” to institute judicial management proceedings in the High Court of Zimbabwe in terms of the Companies Act [*Cap 24:03*] against Air Zimbabwe Holdings (Pvt) Ltd and Air Zimbabwe (Pvt) Ltd who owe me salaries and benefits for several months jointly and severally the one paying the other to be absolved, to vindicate my rights and interests with regard to the inordinate non-payment of salaries and to ensure that the companies are restored to financial viability for the security of my employment”.

Except for the documents on p 83, 94 and 128, which were signed on 18

February 2012, the rest were signed on 18 January 2012 .

Annexure B consists of 199 documents. They are to the following effect.

“I, the undersigned, Meki Samson Martin Pay/Staff No. 038612,

do hereby authorise the unions National Airways Workers Union (NAWU), and Air Transport Union (ATU), to represent my interests in the payment of my salary arrears and/or deferred payments from Air Zimbabwe Holdings and for the security of my employment”.

These were signed on varying dates ranging from 18 January to 14 February 2012.

An analysis of Annexure A and B will reflect the following:-

1. The present application was filed on 26 January 2012. Therefore the bulk of the documents which were signed after 20 January 2012 were signed *ex post facto* the issuing of the application.
2. Annexure B clearly did not authorise the institution of the present proceedings. It authorised the applicant to represent the named persons in claims for arrear salary and wages. There is no mention of a claim for judicial management. There is nothing to suggest that it was in the contemplation of those named persons that applicants would institute judicial management proceedings.
3. If one were to proceed by number the signatories to Annexure A authorising the institute of the present proceedings, do not constitute a simple majority of the applicant’s membership. Those who signed Annexure B are in the majority.
4. Annexure A reflects that the employees are employed by Air Zimbabwe Holdings (Pvt) Ltd and yet they are employed by the second respondent.
5. Both Annexure A and B authorise the first and the second applicants to do various acts and yet the signatories are not members of both unions.
6. Both Annexures do not authorise the deponents to depose to the affidavits.

It is clear from the above that the deponents to the founding papers did

not derive their authority from their membership. The applicants did not obtain a mandate from the majority of the membership or a resolution of the applicants to institute the present proceedings.

In the result I will uphold the point *in limine*. There is no proper application before me. In view of that, it will not be necessary for me to determine the other point raised *in limine*.

In the result I will make the following order.

1. The application is dismissed.
2. The applicants to pay the first and the second respondents’ costs.

*Matsikidze & Mucheche*, applicants’ legal practitioners

*Mutumbwa Mugabe & Partners*, 1st & 2nd respondents’ legal practitioners