

Kenya National Union of Nurses and Midwives



For Unity, Protection & Empowerment

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Registered Trade Union (Reg. No. TU/169)

NBI/KNUNM/S.K.K.1/44/26

17TH FEBRUARY 2026

SIMON KIBII KOECH

MEMBER

UASIN GISHU COUNTY

Email: symonkibii@gmail.com

Cell Phone: 0723712170

REF: NOTICE OF MOTION AND IMMEDIATE SUSPENSION OF MEMBERSHIP.

Pursuant to **Article XX** [Clauses 20.0 (b–h), 20.8, and 20.19] of the Union Constitution and **Section 47 of the Labour Relations Act**, notice is hereby given that the General Secretary shall present a formal Motion against you to the National Executive Board (NEB).

This action is necessitated by the findings of **Judgments in Cause No. 50 of 2018 and 387 of 2018 (issued on 21st February, 2020 and 27th March, 2023 respectively)** in the matter of *Kenya National Union of Nurses vs. Simon Kibii and Others (Judgments enclosed)*.

The Union is contemplating your permanent removal from membership based on the following proven grounds of gross misconduct:

- a) Financial Malpractice & Illegal Diversion of Union Dues:** You were found to have illegally diverted Union dues to an unauthorized account held at NIC Bank. This is a direct violation of **Article XI** (Clauses 11.4, 11.5, 11.6, and 11.8) and **Sections 48 & 50 of the Labour Relations Act (2007)**.
- b) Gross Insubordination:** Your actions demonstrate a fundamental disrespect for Union leadership and constitutional governance, contrary to **Article XX 20.0 (a-i)**.
- c) Breach of Fiduciary Duty:** By fraudulently redirecting funds meant for member services, you acted in a manner detrimental to the Union's interests and the Rule of Law.

In accordance with the aforementioned Court Judgments, you are hereby granted **seven (7) days** from the date of this notice to:

1. **Refund the full amount** of the Union dues fraudulently obtained.
2. **Provide proof of payment** to the National Office Gazetted Account.

3. Respond to the motion

Failure to comply with this demand within the stipulated 7-day window will result in the immediate institution of **criminal proceedings** to recover all misappropriated funds.

TAKE NOTICE that your membership is hereby **SUSPENDED** pending the final determination of the Motion by the National Executive Board. During this period, you are prohibited from transacting any business or misrepresenting yourself as a member of the Union.

Thank you.

Yours faithfully,



SETH PANYAKO
GENERAL SECRETARY

Cc:

- 1. County Secretary & Head of County Public Service - Uasin Gishu**
- 2. Secretary County Public Service Board - Uasin Gishu.**
- 3. Payroll Manager - Uasin Gishu**
- 4. County Secretary – Uasin Gishu**
- 5. Chief Officer, Health – Uasin Gishu**
- 6. Nursing Council of Kenya**



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 50 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

ECO BANK KENYA LIMITED.....1ST RESPONDENT

KENYA COMMERCIAL BANK GROUP LIMITED.....2ND RESPONDENT

THE REGISTRAR OF TRADE UNIONS.....3RD RESPONDENT

SIMON KIBII.....4TH RESPONDENT

JOHN BIIY.....5TH RESPONDENT

LUCY TANUL.....6TH RESPONDENT

ALINCE YAHUMA.....7TH RESPONDENT

GRACE KINYANJUI MUTHONI.....8TH RESPONDENT

ALI GABOW ABDULAHI.....9TH RESPONDENT

JUDGMENT

The Claimant herein a duly registered Trade Union whose mandate is to represent the interests of the nurses on matters employment and labour relations pursuant to the Labour Relations Act, No. 14 of 2007.

The 1st and 2nd Respondents are financial institutions offering banking executorship and trust business within the meaning and regulations of the Banking Act, duly authorised to perform such functions.

The 3rd Respondent is the Registrar of Trade Unions operating within the parent Ministry of East Africa Community, Labour and Social Protection.

The 4 to 7th Respondents are employees of Uasin Gishu Public Service Board and are all serving in the designation of nurse save for the 5th Respondent who has since been dismissed by the said board.

The 8th Respondent is an employee of Lamu County Public Service Board, serving in the designation of a nurse and the 9th Respondent is a former employee of the said Lamu County Public Service Board, who has since retired from service since December, 2015.

In its Claim the Claimant union contends that there has been fraudulent diversion and use of union funds into ungazetted and unauthorized Bank Accounts being account numbers 0073205026433901 and 1177568497 held at the 1st and 2nd Respondent's Banks respectively.

The Claimant contends that it operates two accounts one being the gazetted account and the other being the authorized account where all monies received from the remittances from its members are remitted in accordance with Section 39 of the Labour Relations Act.

The Claimant further contends that contrary to the provisions of Part VI Section 48 (1), (2) and (3) of the Labour Relations Act No. 14 of 2007 the 4th to 7th Respondent caused the opening of an account with the 1st Respondent Bank being Account No. 0073205026433901, Eldoret Branch and proceeded to receive remittances of union dues deducted from members of the Claimant union from 18 counties.

The Claimant avers that it further discovered the existence of yet another improper, unlawful and unconstitutional Bank Account held at the 2nd Respondent Bank being account number 1177568497 at its Lamu Branch with the 8th and 9th Respondents being signatories thereto. It is further contended that this act is contrary to the provisions of Part VI Section 48(1), (2) and (3) of the Labour Relations Act No. 14 of 2007.

The Claimant further avers that the 1st and 2nd Respondents actions

are in breach of Section 48(2)(a-b (i) and (ii) of the Labour Relations Act as they have colluded with strangers and entertained unlawful accounts whose aim was to defraud the Claimant union of its dues.

The Claimant maintains that the actions of the 1st and 2nd Respondent are in breach of the Constitution and in particular Article 41 of the Constitution.

In its Amended Memorandum of Claim the Claimant Union seeks the following reliefs:-

1. That this Court be pleased to issue an Order of Permanent closure of the Bank Account No. 0073205026433901 in the 1st Respondent's Eldoret Branch bearing the 4th to 7th Respondents as signatories and transfer all the funds therein to the Claimant's Gazetted bank Account whose details are:-

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

2. That this Court be pleased to issue an Order of Permanent closure of the Bank Account No. 1177568497 in the 2nd Respondent's Lamu Branch bearing the 8th and 9th Respondents as signatories and transfer all the funds therein to the Claimant's Gazetted bank Account whose details are:-

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

3. That this Court be pleased to quash the instruments used in opening Bank Account No. 007320526433901 being operated in the 1st Respondent's Eldoret Branch and Account No. 1177568497 being operated by the 2nd Respondent's Lamu Branch.

4. That this Court be pleased to issue an Order directing the 1st, 4th, 5th, 6th and 7th Respondents to jointly pay ALL FUNDS transacted in the Bank Account No. 0073205026433901 from the time of its opening, the same that amounts to Kshs.9,686,463.15 with interest at Court rate into the Claimant's Gazetted bank Account whose details are:

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

5. That this Court be pleased to issue an Order directing the 2nd, 8th and 9th Respondents to jointly pay ALL FUNDS transacted in the Bank Account No. 1177568497 from the time of its opening, the same amounts to Kshs.840,000 with interest at Court rate into the Claimant's Gazetted bank account whose details are:

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

6. That this court be pleased to issue an Order directing the relevant criminal investigation department to commence forthwith criminal investigations into the operations of the two accounts herein and the Employers who are fraudulently diverting the Union dues to these two accounts.

7. That this court be pleased to issue an Order directing the 1st and 2nd Respondent to immediately transfer ALL MONIES in possession into the Claimant's Gazetted Bank Account or Authorized Account as specified below:

Kenya National Union of Nurses Bank;

Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account Number No. 20277G5079.

OR

Bank; Co-Operative Bank Branch; Aga Khan Walk.

Account Number; 0112030951520

8. That, this Court issue an order directing any employer who may have channelled the union dues into the two accounts in the 1st and 2nd Respondent to pay the Claimant from its own kitty all sums of monies owed to the Claimant as union dues which the culprit employers has diverted into these two unauthorized and fraudulent accounts after deductions the members' wages as provided for under Sec. 19(6) of The Employment Act, 2007 Laws of Kenya and to continue in remittance of the said dues to the Claimant's Bank Accounts in prayer no 4 above.

9. That this court be pleased to order any persons, firm corporate, individual employer or agent of any employer who by virtue of choice, association and knowledge necessitated the fraudulent transaction of the Bank Account No. 0073205026433901 being operated in the 1st Respondent's Eldoret Branch and Bank Account No. 1177568497 in the 2nd Respondent's Lamu Branch to pay the Claimant compensation for economic damages at court rate and discretion.

10. That this Court be pleased to grant such orders or relief as it deems fit and just in the circumstances.

11. That the cost of this suit be borne by the Respondents.

The firm of M'Njau and Mageto on behalf of the 4th to 7th Respondents filed a Memorandum of Response and Counter Claim on 29th May, 2018, in which they aver that the Bank Account No. 0112030951520 held at Co-operative Bank Aga Khan Walk Branch Nairobi that is referred to by the Claimant union as the authorized bank account is actually an illegal and unauthorized bank account as the same was opened and continues to operate without gazzement and is being used to siphon monies belonging to members of the union.

The 4th to 7th Respondents further contend that contrary to the Claimant's assertion the Bank Account No. 0073205026433901 held at the 1st Respondent's Eldoret Branch is proper, lawful and constitutional as it was opened and operated in accordance with the union Constitution Chapter XI (2) and that they (the 4th to 7th Respondents) are the rightful signatories to the said account.

The 4th to 7th Respondents further contend that the Claimant through its Secretary General has been operating an illegal bank account being account number 01120309515209 at Co-operative Bank Aga Khan Walk which is being used to siphon funds from members of the union in clear violation as confirmed from the Ministry of Labour, Social Security and Services Department of Labour that the same was not gazetted as required by law.

The 4th to 7th Respondents sought for Judgment as against the Claimant in terms of the following reliefs:

1. An Order directing that the Account No. 0112030951520 held at Cooperative Bank Aga Khan Walk Branch which is unauthorised and illegal be permanently closed.
2. Costs and interest of the Counter Claim at Court rates.
3. Any other reliefs which this Court deems fit and just to grant.

The 4th to 7th Respondent urged this Court to dismiss the instant Claim with costs and enter judgment in its favour in terms of the reliefs sought in their counterclaim.

The 2nd Respondent on the other hand filed its Statement of Defence on 11th June, 2018 in which it admits having opened a joint account No. 1177568497 at their Lamu Branch on 29th December, 2015 with the 8th and 9th Respondents as its beneficiaries and/or signatories thereto following receipt of a request from the said 8th and 9th Respondent and duly filed, signed and executed account opening forms presented to the 2nd Respondent.

The 2nd Respondent contends that it at all times carries out its financial obligations in accordance with the law and has never at any point conspired with the 8th and 9th Respondent to defraud the Claimant of any union dues or monies as alleged by the Claimant herein.

It is further its contention that it has never infringed on the Claimant's members' Constitutional rights as envisaged under Article 41(2)(c) of the Constitution of Kenya, 2010 or Section 48(2) of the Labour Relations Act.

The 2nd Respondent further contends that it has no interest whatsoever in the subject account number 1177568497 and further that it is willing to comply with any orders that may be issued by this Court in relation to the monies held in the said account No. 1177568497.

The 2nd Respondent contends that the instant claim against it is unwarranted and that the same ought to be dismissed with costs.

The 1st Respondent also filed a Memorandum of Response in Court on 4th July, 2018, in which it admits having opened the Account No. 0073205026433901 at its Eldoret Branch on 20th March, 2017 in the name of Kenya National Union of Nurses, Uasin Gishu County.

It contends that the said Bank Account was opened following presentation of duly signed Account opening forms and supporting documentation by the 4th to 7th Respondents being union officials and signatories to the said account.

The 1st Respondent further avers that the said Bank Account is not the National Bank Account but rather a Branch Account that was opened under the provisions of Chapter XI (2) of the Claimant Union's Registered Constitution.

The 1st Respondent contends that it has not committed any fraudulent activities in relation with the said Account Number 0073205026433901 as alleged by the Claimant herein and that in opening the said account it did not contravene the provisions of Article 41(2)(c) of the Constitution of Kenya, 2010 and Section 48 (2) (a-b (i) and (ii)) of the Labour Relations Act.

The 1st Respondent insists that it has no claim whatsoever to the monies held in the aforementioned account and that it will abide by any directions given by this Court on the same.

The 1st Respondent insists that the Claimant has no Claim against it and that the instant Claim has been made in bad faith and ought to be dismissed with costs to the 1st Respondent.

In its response to the Defence and Counter Claim filed in Court on 8th November, 2019 the claimant insists that it was illegal for the 4th to 7th Respondents to proceed and open accounts without authority both in law and fact.

It further contends that the Claimant sent a Notice to the said 4th to 7th Respondent dated 17th November, 2017 in respect of alleged breach of the Claimant's Constitution and requested for their responses on the said issues. It is further contended that The Respondents neither responded to the allegations nor appeared for the National Executive Council (NEC) meeting that was set for 16th February, 2018.

In the NEC Meeting held on 16th February, 2018 the Claimant avers that it was resolved it dissolves its Uasin Gishu Branch as it was affirmed that the 4th to 7th Respondents had opened the said account for fraudulent purposes only.

The Claimant contends that none of the Respondents contested the said dissolution save for the 5th Respondent whose protest was none the less dismissed for lack of merit.

The Claimant union maintains that the 4th to 7th Respondents are guilty of fraud and illegalities for purporting to advance interests of a disbanded union, purporting to be union officials of the union when in fact they were not and in the process opened an account without proper authorization with an aim to siphon and/or divert union money for selfish gain.

The Claimant urged this Court to dismiss the Response by the 4th to 7th Respondents and the Counter Claim filed therein and instead enter judgment in its favour as against the said 4th to 7th Respondents herein.

The 8th and 9th Respondent did not enter appearance or file defence in this matter.

Parties agreed to disposed of the Claim by way of written Submissions.

Submissions by the Parties.

The Claimant submitted that the 4th to 7th Respondents are not officials of the claimant and have never held such positions at any time and therefore lack the requisite capacity to open an Account for the Claimant.

The Claimant further avers that the 4th to 9th Respondents lack the requisite *locus standi* to open and/or authorize the opening of the Claimant's Bank Accounts. The Claimant further submitted that the Claimant's acts were fraudulent and they worked in collusion with the 1st and the 2nd Respondents to fraudulently divert funds into the said illegal accounts for their own selfish gain.

The Claimant further contended that it only has two (2) gazetted accounts that receive dues deducted from its members being Account Number 202776507 (Barclays Bank) and 01120309515209 (Cooperative Bank).

It is further contended that opening of such accounts is well provided for under Chapter XI (1) of the Claimant's Registered Constitution.

The Claimant further contends the 1st and 2nd Respondents on one hand and the 4th to 9th Respondents have breached various provisions of her Constitution and in particular Chapters XI, XXI in relation to opening and operation of union accounts and Article 41(2)(c) of the Constitution of Kenya, 2010 and Sections 37,39, 48 and 50 of the Labour Relations Act.

The Claimant further submitted that the 1st and 2nd Respondent Banks deliberately failed to follow due process and/or conduct due diligence before opening the subject accounts.

The Claimant maintains that this Court is clothed with the requisite jurisdiction under Section 47(1)(a) of the Labour Relations Act to hear and determine the instant Claim. The Claimant relied on the decision in the case of **Lawrence Nyaguti Ochieng and 7 Others v Union of Kenya Civil Servants & 3 Others (2015) eKLR**.

In conclusion the Claimant urged this Court to allow its Claim in terms of the reliefs sought in the Amended Memorandum of Claim.

1st Respondent's Submissions

The 1st Respondent in its Submissions maintains that the Account Number 0073205026433901 opened at its Eldoret branch was lawful and that the same was a branch account and not a national account. It is further submitted that the 4th to 7th Respondent did avail all the requisite account opening documents prior to the opening of the said account. The 1st Respondent relied on the provisions of Chapter XI of the Claimant Union's Constitution.

The 1st Respondent further submitted that it has no specific interest in the said Bank Account Number 0073205026433901 and further that no evidence has been tendered by the Claimant herein to demonstrate its interest and/or intent by it to defraud the Claimant Union.

The 1st Respondent maintains that the Claimant has failed to prove its case as against it and in particular it has failed to prove its allegation of Fraud. The 1st Respondent cited the case of **Central Bank of Kenya v Trust Bank Limited & 4 Others (1996) eKLR** and **Evans Kidero Speaker of Nairobi City County Assembly and Another (2018) eKLR**.

The 1st Respondent further submitted that in providing banking services to the 4th to 7th Respondents it did follow and apply the normal and standard procedure as it does to all other customers. It is further the 1st Respondent's Submission that the instant Claim in the circumstances ought to be dismissed with costs to the 1st Respondent.

4th to 7th Respondents' Submissions

The 4th to 7th Respondent on their part submitted that they lawfully opened the Bank Account Number 007320502643901 to serve the Claimant's Uasin Gishu branch as its union officials pursuant to the provisions of Chapter XI (2) and (4) of the Union Constitution.

The 4th to 7th Respondents contend that they have wrongly been enjoined to the instant Claim as they are neither custodians nor remitters or diverters of union funds. They further contend that the instant Claim ought to be dismissed with costs.

The 4th to 7th Respondents further submitted that the Claimant has failed to prove its case as against them on the issue of fraud and therefore urged the Court to dismiss the Claim. For emphasis the 4th to 7th Respondents cited the Court of Appeal decision in the case of **Kinyanjui Kamau v George Kamau Njoroge (2015) eKLR**.

In conclusion the 4th to 7th Respondents urged this Court to dismiss the instant Claim and allow its counter claim in terms of the reliefs sought therein.

Analysis and Determination

Having considered the Amended Claim and its supporting documents, the Responses thereto together with the supporting documents, the submissions filed by the parties hereto and the authorities cited, the issues for determination are:

1. Whether the 4th to 9th Respondents had the *locus standi* to cause the Bank Account Numbers 007320502643901 and 1177568497

to be opened.

2. Whether the Account Numbers 007320502643901 and 1177568497 have been handled in an illegal manner.
3. Whether the 1st and 2nd Respondents conspired in any way with the 4th to 9th Respondent to commit any fraud.
4. Whether the Claimant is entitled to the reliefs sought in its Amended Claim.

Whether the 4th to 9th Respondents had the locus standi to cause the Bank Account Numbers 007320502643901 and 1177568497 to be opened

The Claimant maintains that the 4th to 9th Respondent had no *locus standi* to cause the 1st and 2nd Respondents to open the account numbers 007320502643901 and 1177568497. It further contends that Claimant union operates two accounts where all the monies so deducted from the wages of all her members should be channelled being:

Kenya National Union of Nurses Bank;

Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account Number No. 20277G5079.

OR

Bank; Co-Operative Bank Branch; Aga Khan Walk.

Account Number; 0112030951520

It was further contended that the opening of the two separate accounts was only meant to fraudulently obtain money from the Claimant union meant for its members and was done contrary to the provisions of Article 41(c) of the Constitution of Kenya, 2010, Sections 48 (2) (a-b) (i) and (ii) of the Labour Relations Act, 2007 as well as the Claimant Union's Constitution.

The Respondents on the other hand maintained that the 4th to 9th Respondents in the capacity as branch union officials and after completing the requisite account opening documents at the 1st and 2nd Respondent Banks the said banks accounts were opened for branch office and not for the national office.

The 1st and 2nd Respondents maintained that they followed due process and that they both had no intent to defraud the Claimant in anyway as they had no interest with the said sums held in the two accounts.

The 4th to 9th Respondents contend that they opened the said accounts as branch accounts and not national accounts.

The Claimant union does not dispute the membership of the 4th to 9th Respondents were at some point its branch officials. The said Respondents maintained that the said accounts were opened as branch accounts and that they had the requisite capacity to do so.

Chapter XI part 2 of the Union's Constitution provides as follows:

*"The treasurer of every branch of the union shall cause a bank account to be opened in the name of the branch of the union and shall ensure that all money belonging to the union received by him is paid into he said account immediately upon receipt of such monies, provided that branch treasurer shall be permitted to retain in cash a sum not exceeding twenty thousand shillings to pay minor expenses. All cheques for withdrawals of money for such branch bank account shall be signed by the branch secretary and any other two signatories, that is branch treasurer, the branch chairperson and or branch trustee. **Provided that the branch shall account for such withdrawals to the national treasurer.**"*

[Emphasis added]

Further Chapter XVII (5) provides that –

Branch Treasurer

The Branch Treasurer shall be a person capable of maintaining clear records of all funds of the Branch. He shall be responsible for the funds of the Branch and shall maintain all necessary books of accounts and records. He shall ensure that no payments are made from Branch funds under his/her control unless a payment voucher has been prepared and authorized in accordance with the provisions of the Trade Union Accounts Regulations and shall ensure that funds are remitted to accounts and records. He shall ensure that no payment is made from Branch funds under his/her control unless a payment voucher has been prepared and

authorized in accordance with the provisions the Trade Union Accounts Regulations and shall ensure that funds are remitted to the Union's National Treasurer in accordance with the provisions of Chapter XIII (3) of this Constitution.

From the 4th to 7th Respondents Further List of Documents there is a certificate of Registration for Kenya National Union of Nurses Uasin Gishu Branch dated 29th October, 2013 issued by the Registrar of Trade Unions.

Further document 2 is an extract from the Registrar of Trade Unions

indicating the 4th to 7th Respondents as branch officials of the said Uasin Gishu branch.

From the foregoing and in light of the fact that the Claimant Union does not dispute the fact that the said respondents were or used to be branch officials I find that they had the requisite locus standi to cause the opening of the two accounts being 007320502643901 and 1177568497 as branch accounts and that the two accounts are distinct from the national accounts held by the Claimant union.

Whether the Account Numbers 007320502643901 and 1177568497 have been handled in an illegal manner

From the above, the 4th to 9th Respondents in their capacity as union officials opened the bank account numbers 007320502643901 and 1177568497 as branch accounts. However, the union Constitution at Chapter XI part 2 and 3 provides as follows:

1. *The national treasurer shall cause a bank account to be open and maintained in the name of the Union and shall ensure that all money belonging to the union received by him is paid into the said bank account immediately upon the receipt of such money provided that the national treasurer shall be permitted to retain in cash a sum not exceeding fifty thousand shillings to pay minor expenses. All cheques for withdrawals of money shall be signed by the national treasurer, Secretary General and national Chairperson. In the event of them being sick or out of the country, their deputies shall sign all Union cheques.*

2. *The treasurer of every branch of the union shall cause a bank account to be opened in the name of the branch of the union and shall ensure that all money belonging to the union received by him is paid into the said account immediately upon receipt of such monies, provided that branch treasurer shall be permitted to retain in cash a sum not exceeding twenty thousand shillings to pay minor expenses. All cheques for withdrawals of money for such branch bank account shall be signed by the branch secretary and any other two signatories, that is branch treasurer, the branch chairperson and or branch trustee. Provided that the branch shall account for such withdrawals to the national treasurer.*

3. *All the money collected by the branches shall be the property of the union. Ordinary branch expenditure shall be paid from branch funds of money allocated to it by the National Executive Council. All cheques of check-off system shall be crossed and shall be neither paid in cash nor be paid into branch bank account but shall be sent to the national headquarters' bank account.*

4. *The funds of the Union may be Used only for the following objects –*

- a) *The payment of salaries for Executive and Employees of the Union in line with Trade Union/ Corporate practices in Kenya.*
- b) *The payment of allowances and expenses of officers of the Union line with Trade Union/ Corporate practices in Kenya*
- c) *The payment of expenses for administration of the Union including audit of accounts of the funds of the Union.*
- d) *The prosecution or defence of any legal proceedings to which the union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising but of the relations of any member with his/her employer.*
- e) *The conduct of Trade Disputes on behalf of the Union or any member thereof.*
- f) *The compensation for loss arising out of Trade disputes.*
- g) *Such allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment as the National Executive Council may from time to time prescribe.*
- h) *The payment of any fine or penalty imposed upon the Union under the provisions of the Trade Union Act, provided that the funds of the Union shall not be applied either directly or indirectly in payment of the whole or any part of any fine or penalty imposed upon any member or other person by sentence or order of a court of justice.*
- i) *The payment of subscription and fees to any Federation of Trade Unions to which the Union may be affiliated.*
- j) *The financial year of the Union shall end on 31st June of every year. Copies of the Annual Statement of accounts shall be supplied to members by the Secretary General upon request."*

From the above provisions, it is clear that the said branch accounts are not to operate independently of the national office gazetted union account. The 4th to 9th Respondents cannot purport to run the said accounts in a manner that contravenes the Union Constitution.

No evidence has been availed by the 4th to 9th Respondents to prove compliance with the provisions of Chapter XI part 2 and 3 of the union Constitution with respect to funds held at the branch account. The said officials have not produced evidence of compliance with the requirement of the branch to account for all expenditure and pay all other funds to the National Headquarters bank accounts.

Whether the 1st and 2nd Respondents conspired in any way with the 4th to 9th Respondent to commit any fraud

The 1st and 2nd Respondents are financial institutions who maintain

that they have no interest in the sums held on behalf of the union branches. They further maintain that the accounts opened were done in a procedural manner and that the accounts are maintained as branch accounts and not national accounts.

Both the 1st and 2nd Respondent attached the requisite Bank account opening forms duly filed by the branch union officials prior to the opening of the said bank accounts.

The Claimant union contends that the 1st and 2nd Respondent are working with the 4th to 9th Respondents to defraud the union of its dues.

No evidence was tendered on any fraudulent dealings between the 1st and 2nd Respondents and the 4th to 9th Respondents respectively.

I therefore find that the account opening was done in a systematic and procedural manner except that they do not appear to have considered the union's constitution on maintenance of such accounts. In absence of any evidence to the contrary the 1st and 2nd Respondents carried out instructions issued to them by the 4th to 9th Respondents on behalf of the respective union branches and there was no evidence of conspiracy to defraud the Claimant Union.

Whether the Claimant is entitled to the reliefs sought in its Amended Claim

The law governing relations between trade unions and employees is contained in Article 36 and 41 of the Constitution, parts VI, VII, VIII and IX of the Labour Relations Act in particular Section 48, 49 and 50 of the Labour Relations Act provide for deduction and remittance of trade union dues.

Chapters XI, XIII and XX of the Claimant Union Constitution provides for funds held by respective branches, how the said funds will be handled by the branch officials as well as the discipline of such union branch officials.

From the foregoing, I find that the Claimant has proved its case on a balance of probabilities and is entitled to the following reliefs:-

1. An Order of permanent closure of the Bank Account Numbers 007320502643901 and 1177568497 held at the 1st and 2nd Respondent banks respectively.

2. An Order that the funds held in the two accounts being 007320502643901 and 1177568497 be transferred forthwith to the Claimant's gazetted bank account whose details are:

Kenya National Union of Nurses Bank;

Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account Number No. 20277G5079

3. An Order be and is hereby issued quashing the instruments used in account opening for the account numbers 007320502643901 and 1177568497 held at the 1st and 2nd Respondent banks.

4. An Order be and is hereby issued to the 4th to 7th Respondents to jointly account for all the funds transacted in respect with Bank Account number 007320502643901 held at the 1st Respondent's Uasin Gishu Branch being Kshs.9,686,463.15/- and to refund any money not properly spend in accordance with the Union's Constitution.

5. An Order be and is hereby issued to the 8th to 9th Respondents to jointly account for all the funds transacted in respect with Bank Account number 1177568497 held at the 2nd Respondent's Lamu Branch being Kshs.840,000/-

6. The Claimant is also entitled to costs of this Claim to be paid by the 3rd to 9th respondents. 

The Claim against the 1st and 2nd Respondents stands dismissed with no order for costs for the 1st and 2nd respondents as they had a responsibility to open accounts for the branches only in compliance with the Union Constitution which they had a responsibility to call for in addition to all other account opening documents.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF FEBRUARY 2020

MAUREEN ONYANGO

JUDGE



Kenya National Union of Nurses [KNUN] v National Industrial Bank (NIC) & 5 others (Cause 387 of 2018) [2023] KEELRC 796 (KLR) (27 March 2023) (Judgment)

Neutral citation: [2023] KEELRC 796 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 387 OF 2018
M MBARŪ, J
MARCH 27, 2023**

BETWEEN

KENYA NATIONAL UNION OF NURSES [KNUN] CLAIMANT

AND

NATIONAL INDUSTRIAL BANK (NIC) 1ST RESPONDENT

THE REGISTRAR OF TRADE UNION 2ND RESPONDENT

SIMON KIBII 3RD RESPONDENT

JOHN K BIY 4TH RESPONDENT

LUCY J TANUI 5TH RESPONDENT

ALICE YAHUMA 6TH RESPONDENT

JUDGMENT

1. The claimant filed the claim herein on April 9, 2018 and served the respondents. Only the 1st respondent entered appearance.
2. The claimant was directed to serve through substituted service. There was no appearance or attendance by the 2nd to 6th respondent.
3. Satisfied that all the respondents were aware of these proceedings, the court heard the claimant and the 1st respondent.

Claim

4. The claimant is a trade union registered under the provisions of the *Labour Relations Act, 2007* (the LRA). The 1st respondent is a financial institution regulated under the *Banking Act*. The 2nd respondent is an office established under the *LRA*. The 3rd, 5th and 6th respondents are employees of



Uasin Gishu Public Service Board designated as nurses, and the 4th respondent is a former employee of Uasin Gishu Public Service Board.

5. The claimant operates two bank accounts where all monies deducted from the ages of all its members should channelled being;

"Kenya national Union of Nurses Barclays Banks of Kenya Queensway Branch Nairobi
Account Number xxx

And;

Kenya National Union of Nurses Co-operative Bank

Aga Khan Walk

Account number xxx."

6. The claimant's constitution provides that all cheques should be banked in the unions account in accordance with Recognition Agreement signed between the claimant and all County Governments for check-offs system and should not be paid in cash or be paid into the branch account but to the national union account.
7. The claimant receives the remittances from the members for lawful undertakings well spelt out under the provisions of section 39 of the *LRA*.
8. The claimant noted that an unauthorised account receiving union monies being account No.xxx at the 1st respondent was fraudulently opened by the 3rd to 6th respondents and immediately wrote to the 1st respondent on 2nd January, 2018 so as to be supplied with instruments used to opening such an account, the signatories and that the account be frozen but there was no response.
9. The actions by the 1st respondent denied the claimant's members right to fair labour practices and failed to abide the provisions of section 48 of the *LRA* by refusing to pay monies deducted from members of the claimant to the claimant and the actions by the 1st, 3rd to 6th respondents were done fraudulently and in violation of the law.
10. The claimant is seeking the following;
- an order be issued freezing the account held by the 1st respondent being account No.xxx being operated from Eldoret branch;
 - an order quashing the instruments used in opening Bank account No.xxx at 1st respondent Eldoret branch;
 - a declaration that the 3rd to 6th respondent's action of opening Account No.xxx with the 1st respondent for the purpose of collecting claimant's members union dues is illegal and fraudulent;
 - An order be issued directing criminal investigations into the operations of the account and the employers/individuals who fraudulently diverted the union dues to the subject account No.xxx;
 - An order be issued directing the 1st respondent to transfer all monies in respect of account No.xxx into the claimant's gazetted and authorised accounts;



- f. An order be issued directed at employers who have channelled union dues into the account to pay the claimant as provided for under section 19(6) of the *Employment Act* and commence remittances to the authorised bank account;
 - g. Orders be issued that any person, firm or individual of any employer who by virtue of choice necessitated the fraudulent transactions in account No.xxx to pay the claimant compensation for economic damage at court rates;
 - h. An order be issued directing the 3rd to 6th respondent to tender an accurate account of the proceeds acquired from members in respect of account No.xxx and to immediately remit the same to the claimant's authorised bank account at Kenya National Union of Nurses, Barclays Bank of Kenya, Queensway Branch Nairobi, Account No.xxx; and
 - i. Payment of costs.
11. In evidence, the claimant called Seth Panyako the general secretary and who testified and reiterated the claim and that as the general secretary of the claimant, on 2nd January, 2018 upon discovery of union funds being deposited with the 1st respondent in account No.xxx he wrote and requested that the account be frozen and to get information as to who the signatories were. He discovered there were fraudulent remittances of claimant's member's union dues through the participation of the 3rd to the 6th respondents which is contrary to article 41 of the *Constitution* and the *LRA*.
 12. The deductions made by the employers from the wages of claimant's members were being unlawfully transacted in the bank account held by the 1st respondent without any justifiable cause. There was fraudulent diversion of money into an illegal account and unauthorised account operated by the 3rd to 6th respondents who are employees of Uasin Gishu County Public Service Board serving as nurses save for the 4th respondent who is a former national official of the claimant.

Response

13. In response, the 1st respondent's case is that in March, 2017 it received instructions from its customers the 3rd to 6th respondents to open a joint account No.xxx and who indicated that the account would be used to carry on a PSV business which was detailed in the account opening forms signed by all of them. At the time the account was opened, the 1st respondent carried out due diligence as required and at the time it was not indicated that the same was meant to be used to collect or deposit deductions from members of the claimant.
14. In opening account No.xxx the 1st respondent followed due diligence and is not party to any conspiracy to commit fraud for the reasons that the claimant did not disclose the members whose deductions have been remitted into this account. If there was fraud on the part of the 1st respondent as alleged, there was no call to address how the account was opened and the 1st respondent had acted in good faith and there is no cause of action against the 1st respondent since the account was opened regularly and all required documents to support the same were availed as required by law. The claimant is entitled to pursue the account holders as opposed to the 1st respondent. There is no case of fraud by the 1st respondent to justify the grant of orders sought by the claimant and the claim against the 1st respondent should be dismissed with costs.
15. In evidence, the 1st respondent called Ibrahim Ngatia the legal counsel who reiterated the response filed and testified that in March, 2017 the 3rd to 6th respondents issued instructions to the 1st respondent to open account No.xxx as a joint account for a PSV business as indicated in the account opening forms and the required documents with regard to opening a joint account were attached and verified



by the 1st respondent to be correct. Due diligence conducted indicated that the source of funds for the account No.xxx was PSV activities and the account holders attached a KRA Pin, their identity cards and transacted different amounts.

16. At the close of the hearing, both parties filed written submissions.
17. The claimant submitted that the 3rd to 6th respondent have previously undertaken fraudulent activities and opened an account at Eco Bank Kenya Limited and leading to the claimant filing *Kenya National Union of Teachers v Eco Bank Kenya Limited & 8 others* [2020] eKLR seeking similar orders as herein and judgment issued against them to refund monies irregularly remitted in that account relating to claimant's members union dues. In this case, despite these respondents being served herein, they failed to attend or challenge any part of the claimant and hence the orders sought should issue.
18. The respondents have acted and gone contrary to section 47 of the *LRA* by misusing union funds and a complaint was lodged with the 2nd respondent and to secure such funds, the account No.xxx proceeds should be remitted to the claimant's account because the 3rd to 6th respondents have acted contrary to the law as held in *Nelson Onyango Otho & 5 others v Rashid Jumaa Nyale & another* [2014] eKLR. All union funds should be remitted to the authorised account pursuant to Section 39 of the LRA and the 1st respondent has special knowledge of the account in question and by its refusal to give evidence in this regard including a statement of the account and source of monies therein is questionable and meant to defeat justice as held in *Peter Wafula Juma & 2 others v Republic* [2014] eKLR and the orders sought should issue.
19. The 1st respondent submitted that account No.xxx is operated from Eldoret branch and the allegations that the respondents conspired to open the same is without evidence since the 3rd to 4th respondents as customers opened the account jointly and due diligence indicated the same was meant for PSV business. There was no conspiracy as alleged and there is no evidence of such matter as held in *Central Bank Limited v Trust Bank Limited & 4 others* [1996] eKLR that where fraud is alleged the same must be strictly proved.
20. The 1st respondent acted in good faith in the circumstances while opening account No.xxx and unlike the case cited of *Kenya National Union of Nurses v Eco Bank Limited & 8 others*, the respondents had opened an account designated as a branch account but the account No.xxx was indicated to be for a PSV business as the details attached to the response indicate.

Determination

21. The non-attendance of the 2nd, 3rd, 4th, 5th, and 6th respondents have denied this court crucial material evidence and records particularly, the 3rd to 6th respondents with knowledge of proceedings herein and being the account holders No.xxx held with the 1st respondent, non-attendance means the claims made against them are not challenged. The word of the claimant against them is correct.
22. The gist of Section 48(2) of the *LRA* is to ensure the lawful handing of all trade union dues collected by employers from employees who are members of a given trade union with whom the employer has a Recognition Agreement with and the Minister has published the authorised bank account to and in which all such trade union dues are to be remitted;
 2. A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to—
 - a. deduct trade union dues from the wages of its members; and
 - b. pay monies so deducted—



- i. into a specified account of the trade union; or
- ii. in specified proportions into specified accounts of a trade union and a federation of trade unions.

And Section 50(1) of the LRA directs in mandatory terms that;

- (1) Any amount deducted in accordance with the provisions of this Part shall be paid into the designated trade union or employers' organisation account within ten days of the deduction being made.

23. What is crucial with regard to deduction and remittance of trade union dues is the conduct of a given employer pursuant to Section 50(8) of the LRA which directs an employer to deduct and remit union dues in accordance with the Minister's Notice and to the authorised account gazetted and stated in such notice;

8. No employer shall—

- i. fail to comply with an order or a notice issued under this Part;
- ii. deduct any money and not pay it into the account designated in the notice issued by the Minister; or
- iii. pay money into an account other than the account designated in the notice issued by the Minister.

24. The rationale for the above is to be found under Section 50(9) and (10) that no person should request an employer to deduct and remit trade union dues into any other account other than the account designated by the Minister and to do so, such a person commits an offence;

9. No person shall—

- i. request an employer to pay money deducted in accordance with this section into an account other than the account designated by the Minister in the notice; or
- ii. use any money deducted in accordance with this section for any purpose other than the lawful activities of a trade union or a trade union federation.

10. An employer or any person who contravenes the provisions of this section commits an offence.

25. The claimant enjoys recognition by Uasin Gishu County under which Uasin Gishu County Public Service Board is resident. With that recognition, for such party and employer or any other employer(s) in collusion with the 3rd to 6th respondents to remit claimant's members trade union dues from the designated account(s) into account No.xxx held by the 1st respondent is a serious breach of the law without justification and a serious breach of the law in complicity with the 3rd to 6th respondents to circumvent the clear provisions of Section 48 and 50 of the LRA. With recognition of the claimant, Uasin Gishu County Public Service Board or any other employer(s) under which the 3rd, 5th and 6th respondents are employees ought and should have acted within the confines of the law and not act to circumvent the law by colluding to defraud the claimant of trade union dues deducted from its members.

26. However, one crucial and important party/parties who ought and should have been enjoined in these proceedings for completeness is or are the employer(s) who with knowledge of the Order of the Minister under the provisions of Section 48 and 50 of the LRA colluded with the 3rd to 6th respondents and facilitated to the opening of account No.xxx with the 1st respondent and proceeded to remit



funds therein drawn from trade union dues deducted from the claimant's members and which the 1st respondent has failed to render an account.

27. Even where the 1st respondent opened an account as instructed by its clients/customers the 3rd to 6th respondents, served with instant proceedings and called upon to account, the 1st respondent in good faith should and ought to have filed the statement of such account.
28. The respondents thus having acted outside the law and leading to opening account No.xxx with the 1st respondent, the proceeds therein deposited from the date the account was opened to date shall all be taken and remitted to the authorised account of the claimant, being;

"Kenya national Union of Nurses Barclays Banks of Kenya Queensway Branch Nairobi
Account Number xxx"
29. This being the bank account published by the Minister with regard to the claimant receiving trade union dues from its members.
30. The 1st respondent shall also file with the court all the transactions/statements relating to this account to assist the claimant to identify the employers and persons who remitted such funds to such account and to allow the claimant to address the same as regards Section 50(10) of the LRA.
31. The 1st respondent upon undertaking the above shall be at liberty to maintain the account No.xxx for their clients/customers the 3rd to 6th respondents for the PSV business.
32. With regard to the remedy sought for the investigations against employers and individuals who colluded to transfer monies into account No.xxx held by the 1st respondent, upon receipt of the account statement(s) from the 1st respondent as above directed, the claimant shall be at liberty to initiate such investigations with the relevant government agencies.
33. Accordingly, judgment is hereby entered for the claimant against the respondents in the following terms;
 - a. An Order is hereby issued that all monies held in account No.xxx held by the 1st respondent from the date the account opened to date shall all be removed and remitted to the claimant through the following account;

Kenya national Union of Nurses Barclays Banks of Kenya Queensway Branch Nairobi
Account Number xxx
 - b. An Order is hereby issued directing the 1st respondent to remit to the claimant bank statement(s) with regard to account No.xxx from the date the account was opened to date to allow the claimant address pursuant to section 50(10) of the *Labour Relations Act, 2007*; accordingly;
 - c. An Order is hereby issued that based on the findings (b) above with regard to any monies remitted to the account No.xxx and removed by the 3rd to 6th respondents and relating to trade union dues, the claimant shall be at liberty to pursue recovery of the same;
 - d. Costs of these proceedings for the claimant shall be met by the 3rd, 4th, 5th and 6th respondents jointly and or individually.
 - e. The 1st respondent shall bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 27TH DAY OF MARCH, 2023.



M. MBARÚ JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

