



**Nzili v Kenya National Union of Teachers (Cause E007 of 2024)  
[2025] KEELRC 2566 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2566 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
CAUSE E007 OF 2024  
M MBARŪ, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**MUDZO KUHENDERWA NZILI ..... CLAIMANT**

**AND**

**KENYA NATIONAL UNION OF TEACHERS ..... RESPONDENT**

**JUDGMENT**

1. The claimant is a male adult. The respondent is a trade union registered under the [Labour Relations Act](#) (LRA).  
The claimant is a former National Chairman of the respondent.
2. On 14 December 2020, the claimant was appointed Liaison and Labour Advisor to the Secretary-General of the respondent. The position was to take effect from 1 December 2020 to June 2022. A letter of appointment was issued.
3. The employment agreement was partly in writing and partly by conduct. The parties held mutual meetings to agree on the duties to be undertaken. During these discussions, there was an understanding that the claimant would attend and advise the respondent on labour matters. Through letters dated 28 September and 22 November 2021, the claimant wrote to the Secretary General requesting payment of his dues under the letter of appointment. The respondent continued to encourage the claimant to perform his duties, and his payments would be processed.
4. The terms of the appointment included that the claimant would work directly with the secretary general. His salary was to be based on the salary scale of his last pay point at the respondent, and by November 2020, his salary was Ksh. 887,230, entitling him to a driver and other relevant allowances.
5. For the contract period, the claimant was only paid Ksh. 300,000 monthly salary. It was agreed that the balance would be settled.



6. The claim is for the payment of Ksh.11, 157,541, being the balance of the salary due and owing in respect of the service rendered by the claimant to the respondent. The claim comprises salary arrears from December 2020 to June 2022 at Ksh.587, 239 for the 19 months of service without full payment. Despite making demand, writing to the respondent to pay, the same has not been settled.
7. In his testimony, the claimant stated that he had served the respondent as the National Chairperson for many years. At the end of his term, due to his extensive knowledge and expertise, the respondent was faced with a myriad of labour relations disputes. Through a letter dated 14 December 2020, he was appointed as the Liaison and Labour Advisor to the General Secretary. The claimant was to arbitrate between the respondent, the Minister, and other stakeholders, including the Teachers Service Commission. He undertook his duties diligently and advice accordingly.
8. The claimant testified that, according to his letter of appointment, his remuneration was to be based on his last payroll pay plus benefits, which included a house allowance and a vehicle.
9. The appointment was approved by the general secretary, who, under the LRA, was authorized to make such an appointment. Meetings were held between the general secretary, treasurer, and the legal team to agree on the modalities of the appointment, including roles and remuneration. The letter of appointment was issued, effective from 1 December 2020 to June 2022. However, he was only paid Ksh.300, 000 per month, and the remaining balance of Ksh.587, 239 is in arrears each month.
10. The claimant wrote to the treasurer, raising concerns about non-payment. He asked for a pays lip to be able to apply for a bank loan without success. The treasurer explained that the respondent had financial problems and his salary arrears would be settled. This was not done until the end of his appointment.
11. In July 2021, new officials were elected to the union. The claimant permitted them to transition into their new appointments and then made his claim for payment of salary arrears. The claimant continued advising the respondent on its relations with the government and other stakeholders to avoid damaging the trade union. Relations improved due to the ongoing interventions by the claimant.
12. The respondent asserts that the appointment was personal to the outgoing general secretary Wilson Sossion, but the appointment and role were for the benefit of the respondent union. The claimant attended forums and meetings on behalf of the respondent. Wilson Sossion left the union in July 2021 after the national elections. The claimant continued in his role with the new officials until June 2022. His salary arrears have not been paid, hence the claim, which should be allowed with costs.
13. In reply, the respondent denies the claimant's claim and seeks that the suit be dismissed. The response is that the purported appointment of the claimant was not sanctioned by the union's constitution, governing council, or any authorized body and was a unilateral political arrangement between the then secretary general and the claimant, hence lacking legal validity.
14. The position of Liaison and Labour Advisor does not exist in the respondent's organizational structure or the salary framework. A review of the union constitution and the 2021 CBA affirms the non-existence of such a position or role.
15. The respondent relies on the extract from the Registrar of Trade Unions, committee members and trustees registered with the Minister, effective 26 June 2021. Only this record recognizes the office bearers and not the position allegedly held by the claimant.
16. There is no legally binding oral or written contract to appoint the claimant. The letter dated 14 December 2020 was between the claimant and the then Secretary General and was never ratified by the respondent. The claims made for payments are not due and should be dismissed.



17. Collins Henry Oyuu, the secretary general, testified in support of the response. Since 26 June 2021, he has been the Secretary General following the national elections. The claimant was the national chairperson and has since retired. The letter dated 14 December 2020 appointing the claimant is not valid and is not recognized by the respondent. It was a personal letter between him and the former secretary general. The respondent has its own official committees registered with the Registrar of Trade Unions to undertake all functions on behalf of the union. Based on the letter dated 14 December 2020, the claimant was paid a monthly salary by the respondent.
18. Oyuu testified that he was not aware of this letter of appointment. When he took over as Secretary-General, he received a letter of demand to pay the claimant's salary arrears on 22 November 2021. The letter of appointment and demand notice were not valid. He therefore called the claimant for a meeting on the matter and noted his position was not formally within the organizational structure of the union.
19. Oyuu testified that despite noting the discrepancy, he did not stop subsequent payments to the claimant. The treasurer only stopped the payments at the end of the June 2022 appointment.
20. The claimant was previously the national chairperson. He could not continue being paid at the same terms and conditions in the alleged appointment as the Liaison and Labour Advisor. That would mean the respondent had two positions of chair, and the Liaison & Labour Advisor would be paid at the same rate and receive the same benefits. This resulted in double payments for a position that was personally tied to the former secretary general, and therefore the appointment was invalid.
21. Upon cross-examination, Oyuu admitted that the payment of Ksh. 300,000 per month was from union funds. Wilson Sossion did not pay the claimant. The letter dated 14 December 2020 appointing the claimant was not revoked.
22. He testified that the payment of Ksh. 300,000 to the claimant was a token of appreciation for work done for the union. It was paid monthly from the union funds. For the audit, the payment was supported by the mutual discussions held between the parties.

### **Determination**

23. The claimant filed his letter of appointment dated 14 December 2020 to the position of Liaisons and Labour Advisor to the Secretary General – KNUT. The appointment was to take effect from 1 December 2020 to June 2022. The requirement was to work directly with the Secretary General from time to time on Liaisons and Labour Assignments.

The letter noted that;

... note that you will adopt the salary scale of your last pay point at the KNUT head office and you are also entitled to a driver and other relevant allowances.

24. This letter is issued by the respondent under the hand of the Secretary General, Wilson Sossion. The claimant was consistently paid Ksh. 300,000 per month, as evidenced by his bank statements.
25. This position is confirmed by Mr. Oyuu, the current secretary general, who testified that he noted the appointment was not in accordance with the union's constitution or organizational structure and therefore was not valid. However, the claimant continued to receive a payment of Ksh. 300,000 as a token of appreciation.
26. One position that is clearly defined under the LRA is that of the general secretary of a trade union;

“authorized representative” means—



- (a) the general secretary of a trade union;
  - (b) an employer or the chief executive officer of an employer;
  - (c) the secretary of a group of employers;
  - (d) the chief executive or association secretary of an employers' organisation; or
  - (e) any person appointed in writing by an authorized representative to perform the functions of the authorized representative;
27. The authorized representative of a trade union handles all matters affecting the union, such as representing it. The office of general secretary may be appointed in writing by an authorized representative to carry out the functions of the authorized representative.
28. Upon such mandate, the Secretary General holds a fiduciary duty. Where such role is misapplied, the protection to the union, members, or any official is allowed to move the court to seek protection against misuse of funds under section 41(1) of the LRA.
- (1) The Court may grant an injunction restraining unauthorized or unlawful expenditure of the funds of a trade union, employer's organisation or federation on application by the Registrar, or by five or more persons having a sufficient interest in the relief sought.
29. This aims to prevent the misuse of office or personal application of union funds as held in *Otieno & 37 others v Union of Kenya Civil Servants & 3 others* [2024] KEELRC 99 (KLR). An aggrieved official, member, or interested party may approach the court to safeguard union assets and funds. This stance is reaffirmed in *John Biiy v Seth Panyako, Registrar of Trade Union & Kenya National Union of Nurses* [2017] KEELRC 245 (KLR), which states that the national chair and members of the trade union must ensure compliance with *the constitution*, bearing a fiduciary duty to protect union assets.
30. The respondent claims that the appointment of the claimant as the Liaison and Labour Advisor to the Secretary General of the union was political and lacked legal validity. The letter of appointment was issued in violation of *the constitution* and established policies. However, under section 2 of the LRA, a secretary general of a trade union is permitted to issue a written letter and communication to any person with delegated authority. It is the position of the secretary-general, not the person occupying the office.
31. In this case, a letter dated 14 December 2020 from the Secretary-General appointed the claimant as the Liaison and Labour Advisor to the Secretary-General. This appointment is lawful and valid under the LRA. The alleged union policy that purportedly restricted such matters was not produced.
32. In any event, where the former secretary general, Wilson Sossion, is alleged to have made a political appointment of the claimant, upon assuming office in July 2021, the new officials continued the relationship with the claimant. The payment from union funds was not halted. The arrangement, even if not valid or lawful, continued until June 2022. Where the former secretary general illegally and without proper authority committed to the responsibility of appointing the claimant, nothing was done by the new incoming officials to rectify the situation. There is no counterclaim or attempt to include such a person to recover any monies allegedly wrongly paid to the claimant.

For work done as appointed, the claimant is entitled to his dues.



### What are the dues?

33. In the letter dated 14 December 2020, the claimant was to be remunerated ...as you will adopt the salary scale of your last pay point at the KNUT head office, and you are also entitled to a driver and other relevant allowances.
34. The claimant filed his last pay slip for April 2018. He had a gross salary of Ksh. 887,239. The designation for such pay is National Chairman. This payment included the following;
  - a. Basic pay Ksh.268,900
  - b. Commuter allowance Ksh.45,500;
  - c. Medical allowance Ksh.14,600;
  - d. National allowance ksh.145,680;
  - e. Car allowance Ksh.172,500;
  - f. Entertainment allowance Ksh.27,500;
  - g. Pension Ksh.83,369;
  - h. House allowance Ksh.120,450.
35. As correctly stated by the respondent's witness, Mr Oyuu, making such payments to the claimant was akin to having two chairpersons for the respondent's union. This does not promote accountability or the proper use of union funds. Nevertheless, the respondent maintained the appointment of the claimant and took no action to revoke or invite him to amend his appointment.
36. What is clear from the letter dated 14 December 2020 is that your salary scale was at your last pay point, plus entitlement to a driver and other relevant allowances.
37. No payment statement is filed to address how the paid Ksh. 300,000 was broken down to determine whether this included the relevant allowances noted in the letter of appointment.
38. The union officials registered with the Registrar of Trade Unions include the position of national treasurer held by Mr Karinga. None raised the payments to the clamant as an audit issue.
39. Under the given circumstances, the last pay was Ksh. 887,239; the difference is due to the appointment dated 14 December 2020.
40. However, the non-payment of accrued salary arrears occurred on a monthly basis. The Court of Appeal emphasised that when a benefit to the employee accrues on a monthly basis, it constitutes a continuing injury under section 90 of the *Employment Act*. Such claims should be made within 12 months from the date of cessation, as held in *Kathoka v Ellams Products Limited* [2025] KEELRC 620 (KLR); *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another* [2016] KECA 213 (KLR); and the case of *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR).

There is no contest that a claim premised on a continuing injury must be filed with 12 months after cessation of the injury as provided by section 90. This position was upheld by this Court in *G4S Security Services (K) Limited v Joseph Kamau & 468 Others* [2018] eKLR. The contestation before this Court is whether the claims in question fall within the ambit of "a continuing injury" as contemplated by section 90. The essential question for determination before the High Court was the maintainability of the complaint due to the



limitation period prescribed by the above section. Central to this question is the meaning of the phrase “a continuing injury” and whether the respondent’s claims fell within the said definition. Before the High Court and this Court, the parties did not attempt to define what constitutes “a continuing injury.” ...

Therefore, “a continuing injury” was held to be;

The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. “A continuing wrong” refers to a single wrongful act which causes a continuing injury. “Recurring/successive wrongs” are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. The Supreme Court of India in *Balakrishna S.P. Waghmare v Shree Dhyaneswar Maharaj Sansthan* AIR 1959 SC 798 explained the concept of continuing wrong (in the context of the Indian Limitation Act) as follows: “It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.

41. The claimant did not address the continuing injury of non-payment of his due salaries over time, as he had decided to treat the matter on a friendly basis and to allow the new officials appointed in June 2021 to transition. The inaction on his part progressed until the end of his appointment.
42. The claim was filed on 31 December 2024, way after the appointment ended in June 2022, a period of over 12 months since the continuing injury lapsed.
43. As a continuing injury, the salary dues should have been addressed on or before 31 May 2023. To file the claims as outlined solely based on salary arrears is time-barred under section 90 of the [Employment Act](#).

The claim herein is dismissed. Each party is to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

