

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA

CAUSE NO. E027 OF 2025

DR. JOSEPH OGOLLA CLAIMANT

VERSUS

DR. NIKO GICHANA 1ST RESPONDENT

DR. GHALIB SALIM ALI 2ND RESPONDENT

DR. MARIAM MWAJUMLA 3RD RESPONDENT

**KENYA MEDICAL PRACTITIONERS, PHARMACISTS & DENTISTS' UNION
4TH RESPONDENT**

JUDGMENT

The claimant is a male adult. The 1st respondent is a male adult and the branch chairperson for the 4th respondent. The 2nd respondent is a male adult and the branch secretary of the 4th respondent. The 3rd respondent is an adult and the branch treasurer for the 4th respondent.

The claim is that the claimant was the Kwale County Liaison Officer for the Kenya Medical Practitioners, Pharmacists, and Dentists Board from April 2021 to May 2024. He worked for the 4th respondent, Kwale County Doctors, earning Ksh. 15,000 per month.

On 14 May 2024, the claimant received a disciplinary letter from the 2nd respondent initiating a suspension due to an alleged gross misconduct. There was no hearing or a chance to defend himself. Since May 2024, the claimant has not been paid his monthly stipend.

On 6 September 2024, the claimant was suspended for an unspecified period. Under section 41 of the Employment Act (the Act), the claimant was not allowed a hearing. This was contrary to section 45 of the Act.

The claimant's primary role was to unite doctors of all cadres for empowerment and professional advancement. Failing to make monthly payments is unlawful and unfair. The claimant is seeking the following;

- a) Salary for 10 months from May 2024 to February 2025, Ksh.150,000;
- b) Compensation for constructive dismissal from employment Ksh. 180,000;
- c) Costs of the suit.

The claimant testified in support of his case that he has been the Kwale County Liaison Officer for the 4th respondent, earning Ksh. 15,000 per month. His role is to represent the doctors in the branch on the executive committee. However, on 14 May 2024, the 2nd respondent suspended him due to alleged gross misconduct. No evidence or hearing was

conducted. The action of suspension was unlawful and not justified. His monthly stipend of Ksh. 15,000 was stopped unfairly and the claim should be allowed.

Upon cross-examination, the claimant testified that he did not vie for the position of Kwale Liaison Officer, which is elective. He was not nominated for the position. He was allowed to take the position and has been receiving payments. He is employed by the Kwale County Government and is not permitted to hold two employment contracts. He was earning a stipend from the 4th respondent and not a salary.

The claimant testified that the returns to the Registrar of Trade Unions show the position of Kwale Liaison Officer is vacant. This includes Lamu and Taita Taveta. The respondents issued various communications indicating that he held the position of Kwale Liaison Officer.

In reply, the respondents filed Notice of Preliminary Objections dated 9 April 2025.

The objections are that the claimant was not an employee of the 4th respondent as alleged, and therefore, there was no contravention of sections 41, 43, 45, and 49 of the Act as alleged. The court lacks jurisdiction to hear the matter.

The response is that the claimant was not elected as the Kwale Liaison Officer for the 4th respondent as alleged. The position is elective, and the claimant did not contest for it; it remains vacant per the returns to the Registrar of Trade Unions. Under the 4th respondent's constitution, the claimant has not proven that he contested any elected position. The claimant is an employee of Kwale County and has freely volunteered to undertake the duties of a liaison officer.

The claimant is a full-time employee of Kwale County Government and therefore cannot hold a second employment with the 4th respondent, as alleged. The claims made are unwarranted and should be dismissed with costs.

In evidence, the respondents called Dr. Gichana, the 1st respondent, who testified that as the Coast branch chairperson, the claimant was neither elected nor nominated for the position of Liaison officer. He volunteered and was paid an honorarium for any duties performed. To keep the claimant motivated, he was paid different amounts and not a standard allowance as alleged. He remained a volunteer and was removed due to misconduct.

There is an extract from the Registrar of Trade Unions to confirm that the position remains vacant.

Dr. Gichana testified that he was elected as a doctor, and for meetings held, a stipend is paid. The claimant was compensated for any duties assigned. Through a letter dated 24 September 2025, he was suspended following a resolution by the executive committee. Upon such suspension, internal appeal mechanisms exist that the claim failed to address, and the suit herein is therefore premature.

At the conclusion of the hearing, both parties submitted written submissions. These are taken into account in the analysis.

Determination

The objections by the respondents were not raised until the written submissions. The claimant filed his Grounds of Opposition, asserting that he was an employee of the 4th respondent and, therefore, the court has jurisdiction.

The dispute herein relates to the claimant and the respondent. His case is that the 4th respondent employed him as the Kwale Liaison Officer. In his evidence, he confirmed that he is in full-time employment with the Kwale County Government. The respondents assert that there is no employment relationship between the parties and that the claimant cannot hold two appointments; hence, the court lacks jurisdiction.

What is not contested is that the claimant, 1st to 3rd respondents, are members of the 4th respondent. As a trade union registered under the Labour Relations Act (LRA), it is subject to legal regulation and is permitted to elect or nominate its officials. For the officials to lawfully hold their mandates, returns must be submitted to the Registrar of Trade Unions.

The respondents have filed the latest extract from the Registrar of Trade Unions, and the position of Kwale Liaison Officer is noted as vacant.

The court takes judicial notice of this fact, which is not contested.

Under section 34 of the LRA, only elected officials of a trade union, such as the 4th respondent, can perform duties as assigned. Any other person claiming to act for or on behalf of a trade union without the written authority of the general secretary, as defined under Section 2 of the LRA, acts in violation of the law, as held in **Kenya Ports Authority v Dock Workers Union (Cause E099 of 2021) [2025] KEELRC**. In the case of **Oloo v Ndege, Secretary General Union of Kenya Civil Servants & 2 others [2024] KEELRC 461 (KLR)**, the court held that no other person is permitted to act on behalf of a trade union without the written authority of the general secretary.

In this case, the claimant asserts that he was employed by the respondents and received a monthly salary and/or stipend. Any dispute relating thereto is a trade dispute for the court to determine.

The objections are without merit.

However, without being elected as an official of the 4th station or being nominated or issued with a letter of authority to act in any capacity, employment cannot be conferred through the various letters issued to the claimant, which define him as the Kwale Liaison Officer. The returns to the Registrar of Trade Unions are prima facie evidence of the current officers of the 4th respondent. The claimant is not such an officer or official of the 4th respondent.

The listed persons under the extract of Form Q are the only authorized officers and persons to act for the union. Any payments to any other person from the union funds are unlawful, and a claim to be paid a salary without a letter of appointment or authority from the general secretary is not justified.

The claimant was suspended by a letter dated 14 May 2024 for alleged gross misconduct. The suspension arose from an investigation conducted by the respondents, which identified issues concerning erroneous suitability tests carried out in Kwale County for the redesignation of

qualified consultants. It was therefore determined that the claimant engaged in gross misconduct. He refused to apologise, and a decision was made to suspend him.

Under Article III, part B of the 4th respondent's constitution, the disciplinary committee is permitted to address any misconduct or gross misconduct within the branch. Any aggrieved member is entitled to escalate the matter if dissatisfied. The claimant had this option upon his suspension as a member.

Without being officially elected and registered with the Registrar of Trade Unions, the complainant cannot claim a stipend outside the legal framework of Form Q. They cannot justify a claim for a salary, honourarium, or stipend under the title of Kwale Liaison Officer.

The evidence provided by the respondent thus remains accurate that the claimant would be allocated duties and paid a stipend based on needs.

The claimant is seeking payment of a salary for 10 months. He has no legal basis or foundation to urge such a matter. He is a full-time employee of Kwale County Government and is not part of the elected officials of the 4th respondent. The claim is not justified.

The claimant is also pursuing constructive dismissal. This concept is well explained in the case of **Namale v Yako Supermarket Company Ltd [2025] KECA 1017 (KLR)**, where the court held that constructive dismissal occurs when an employer creates a hostile working environment through their actions, forcing the employee to leave employment involuntarily.

In this case, there was no employment; there is no resignation. The claimant is an employee of another entity.

There is no proof of constructive dismissal. The elements of such matter are lacking.

Regarding the claim for costs, the claimant, well aware that he was not an elected official of the 4th respondent and only received a stipend for assigned tasks, was suspended. He did not utilise internal mechanisms to address any grievance. As mentioned above, the claims are without merit and he should pay costs.

Accordingly, the claim is without merit and is hereby dismissed with costs to the respondents.

Delivered in open court at Mombasa, this 2nd day of October 2025.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Japhet

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