



Kenya Tertiary and Schools Workers Union (KETASWU) v ABSA Bank Kenya PLC & 2 others; Registrar of Trade Unions & 5 others (Interested Parties) (Judicial Review Application E035 of 2025) [2025] KEELRC 3184 (KLR) (13 November 2025) (Judgment)

Neutral citation: [2025] KEELRC 3184 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E035 OF 2025**

**B ONGAYA, J
NOVEMBER 13, 2025**

BETWEEN

**KENYA TERTIARY AND SCHOOLS WORKERS UNION
(KETASWU) APPLICANT**

AND

**ABSA BANK KENYA PLC 1ST RESPONDENT
CHIEF MAGISTRATES COURT AT NAKURU 2ND RESPONDENT
THE ATTORNEY GENERAL 3RD RESPONDENT**

AND

**REGISTRAR OF TRADE UNIONS INTERESTED PARTY
JAPHETH ANYIRA AGURA INTERESTED PARTY
BENSON AMURONO INTERESTED PARTY
PAUL IRUNGU INTERESTED PARTY
LORNA OSORE INTERESTED PARTY
KENNEDY KHAEMBA INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Thursday 13th November, 2025)

JUDGMENT

1. The applicant filed the originating motion dated 19.05.2025 in person, pursuant to Section 9 of the Fair Administration of Action Act, Articles 23, 47 and 50 of *akn ke act 2010 constitution the Constitution*, and all other enabling provisions of the law. It sought the following orders:



- a. An order of certiorari to quash the order issued by the 2nd respondent dated 12th October, 2023 and later confirmed on 15th November, 2023.
 - b. An order of mandamus does issue to compel the 1st respondent to reinstate and restore the account balance of the applicant as at on 6th October, 2023, when the account balance stood at KES 3,559,358.75.
 - c. An order of mandamus does issue to compel the 1st respondent to update the said account after (b) with the further deposits which were remitted to the said account and to provide the statement of the account thereafter to the applicant.
 - d. An order does issue to declare the 2nd to 6th interested parties as dishonest.
 - e. An order does issues in terms of Section 31(5) of the Labour Relations Act, to prohibit the 2nd to 6th interested parties from holding any office of the Trade Union.
 - f. An order of costs against the 1st respondent.
2. The application was based on the grounds set out in the motion and supported by the affidavit sworn on 19.05.2025 by Paul Mungale Kinyangi. The applicant's case was as follows:
- a. The instant originating motion arises from the unfair administrative actions taken by the 1st and 2nd respondents against the applicant union, in which the 1st respondent disregarded the ongoing judicial processes and procedures thereto and the law regulating banks and trade unions and proceeded to allow access to the applicant's Bank Account No. 2036751064 held at Queensway Branch, Mama Ngina Street in Nairobi by the 2nd to 6th interested parties.
 - b. Such administrative actions injured the applicant because its funds were unlawfully withdrawn, unlawfully expended in activities that do not fall within Sections 39 and 50 of the *akn ke act 2007 14 Labour Relations Act*, thereby hindering its lawful activities to its members and administrative expenses.
 - c. The elections of trade unions fell due in 2021 as per the calendar or notice issued by the 1st interested party to all registered trade unions in Kenya. However, the 2nd interested party colluded with the 3rd to 6th interested parties, bypassing the applicant's statutory instruments or organs mandated to organize the applicant's elections, and purportedly conducted a sham election on 26.05.2021, which the 1st interested party declined to register.
 - d. Consequently, the aggrieved members filed their objections with the 1st interested party, and upon the 2nd interested party realizing that the 1st interested party would not register the changes from the said sham elections, he instituted Nyeri ELRC Appeal No. E007 of 2021, which was later transferred to Nairobi and registered as Nairobi ELRC Appeal No. 197 of 2022.
 - e. During the pendency of the said appeal in Nyeri, the 2nd to 6th interested parties filed Nairobi ELRC Cause No.1065 of 2021 (formerly KSM ELRC Cause No. E079 of 2021), seeking orders to compel the 1st respondent to allow them to operate the applicant's Bank Account No. 2036751064 held by the said 1st respondent. Another suit was filed in Nairobi ELRC Miscellaneous Application No. E230 of 2021 by the trustees of the applicant, also seeking orders to operate the same bank account held by the 1st respondent.
 - f. The 1st interested party explained in its letter dated 23.09.2021 to the Deputy Secretary of the applicant that since the elections were challenged in the Nyeri ELRC Appeal No. E007



of 2021, the applicant has no lawful officials to carry out its mandates. The 1st interested party advised that the operations of the applicant's bank account be left to the trustees of the applicant, and copied the said advice to all the then officials and the 1st respondent. Subsequently, the Branch Manager of Queensway, where the applicant's bank account is domiciled, wrote to the national trustees to regularize the decision of the 1st interested party by providing specific information and documents.

- g. The decision of the 1st interested party was never challenged as required by law and was only lifted when on 30.08.2024 she registered the applicant's elections held on 16.06.2023. When this Honourable Court became seized of the disputes on the elections and subject bank account, it did not grant any orders to any of the parties in respect of the operations of the applicant's bank account held by the 1st respondent.
- h. By its orders dated 18.03.2023, this Court seemed to have dismissed the elections held on 26.05.2021, which precipitated the filing of Nairobi ELRC Appeal No. 197 of 2022 (formerly Nyeri ELRC Appeal No. E007 of 2021), where the Court directed the 1st interested party to convene a meeting of the registered officials, trustees and any other interested parties to plan for an election. The said orders were later amended by an order issued on 27.03.2023 and a further order issued on 31.03.2023, and the elections were later held on 16.06.2023.
- i. As the orders issued on 27.03.2023 failed to materialize due to opposing interests from different groups, on 31.05.2023, this Court determined Nairobi ELRC Cause No. 1065 of 2021, as consolidated with Nairobi ELRC Misc. Application No. E230 of 2021 and Nairobi ELRC Appeal No. 197 of 2022, directing that the applicant's pending national elections be conducted not later than 30.06.2023, and that the applicant's National Trustees perform functions reserved for the Central Council in respect of the said elections.
- j. During the pendency of the consolidated suits before this Court, the 2nd to 6th interested parties filed another suit dated 12.10.2023 before the 2nd respondent herein in Nakuru Civil Suit No. E608 of 2023 before the Magistrate's Court, seeking similar prayers as those in Nairobi ELRC Cause No.1065 of 2021, and those filed by the National Trustees in Nairobi ELRC Misc. Application No. E230 of 2021. The 2nd respondent proceeded to grant an ex parte order in respect of the prayers sought in the motion application, and directed the 1st respondent to allow the 2nd to 6th interested parties to operate the applicant's account, thereby summarily determining the suit before that court. Notably, the 1st respondent entered appearance in the civil suit in Nakuru and did not inform the court that similar suits are pending before this Court. The advocate who acted for the 2nd to 6th interested parties also actively participated in the consolidated proceedings before this Court.
- k. After the 2nd respondent issued its order dated 12.10.2023, the 2nd to 6th interested parties engaged in erratic and unexplained withdrawals and within two weeks, they had depleted the whole amount of Kshs. 3,600,000 from the applicant's bank account. The 2nd respondent did not exercise its mind judicially and professionally, especially on bank transactions that involved a corporate entity, as the applicant herein was not made a party, despite the transaction ordered by the 2nd respondent being in respect of the applicant's bank account.
- l. On 19.12.2024, this Court delivered its ruling in respect of the consolidated suits, while not seized with the proceedings in Nakuru Civil Suit No. E608 of 2023 before the Magistrate's Court at Nakuru, which rendered the ruling of this Court an academic exercise. The 1st



respondent and the 2nd to 6th interested parties were aware and acted in bad faith and unlawfully.

- m. Pursuant to Legal Notice No. 6024 dated 22.06.2018, the Magistrate's Courts were only conferred with jurisdiction in respect to employment disputes and were divested of the power to hear and determine disputes arising from labour disputes, which was the case herein.
 - n. In the circumstances, the applicant was not given the opportunity to participate and give representations before these administrative actions were made, which were clearly taken against it. Similarly, the administrative actions were carried out in disregard of the law and *akn ke act 2010 constitution the Constitution*. The doctrine of exhaustion is inapplicable as these matters were already before this Court. Further, the issues are not appealable as they are purely administrative actions that do not call for interpretation and analysis of the facts, and simply require review by this Court.
3. The 1st respondent bank filed the replying affidavit of Simon Mwangi, sworn on 23.10.2025 and through Benson Kuria Advocate. They averred as follows:
- i. The bank established sometime in 2021 that there was an internal dispute within the applicant consisting of two rival factions, with each faction claiming to be the lawful officials of the applicant following a botched election. In the bank's view, the dispute placed the applicant's funds at risk and had a probability of occasioning loss to the applicant's members if the people operating the account lacked the mandate to do so. The bank, therefore, proceeded to suspend the debits on the said account.
 - ii. Considering the applicant's status as a trade union upon receipt of a letter from the Registrar of Trade Unions purporting to provide clarity on the internal wrangles affecting the applicant, the bank requested the applicant to provide a confirmation letter or certificate from the Ministry of Labour and Social Protection confirming various documents. However, the applicant failed to provide the requisite documentation, making it impossible for the bank to regularize the account mandate and necessitating the continued suspension of debits on the applicant's account.
 - iii. The bank was further subjected to various litigation proceedings initiated in both the applicant's and the applicant's officials' names, all seeking to have the bank compelled to unfreeze the applicant's account.
 - iv. The impugned suit, namely Nakuru Civil Suit No. E608 of 2023, Japheth Anyira Agura & 4 Others vs. ABSA Bank PLC, was filed by the 2nd to 6th interested parties in their capacity as the registered officials of the applicant and the elected signatories of the account held by the bank. Following an application filed under a certificate of urgency in the said suit, the 2nd respondent considered the matter *ex parte* in the first instance and granted a temporary injunction compelling the bank to permit the 2nd to 6th interested parties, being the applicant's signatories, to continue operating the subject account on an interim basis for purposes of filing statutory returns and settling any union debts, including payment of employee salaries, until a proper transition is effected.
 - v. The stamped Court Order dated 12.10.2023 was thereafter served upon the bank on 13.10.2023, containing a penal notice stating that any disobedience of the court order would render the bank liable to contempt of court proceedings and punishment thereof. Consequently, the bank lifted the suspension of debits on the applicant's accounts and



permitted the 2nd to 6th interested parties to operate the subject account on behalf of the applicant.

- vi. Therefore, the applicant cannot accuse the bank of engaging in unfair administrative action because the access given to the 2nd to 6th interested parties was granted in compliance with a subsisting court order and for the benefit of the applicant. The bank did not collude with any person or entity to defraud the applicant as alleged, and such allegation is devoid of any evidentiary support.
 - vii. The bank has always maintained a neutral position, as it neither has any interest nor is involved in the internal disputes of the applicant. Its operations are governed by contract terms and applicable laws that do not extend to the internal governance issues of the applicant.
 - viii. The bank has since forwarded to the applicant a full account of all the bank statements for the impugned account, revealing that all debits effected on the subject account following the lifting of the suspension on debits were done at the behest of the applicant, through the 2nd to 6th interested parties.
 - ix. In addition, the bank was compelled to settle a sum of Kshs. 346,069 55 from the said account, which was garnisheed pursuant to a ruling issued on 19.09.2024 in ELRC Misc. Application No. E150 of 2023, Clement Omongo Onenga vs. Kenya Tertiary and Schools Workers Union & ABSA Bank PLC.
 - x. It would, therefore, be unlawful and unjust enrichment for the bank to be ordered to credit back into the applicant's account, funds that were used for the express benefit of the applicant as sought in the instant originating motion. The 2nd to 6th interested parties should be held accountable if, at all, they misappropriated or otherwise misused the funds accessed from the impugned account.
 - xi. A party cannot institute judicial review proceedings as a means of challenging a validly issued court order. In the circumstances, the application herein is not meritorious at all and should be dismissed with costs.
4. The applicant then filed a supplementary affidavit sworn on 31.10.2025 by Paul Mungale Kinyangi, who averred that whereas only one set of officials and trustees were duly registered by the 1st interested party, the 1st respondent had developed bias and aligned itself with specific persons. The 1st respondent failed to disclose to the officials whose election was pending registration before the 1st interested party, and to accord the applicant the duty of care. Since the 1st respondent acted unlawfully, it is in the interest of justice that it be ordered to remedy itself. This Court has a supervisory jurisdiction of all ELRC courts established pursuant to Legal Notice No. 6024 dated 22.06.2018, and therefore has the power to correct the mistakes of the lower court in accordance with Article 165(5) and (6) of *akn ke act 2010 constitution the Constitution*.
 5. Despite service, the 2nd and 3rd respondents as well as the interested parties did not appear and did not file opposing affidavits.
 6. The applicant and the 1st respondent filed their respective written submissions. The Court has considered the material on record and returns as follows.
 7. To answer the 1st issue, in absence of any other material on record, the facts and circumstances of the case are as pleaded and set out for the applicant trade union.



8. The 2nd issue is whether the applicant is entitled to the remedies as prayed for. The Court returns as follows:

- a. The applicant union has become aware of the alleged dishonesty flowing from the suit before the Magistrates Court at Nakuru in Civil Suit No. E608 of 2023, Japheth Anyira Agura and 4 others –versus- ABSA Bank Kenya. The applicant has not pleaded and explained why steps have not been taken to be enjoined in that suit and to ventilate its case including the issue that the Magistrate’s Court lacks jurisdiction per Legal Notice No. 6024 of 22.06.2018 as urged and submitted for the applicant herein. The applicant says that it is on 17.01.2025 that the 1st respondent gave it a bank statement with respect to its bank account and it was discovered that erratic withdrawals had been made between 16.10.2023 to 03.11.2023. The applicant’s further case is that at all material times the 1st respondent knew that the funds ought not to have been withdrawn. While that may be the case, the applicant union has not explained why it has not moved to be enjoined in the case before the Magistrate’s Court to ventilate its alleged fraud and for appropriate legal steps in that regard.
- b. The applicant union alleges dishonesty on the part of the 1st respondent and the 2nd to 6th interested parties. The Court considers that such are matters which are best ventilated through the Criminal Justice System. In the instant proceedings based on affidavits the evidence of the witnesses has not been tested and if indeed there was a conspiracy between the bank and the 2nd to 6th interested parties, then the same will fall for investigation and appropriate legal action in accordance with the law including the regulatory provisions of operation of banks.
- c. The judicial review order of certiorari is prayed for to quash the order by the 2nd respondent dated 12.10.2023 and later confirmed on 15.11.2023. The applicant has confirmed that the impugned orders have since been fully satisfied through the withdrawal of the relevant applicant’s funds from the union account held at the 1st respondent bank. It appears to the Court that quashing the impugned orders would not serve practical purposes and the Court should not act in vanity. The order will therefore be declined.
- d. Unless what that applicant calls dishonesty or fraud in obtaining the impugned orders is established in a proper legal processes instituted for that purpose, it appears that the 1st respondent does not become liable to refund the monies which are said were withdrawn by the 2nd to 6th interested parties. Further, mandamus as is trite law and as submitted for the 1st respondent, is a judicial review order usually directed at a public authority to perform a public or statutory duty as vested but not performed despite a demand for such performance. The relationship between the applicant and the 1st respondent bank appears to be private and contractual and as submitted for the 1st respondent, an order of mandamus will not fall as proper, in that regard. It will be declined.
- e. The applicant union seeks an order that the 2nd to 6th interested parties be prohibited from hold any union office. It would appear to the Court that such are matters governed by the union constitution and falling outside the cause of action in the instant case.
- f. The Court has considered the convoluted relationship between the parties and particularly between the applicant and the 1st respondent bank and in the interest of justice there shall be no orders on costs of the suit.

In conclusion, the suit by the originating motion herein dated 19.05.2025 is hereby dismissed with no orders on costs.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
THURSDAY 13TH NOVEMBER, 2025.**

BYRAM ONGAYA

PRINCIPAL JUDGE

