

REPUBLIC OF KENYA

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

CAUSE NO.E057 OF 2023

SEAFARERS UNION OF KENYA CLAIMANT

VERSUS

ATIE SWALE RAMADHAN 1ST RESPONDENT

JOHN HUSSEIN ZAPPA 2ND RESPONDENT

MATARI MWINYI MARARI 3RD RESPONDENT

AND

REGISTRAR OF TRADE UNION INTERESTED PARTY

JUDGMENT

The background to the instant suit is a claim filed by the Seafarers Union of Kenya on 22 June 2023. The claim is supported by the Verifying Affidavit of Hassan Kombo Ismael. The court, through various rulings, has addressed the claimant's standing to file the instant suit. In evidence, the 'claimant' called Stephen Ojiambo Owak and Albert Adembesa Adeg0. In the written submissions, the 'claimant' has relied on the 'amended Plaintiff', which is not part of the court record. Such an 'amended plaintiff' was not filed. It is not paid for. It does not form part of the record for the court to address as part of the claim herein.

The claimant is seeking the following orders:

- a) An order of permanent injunction be issued stopping the alleged and planned election organised by the respondents and scheduled on 24 June 2023, pending the hearing and determination of the suit.
- b) A declaration that the elections conducted by the claimant on 21 June 2023 were conducted in line with the constitution and in accordance with the court judgment dated 2 February 2023.
- c) Declaration that the respondents' alleged splinter group is unlawful.
- d) Any other relief and or the court will find just and fit to grant in the circumstances of this case.
- e) Costs of the suit.

The claimant, Seafarers Union of Kenya, represented by Hassan Kombo Ismael, filed the claim on the basis that it is a trade union registered under the Labour Relations Act. the 1st,

2nd and 3rd respondents are adults. The interested party is the body mandated to oversee the running of trade unions in Kenya.

The claim is that following judgment on 2 February 2023, the claimant was ordered by the court to carry out fresh elections within 150 days. Instead of complying with the Court order, the International Transport Workers Federation (ITWF), the national coordinating committee, requested to intervene in the matter and reconcile the factions.

Immediately after the reconciliation, the claimant embarked on the procedure as per its constitution and pursuant to the court order to conduct elections.

On 2 May 2023, a meeting was called for 4 May 2023 to fix a special conference for the purposes of electing an elections board, but it never took off. The claimant called for another meeting on 9 May 2023. On 10 May 2023, the claimant notified members of the special conference scheduled for 6 June 2023 at the office in Mombasa.

It is required that there is security, thus the claimant notified the OCS Central police station of the special conference. The meeting was held successfully, and the lecturing board was constituted. It was also resolved that the union elections be held on 21 June 2023. It was also agreed that Stephen Owaki would issue the notice.

On 21 June 2021, elections were held with new office bearers. It then came to the attention of the claimant that the respondents had formed a splinter group and organized a separate election. They held a meeting at CDF Hall in Likoni and elected their own election board members. Through a letter dated 29 April 2023, the respondents gave notice of a special conference meeting to elect their board on 4 April 2023.

Through a letter dated 9 June 2023, the OSC Likoni police station confirmed that his office was never notified as required before the special conference by the respondents. The claimant had already reported the illegal activities of the respondents to the Mombasa County Criminal Investigations office, who are investigating the criminal conduct. The Likoni police confirmed that the main purpose hall was not used for the special conference on 4 April 2023, as alleged.

The claim is also that the respondents, through a press statement, alleged that elections would be held on 24 June 2023 without disclosing the venue. These actions have been founded on illegalities, fraud, and unprocedural and contrary to the judgment delivered on 2 February 2023.

In evidence, the claimant called Stephen Ojiambo Owaki, who testified that he was the elected official of the claimant following elections on 21 June 2023, after a court order. He should be registered as the official, as the validly elected official of the claimant union. The respondents purported to have conducted a separate election, which was not valid and did not adhere to the union constitution.

Owaki testified that he is the legitimate secretary general of the claimant union since election on 21 June 2023.

Upon cross-examination, Owaki testified that he last paid union dues in June 2023. He has since stopped, as the matter has been pending in court. The union constitution provides that one should not be in arrears of up to 13 months. He thus filed suit as the general secretary, and he had no unpaid **dues arrears**. He paid through the account number 100459174 held at KCB Kilindini Branch. This is not a personal account and has no access.

He testified that in ELRC Petition No. E005 of 2021 (Mombasa) he was a party. There is a decree dated 8 August 2023. The court directed the claimant to conduct elections within 90 days. This was done, and he was elected the general secretary. The respondents held elections and got registered in 2023.

The interested party has since registered the respondent as a union official, leading to this suit.

The claimant also called Albert Adebese Adego a seafarer. He testified that he is a member of the claimant union. The representatives held elections in violation of the union constitution.

Adego testified that it is a condition under the constitution that any member who is not paid up in union dues cannot vote unless under exceptional circumstances. **He has no proof of being a member of the claimant.** He participated in elections on 24 June 2023, but there is no proof of such elections as an official. They have sued the interested party for failing to register them as claimant officials and instead registering the respondents. They were elected through a defective process.

Adego testified that he filed objections with the interested party on the elections. There was no reply.

In reply, the respondents' case is that before the union elections, the court ordered the establishment of an elections board within 90 days from 2 February 2023. Upon delivery of the judgment, the claimant was dissatisfied with the same and hence filed a Notice of Appeal on 8 February 2023. A Record of Appeal was filed on 27 February 2023 at the Court of Appeal.

Since 27 February 2023, the appeal has not been set down for hearing. No steps have been taken in prosecuting the appeal.

On 28 February 2023, the respondent followed the court directions and issued a letter to Owaki requesting him to call for a board meeting and, thereafter, a special conference to establish the elections board. He refused to call for a meeting on the grounds that he had lodged an appeal to the Court of Appeal.

Upon the court judgment, before the 90 days could expire, an elections board was established to nominate another secretary, who called for a special conference on 4 April 2023, and a committee of 9 was established. The respondents thus admit that they attended the meeting and resolved issues affecting them, including the withdrawal of the appeal and calling a special conference in adherence to the court order.

Elections were duly filed and returns submitted to the interested party for registration, which was done. The respondents are the legitimate officials of the claimant union following a

lawful election. Such elections have since been endorsed by the interested party in Form Q on 26 June 2023 upon payment of the requisite fee.

One Stephen Owaki has continued to illegally collect monies from the claimant members and deposit them in his personal account. This is contrary to the union constitution.

The response is that the claimant union did not authorise the filing of this suit. Hassan Kombo Ismael voluntarily resigned from the union on 17 November 2016, since he had no capacity to stand and support the claim as a member or official.

The respondents' case is that the claim lacks merit and should be dismissed with costs.

In evidence, the respondents called Ati Swaleh Ramadhan, the general secretary, who testified that following ELRC Petition No. E005 of 2023, the claimant held its elections, and she was elected, and returns were filed with the interested party in Form Q. There was an elections board constituted, the chair gave notice for elections, which were held on 24 June 2023. There were no objections to the elections and as a result, the claimant withdrew the appeal No. E029 of 2023 that it had filed at the Court of Appeal. There was no stay of execution granted, and the appeal having been withdrawn, there was no matter pending stopping the holding of elections.

The respondents filed a counterclaim to stop Stephen Owaki, Juma Kibwana, who had opened a bank account and was collecting union dues for personal use. The matter was also reported to the police, and there is an occurrence booking.

Atie testified that the claim is filed by the wrong party and should be dismissed with costs.

Upon cross-examination, Atie testified that she is a seafarer although she has not taken sail. She has all the documents for a sailor, which is allowed under the claimant's union constitution. Being the general secretary, she has the authority to testify. Previously, she was a trustee of the claimant and hence understands the union operations. She ceased the role of a trustee in April 2021.

The former secretary general, Owaki, had the members' list. He used it to open a new bank account, which is contrary to the union constitution. The representatives, as the legitimate officials, have since been using the members' lists secured in the office system. The former officials are holding the hard copy records of the claimant.

Determination

Upon analyzing the record, the evidence, and submissions by the parties, the issues which emerge for determination are:

- a) Whether the claim authorised the filing of this suit.
- b) Whether the persons who prosecuted the suit had standing to so.
- c) Whether the remedies sought should be issued.
- d) Who should pay costs?

As outlined in the backgrounds above, the claim herein dated 22 June 2023 was filed following the election of the representatives as the officials of the claimant union. They have since been registered by the Registrar of Trade Unions upon submission of Form Q.

As the body mandated to oversee the running of trade unions in Kenya, the office of the Registrar of Trade Unions, the interested party herein, is empowered under the Labour Relations Act (the LRA) to register union officials upon being satisfied that there is compliance with the union constitution, the law, and due process.

Upon the registration of officials with the office of the interested party, under the LRA, any aggrieved party has a right to register objections with the interested party under section 28(5) and 30 of the LRA:

(5) A trade union, employers' organisation or federation may appeal against a decision of the Registrar to the Industrial Court [Employment and Labour Relations Court].

And:

Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial Court [Employment and Labour Relations Court] against that decision within thirty days of the decision.

In this regard, where a member is aggrieved by the outcome of an election, objections go to the interested party, who is required to make an inquiry and issue a decision. Based on the decision, the aggrieved party has the right to move the court in person, citing the affected trade union as the interested party.

The court should be moved through an appeal, as held in **Kenya Plantation & Agricultural Workers' Union v Omulama & 9 others (The Kenya Export Floriculture, Horticulture and Allied Workers' Union (KEFHAU) Represented by its Promoters) [2020] KESC 59 (KLR)**. This position is given emphasis in **Kenya Plantation & Agricultural Workers' Union v Omulama & 9 others [2020] KESC 59 (KLR)**.

The essence of the orders sought herein is to stop the conduct of elections scheduled for 24 June 2023, and further to declare any elections conducted thereof as held in contravention of the constitution, hence unlawful. The orders sought in the claim acknowledge there was a planned election for 24 June 2023. The elections have since taken place, and the interested party registered the officials.

Under the LRA, the legal representatives of the claimant union were replaced by the registered officials. Under section 2 of the LRA, the authorised officer to represent the interests of the claimant union is the Secretary General or, with the written authority, any other official.

The persons of Hassan Kombo Ismael, who filed a Verified Affidavit in support of the suit, and the witnesses called for the claimant union, Stephen Ojiambo Owaki and Albert Adembesa Adeg, have no legal standing under the LRA to file suit on behalf of the claimant

union. They have no written authority from the Secretary General, as registered by the interested party, to file suit or urge a case on behalf of the claimant union.

The claim is bad in law.

There is no amended claim filed by Hassan Kombo Ismael, Stephen Ojiambo Owaki, and Albert Adembesa Adeg. These are strangers to the entity of the claimant union.

In Mombasa ELRC Petition No. E005 of 2021, the court entered judgment for the petitioners against the 1st and 2nd respondents. The petitioners were:

- 1) Attie Swaleh Ramadhan
- 2) Janet Mirobi Wamahiga
- 3) Mwalimu Chii Hamisi
- 4) John Hussein Zapa
- 5) Matari Mwinyi Matari
- 6) Omar Mohamed Mwadzenze;

The respondents were:

- 1) Searefers Union of Kenya
- 2) General Secretary, Seafarers Union of Kenya [represented by Stephen Ojiambo Owaki]
- 3) Registrar of Trade Unions.

The court declared the letter of the 2nd respondent, dated 18 March 2021, purporting to be an election notice, unlawful.

The elections held on 14 April 2021 were quashed.

The 1st respondent was directed to establish an elections board within 30 days and call for elections within 90 days.

The interested party, Registrar of Trade Unions, has since registered the office bears of the claimant union, the Seafarers Union of Kenya. A Form Q has been issued and actioned by the officer required to address the same under **the law, the Labour Relations Act.**

Upon the fact of Form Q, the status of the parties herein legally changed.

The registered officials of the claimant as of 24 June 2023 are:

Chairperson, Mwalimi Chii Hamisi;

Deputy Chairperson, Khalfan Jilani Mwamboje;

General Secretary, 1st respondent;

Deputy General Secretary, Said Chako;

Treasurer, 2nd respondent;

Deputy Treasurer, Ali Hassan Bakari;

Young workers representative, Salim Gombeni Suleiman;

Women's representative, Mwarabu Abresh Said;

Shop floor committees' representative, Alamin Ahmed;

Committee members, Mchangamwe Abdallah Omar

Omar Mohammed Mwadzedze;

Suleiman Omar Boma

Trustee, Fadhili Gona;

Trustee, Mwanamgeni Hassan;

Trustee, David Hendry Kibuyu.

The claimant can only sue or be sued through its officials as listed above. The suit by the claimant under the Supporting Affidavit of Hassan Kombo Ismael is invalid to the extent that, upon the registration of the union officials by the interested party on 24 June 2023, he ceased to hold any role as an official of the claimant. He cannot file any suit for and on behalf of the entity of the claimant.

The respondents also noted that Hassan Kombo Ismael has since resigned from the union, as per a letter dated 17 November 2016. He was not a union official when he filed the instant suit or at any time after his resignation. He had no capacity to sue or be sued on behalf of the claimant union as of such date.

His pleadings to this extent are invalid.

An invalid suit cannot be revised through amendments. It has no foundation.

Where Hassan Kombo Ismael, Stephen Ojiambo Owaki, or Albert Adebese Adegbo had any grievances following the elections held for the claimant union, filing a claim in the name of the claimant was not an option. There exist mechanisms under the LRA to address any such grievances.

In the ruling delivered on 25 September 2025, the court addressed the standing of the claimant and the persons purporting to represent its interests. The *locus standi* of Stephen Ojiambo Owaki and Albert Adebese as claimant union officials ceased with the submission of Form Q to the interested party on 24 June 2023.

Under the LRA, Stephen Ojiambo Owaki and Albert Adebese cannot purport to act on behalf of the claimant. They cannot urge the claim as herein done, as this is unlawful in terms of section 2 of the LRA, which defines who the authorised officer of the trade union is.

In this instance, under the interested party returns, the office and person with the capacity to sue for the claimant union is Atie Swale Ramadhan.

Any other person purporting to sue in the interest of the claimant must obtain written authority from the registered secretary general, Atie Swale Ramadhan.

Further, in the earlier ruling delivered on 28 September 2024, the court addressed the claimant's standing and the agitations by Stephen Ojiambo Owki. He has not taken heed.

The continued prosecution of the instant suit without the requisite authority constitutes an abuse of court process. In **Kenya Section of the International Commission of Jurists v Attorney General & 5 others [2012] KESC 4 (KLR)**, the Supreme Court of Kenya defined what abuse of court process is and held that:

The concept of “abuse of the process of the court” bore no fixed meaning, but had to do with the motives behind the guilty party’s actions; and with a perceived attempt to maneuver the court’s jurisdiction in a manner incompatible with the goals of justice. The case appeared so hopeless that it plainly and obviously discloses no reasonable cause of action and was so weak as to be beyond redemption.

Hence, the orders sought by the purported claimant have since been overtaken by events. The suit is filed by persons who lack *locus standi*, and ultimately, despite being directed herein by the court that they lacked the proper standing, Stephen Ojiambo Owaki and Albert Adebese have continued to agitate this case. This is at great expense to the claimant union, its officials, and its members, who have been denied the ability to conduct peaceful operations due to these proceedings.

The suit is bad in law. It is an abuse of the court process. The order dismissing this suit shall suffice. The persons of Stephen Ojiambo Owaki and Albert Adebese shall pay the costs assessed against the respondents, amounting to Ksh. 50,000 each.

Delivered in open court at Mombasa on this 29th day of January 2026.

M. MBARŪ

JUDGE