

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**MACHAKOS**  
**CAUSE NO. E011 OF 2024**

**YVONNE MUTINDI MUSYOKA.....CLAIMANT**

**VERSUS**

**MUSEMBI KATUKU THE EXECUTIVE**

**SECRETARY KUPPET MACHAKOS BRANCH .....1<sup>ST</sup> RESPONDENT**

**BENARD KILONZO THE TREASURER**

**KUPPET MACHAKOS BRANCH.....2<sup>ND</sup>**

**RESPONDENT**

**BENARD WARUI THE CHAIRMAN**

**KUPPET MACHAKOS BRANCH.....3<sup>RD</sup>**

**RESPONDENT**

**REGISTRAR OF TRADE UNIONS.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant commenced these proceedings through a Statement of Claim dated 22<sup>nd</sup> April 2024. The Claimant asserts that she is a member of the Kenya Union of Post-Primary Education Teachers (KUPPET) and that, at all material times, she served as the Vice-Chairperson of the Union’s Machakos branch.

2. The Claimant states that in her capacity as the Branch Vice-Chairperson of KUPPET Machakos Branch, she is mandated to represent and safeguard the interests of teachers in Machakos County who are members of the Branch. Her duties include ensuring the prudent management of Branch resources, comprising funds and assets held on behalf of members.
3. She avers that the Machakos Branch, in which she together with the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents, serve as officials, resolved to procure a minivan for Branch operations. Pursuant to that decision, the Branch acquired motor vehicle registration number KCP 996D, a silver Nissan Caravan, which was branded in the Union's colours and the Branch's name.
4. The Claimant asserts that the disposal of any Branch asset can only be effected through a resolution passed at an official meeting of the Branch Executive Committee (BEC), Branch Governing Council (BGC), or Branch General Assembly (BGA). However, she learned in 2021 that the motor vehicle registration number KCP 996D (motor vehicle) had been sold without such authorization. According to her, the sale was unilaterally undertaken by the Branch Executive Secretary and Branch Treasurer, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, who treated the vehicle as though it were their personal property.

5. She further contends that the Branch Chairman, the 3<sup>rd</sup> Respondent, failed to take any action to prevent or challenge the unlawful disposal of the vehicle, continuing a pattern of neglect of his duties under the Union's constitution, including his refusal to act as a mandatory signatory to the Branch bank account.
6. The Claimant further avers that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents proceeded to dispose of the motor vehicle without public advertisement or adherence to procurement and asset disposal procedures requiring competitive bidding. She asserts that the Branch Treasurer also failed, when rendering accounts to the Registrar, to include the vehicle as a Branch asset or to account for any sale proceeds, contrary to section 42 of the Labour Relations Act and the Union Constitution. She adds that the Treasurer did not submit the Branch accounts for audit by an auditor appointed by the BGA.
7. In the Claimant's view, the actions and omissions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents amount to offences under Section 43(5) as read with Section 47 of the Labour Relations Act, attracting the sanctions provided thereunder.

8. The Claimant further states that her efforts to seek information regarding the sale during BEC and BGC meetings were fruitless and created animosity between her and the Respondents. After the Branch failed to provide information, she wrote twice to the 4<sup>th</sup> Respondent requesting an investigation into the circumstances of the sale, the consideration received, and whether the proceeds were used to purchase another vehicle. She contends that the 4<sup>th</sup> Respondent failed in her statutory duty by not inspecting the Branch's accounts as required under Part V of the Labour Relations Act.
9. The Claimant maintains that the acts and omissions of the Respondents have caused financial loss to the KUPPET Machakos Branch and its membership.
10. It is against this background that the Claimant seeks the following reliefs:
- a) A declaration that the purported sale of motor vehicle KCP 996D Nissan Caravan Van Silver in colour by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is illegal and the same is null and void.***
  - b) A declaration that by denying access to information by the 1<sup>st</sup> to 4<sup>th</sup> Respondents as sought by the Claimant, the Respondents are in violation of her rights as protected under Article 35 of the Constitution.***

- c) *A declaration that the illegal sale of motor vehicle KCP 996D Nissan Caravan Van Silver in colour occasioned the Machakos Branch immense loss.*
- d) *An order directing the Registrar of Trade Unions to call for and inspect the books of account of the KUPPET Machakos Branch and issue a report to the Claimant within 30 days of this Judgment.*
- e) *An order cancelling the purported sale of motor vehicle KCP 996D Nissan Caravan Van Silver in colour by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.*
- f) *An order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to immediately return the said motor vehicle KCP 996D Nissan Caravan Van Silver in colour to the Machakos Branch being in the same condition as it was before the illegal sale.*
- g) *In the alternative to (f) above, an order directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to immediately and in their personal capacities/form their own pockets procure for the Branch a new motor vehicle of the same make as the motor vehicle KCP 996D Nissan Caravan Van Silver in colour.*
- h) *An order for general damages to be paid to Machakos Branch by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents from their own pockets for loss of use of the Branch's*

*motor vehicle registration KCP 996D Nissan Caravan Van Silver in colour*

*i) Costs of this suit.*

11. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents opposed the Memorandum of Claim through their respective Replying Affidavits, all sworn on 21<sup>st</sup> May 2024.

12. The 1<sup>st</sup> Respondent, who describes himself as the Executive Secretary of the Machakos Branch of KUPPET, avers that, under the Union's Constitution, his responsibilities include acting as the executive officer and spokesperson of the Branch, maintaining the Branch membership register and other records, preparing meeting agendas in consultation with the Branch Chairperson, submitting reports and financial statements to the Branch General Meeting and to the Secretary General, and filing annual returns with the Registrar of Trade Unions as required by law.

13. He confirms that the Machakos Branch disposed of motor vehicle registration number KCP 996D, a silver Nissan Caravan, through a sale to Volex General Motors (K) Ltd on 15<sup>th</sup> June 2021, asserting that due process was followed.

14. The 1<sup>st</sup> Respondent, referencing Article 20.3.0 of the KUPPET Constitution, avers that a resolution is deemed carried if passed by a simple majority and declared as such by the National or Branch Chairperson, with minutes reflecting the declaration serving as sufficient evidence.
15. He asserts that the proposed sale of the motor vehicle was discussed extensively in several meetings at which the Claimant was present, yet she did not raise any objections.
16. He states that during the meeting of 3<sup>rd</sup> September 2020, it was unanimously agreed that the van would be advertised for sale at a non-negotiable price of Kshs. 600,000/=. This was recorded in the minutes, and the Claimant attended the meeting.
17. The 1<sup>st</sup> Respondent further avers that at the BEC/Finance Committee meeting of 20<sup>th</sup> May 2021, the outgoing Treasurer, Mr. Manda, reported that the van had been sold for Kshs. 600,000/= and that a new van had been acquired, and that the Claimant was in attendance.
18. He states that at the Branch Executive Finance Committee meeting of 24<sup>th</sup> June 2021, the Treasurer presented a report showing that Kshs. 400,000/= had been

deposited into the Union's KCB account and Kshs. 200,000/= into the Union's Equity account. He adds that the Claimant was present.

19. He avers that at the BEC meeting of 13<sup>th</sup> August 2021, the Finance Committee again reported that the van had been sold for Kshs. 600,000/=, and that the Claimant was present.

20. He further states that at the BGA meeting on 22<sup>nd</sup> October 2022, the Treasurer, Benard Kilonzo, presented the Treasurer's Report in the Claimant's presence.

21. He also states that in his address during the same BGA meeting, he informed members that the Branch had acquired a new 16-seater van in 2020 and that the older 11-seater van being the subject of these proceedings, had been sold due to persistent mechanical problems.

22. The 1<sup>st</sup> Respondent avers that at the BEC meeting of 17<sup>th</sup> April 2024, the Finance Committee tabled the minutes of the 24<sup>th</sup> June 2021 meeting in response to the Claimant's query regarding the sale of the van, further demonstrating that she had been kept informed throughout the process.

23. He contends that because the Claimant attended all the meetings and did not object, she effectively acquiesced to the sale.

24. The 1<sup>st</sup> Respondent further asserts that the Branch Chairman duly discharged his mandate and that nothing illegal or irregular occurred in the meetings he presided over.

25. He argues that trade unions are not classified as “public entities” under the Public Procurement and Asset Disposal Act. Notwithstanding this, he maintains that the correct procedure was followed and notes that the sale was advertised in the Daily Nation on 20<sup>th</sup> October 2020.

26. The 1<sup>st</sup> Respondent states that the Branch Treasurer produced receipts evidencing the sale and properly maintained the Branch’s financial records, reporting on the sale in several meetings over which he presided.

27. He avers that the Machakos Branch, in compliance with Section 42 of the Labour Relations Act, submitted its audited accounts to the Registrar of Trade Unions through the Union Secretary General, who received an acknowledgment from the Registrar.

28.He further states that the accounts were audited by the Registrar pursuant to Section 44 of the Labour Relations Act, and that the Branch Chairman provided the required accounts and membership records upon request.

29.He reiterates that during the 24<sup>th</sup> June 2021 meeting, attended by both him and the Claimant, the Treasurer transparently presented the financial report showing the deposit of Kshs. 400,000/= into the KCB account and Kshs. 200,000/= into the Equity account.

30.According to the 1<sup>st</sup> Respondent, Article 17(d) of the Union Constitution identifies the authorized signatories to the Machakos Branch KCB account as the Branch Chairman, the Executive Secretary, and the Branch Treasurer, and that for the transaction in question, the Branch Chairman was the acting signatory.

31.He states that Article 11.13.0 of the KUPPET Constitution designates the Branch Executive Secretary as the official spokesperson of the Branch and asserts that the Claimant could not lawfully write to the Registrar without his authorization.

32. He also relies on Section 2 of the Labour Relations Act, which identifies the General Secretary of a trade union as its authorized representative, arguing that the Claimant lacked the capacity to correspond with the 4<sup>th</sup> Respondent without his approval.

33. The 1<sup>st</sup> Respondent further states that, in the event of a dispute, any member noticing a breach or misconduct must lodge a written complaint with the Secretary General, who would investigate and present findings to the National Executive Board within 14 days for determination.

34. He argues that the Claimant failed to exhaust these internal dispute resolution mechanisms before approaching the Court.

35. The 1<sup>st</sup> Respondent additionally avers that the Claimant was summoned before the Union's Disciplinary Committee on 17<sup>th</sup> January 2024 and expresses surprise that she remained silent from 2021 when the van was sold until 2024 when disciplinary action was initiated.

36. It is noteworthy the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' affidavits generally mirror the 1<sup>st</sup> Respondent's depositions.

37. In his Replying Affidavit, the 2<sup>nd</sup> Respondent identifies himself as the Treasurer of the KUPPET Machakos Branch and states that, under the Union Constitution, he is mandated to maintain accurate records of the Branch's funds and books of accounts, safeguard Branch finances, and ensure that no payment is made from Branch funds under his control unless supported by a duly authorized payment voucher.

38. The 3<sup>rd</sup> Respondent describes himself as the Chairman of the Machakos Branch and states that his responsibilities include presiding over all Branch Governing Council and Branch Executive Committee meetings at which he is present, ensuring compliance with the Union Constitution and rules, and performing all duties ordinarily associated with his office.

39. The 4<sup>th</sup> Respondent did not file any response to the Statement of Claim.

40. On 31<sup>st</sup> October 2025, the parties consented to have the matter determined on the basis of documentary evidence in accordance with Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024. Subsequently, the parties were directed to file and exchange written submissions within the timelines specified by the Court.

### **Submissions**

41. Only the Claimant filed written submissions. In support of her case, the Claimant argued that the Respondents are not trustees of the union and do not oversee union property; therefore, they lacked legal authority to sell union assets such as the van, contrary to **Section 37(1) of the Labour Relations Act**. In the same vein, the Claimant submitted that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents fraudulently and dishonestly misrepresented themselves as trustees while not being in charge of union property.

42. The Claimant further submitted that the Labour Relations Act does not permit trustees to delegate their responsibilities to others. It was her position that the Respondents did not provide any letter showing that the trustees had delegated such authority to them, contrary to **Section 37(1) of the Act**. Additionally, the Claimant argued that the Respondents failed to attach any gazette notice from the Minister in charge of labour authorizing the disposal of the union van, thereby acting in contravention of **Section 37(2) of the Labour Relations Act**.

43. The Claimant also contended that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents are employees of the Teachers Service Commission, a state organ established under **Article 237 of the Constitution**, and as such, are public servants bound by the Procurement and Disposal Act. In her view, pursuant to the Public Service Regulations and the

Recognition Agreement, seconded members of KUPPET are public officers and must comply with the Public Officers Ethics Act.

44. The Claimant further argued that the 2<sup>nd</sup> Respondent's failure to attach a bank statement confirming receipt of the alleged Kshs 600,000/- from the sale of the union van indicates that the van was never paid for, and that the bank signatories should be surcharged.

### **Analysis and Determination**

45. Arising from the parties' pleadings, the documentary evidence on record, and the Claimant's submissions, the Court identifies the following issues for determination:

- a) Whether the sale of Motor Vehicle Registration No. KCP 996D was duly authorized.***
- b) Whether the disposal of the motor vehicle was subject to the Public Procurement and Disposal Act.***
- c) Whether the reliefs sought by the Claimant are merited.***

### **Whether the sale of Motor Vehicle KCP 996D was duly authorized**

46. It is common ground that on or about 15<sup>th</sup> June 2021, the KUPPET Machakos Branch disposed of motor vehicle registration number KCP 996D, a silver Nissan Caravan which it claims was its property.

47. The Claimant's case is that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, serving as the Branch Executive Secretary and Branch Treasurer, respectively, unilaterally authorized the sale of the said motor vehicle, while the 3<sup>rd</sup> Respondent, the Branch Chairman, allegedly stood by without intervening.

48. The Claimant contends that the sale was conducted without approval from the Branch Executive Committee (BEC), Branch Governing Council (BGC), or Branch General Assembly (BGA).

49. In opposition, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents aver that the disposal followed due process. They state that the sale was discussed in multiple meetings attended by the Claimant, who did not raise any objections.

50. The minutes of the BEC meeting held on 3<sup>rd</sup> September 2020 (Minute 03/09/2020) record that the Treasurer reported the acquisition of a new motor

vehicle due to recurring mechanical problems with the old one. As per the said minutes, it was agreed that the old vehicle be advertised for sale at Kshs 600,000/-, non-negotiable.

51. From the record, the Claimant attended this meeting and did not object to the resolution to advertise the motor vehicle for sale.

52. At the BEC meeting of 20<sup>th</sup> May 2021 (Minute 4/5/2021), the outgoing Treasurer reported that the Branch had acquired a new van and that the old one had been advertised for sale in the Nation Media Group on 20<sup>th</sup> October 2020 at Kshs 600,000/-, non-negotiable. The record bears that the Claimant was present and did not raise any objection.

53. Further, at the BEC meeting of 24<sup>th</sup> June 2021, the Treasurer's Report (Minute 3/06/2021) recorded that the old Nissan had been sold for Kshs 600,000/-, with Kshs 400,000/- deposited into the Branch's KCB account and Kshs 200,000/- into its Equity Bank account. As per the minutes, the Claimant was present at this meeting and did not raise an issue with regards to the sale of the motor vehicle.

54.The BEC meeting of 13<sup>th</sup> August 2021 (Minute 1/8/21) further recorded the sale of the old van for Kshs 600,000/-, with the Claimant being present and raising no objection.

55.It is notable that the Claimant does not dispute her attendance at the BEC meetings of 3<sup>rd</sup> September 2020, 20<sup>th</sup> May 2021, 24<sup>th</sup> June 2021, and 13<sup>th</sup> August 2021, nor does she suggest that the minutes do not accurately reflect the proceedings. Therefore, the Court has no reason to doubt the accuracy of the said minutes.

56.What can be drawn from the foregoing is that the BEC of the KUPPET Machakos Branch, comprising the Chairperson, Vice Chairperson, Executive Secretary, Assistant Secretary, Branch Treasurer, Branch Secretary, Branch Secretary (Gender), Branch Secretary (Tertiary), Branch Organizing Secretary, and Branch Secretary (Secondary), resolved to dispose of motor vehicle KCP 996D. Accordingly, the Claimant's argument that the sale was unilaterally authorized by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without the approval of the BEC is unsupported by the evidence on record.

57.It is also noteworthy that the KUPPET Constitution does not specify which organs are required to authorize the sale or disposal of Branch-level assets.

Consequently, it is not possible to determine whether approval from the BGC or BGA was necessary prior to the sale of the motor vehicle in question.

58. In view of the gap identified above, the Court turns to the Labour Relations Act, which at Section 37(1) stipulates that all assets of a trade union, whether movable or immovable, vest in its trustees for the use and benefit of the union and its members. It is important to note that a branch's property is deemed to be the property of the parent trade union.

59. Although Clause 8.13.0 of the KUPPET Constitution outlines the appointment of trustees and their responsibilities, it is silent on their role in relation to the acquisition and disposal of property belonging to the trade union.

60. Consequently, by virtue of Section 37(1) of the Labour Relations Act, it is implied that any disposal of the trade union's property must be undertaken with the authorization of the Union's trustees.

61. In this case, it is evident that the discussions and decision-making regarding the disposal of the motor vehicle were undertaken and concluded at the BEC level of the KUPPET Machakos Branch without any reference to the Union Trustees.

62. Accordingly, it is doubtful that the BEC, acting alone, had the authority to dispose of union property without first obtaining the approval of the Trustees.

63. The Court also observes that during the Branch General Assembly held on 22<sup>nd</sup> October 2022, the 1<sup>st</sup> Respondent informed members that the Branch had acquired a 16-seater van in 2020 and had sold the older 11-seater van due to mechanical issues. However, this communication was merely informational, as the decision to sell the motor vehicle had already been made and implemented.

64. In conclusion, the Court finds that the BEC of the KUPPET Machakos Branch lacked the requisite authority to sell motor vehicle KCP 996D without obtaining approval from the Union Trustees.

#### **Applicability of the Public Procurement and Asset Disposal Act**

65. The Claimant contends that the sale of the motor vehicle was not advertised in accordance with procurement and asset disposal laws to attract competitive bids. This raises the question of whether the Public Procurement and Asset Disposal Act applies to a trade union.

66. Section 2 of the Labour Relations Act defines a trade union as an association of employees whose principal purpose is to regulate relations between employees and employers, including employers' organisations.

67. The preamble to the Public Procurement and Asset Disposal Act is explicit that the statute gives effect to Article 227 of the Constitution and establishes procedures for public procurement and asset disposal by public entities, among other purposes.

68. In addition, Section 4 of the same statute expressly provides that the Act applies to all State organs and public entities concerning procurement planning, procurement processing, inventory and asset management, disposal of assets, and contract management.

69. Given the definition of a trade union under the Labour Relations Act, it is evident that a trade union is neither a State organ nor a public entity. Therefore, the disposal of its assets is not governed by the provisions of the Public Procurement and Asset Disposal Act.

**Reliefs?**

70. The Claimant seeks several reliefs against the Respondents, including: *a declaration that the sale of the motor vehicle was null and void; an order directing the Registrar of Trade Unions to inspect the books of account of the KUPPET Machakos Branch; an order cancelling the impugned sale; an order compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to immediately return the motor vehicle; and an order requiring the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, in their personal capacities and at their own expense, to procure for the Branch a new motor vehicle of the same make as motor vehicle KCP 996D.*

71. In support of its case, the Respondents relied on bank statements of the KUPPET Machakos Branch showing that on 15<sup>th</sup> June 2021, Kshs. 400,000/- was credited to the Branch account as proceeds from the sale of the motor vehicle to Volex General Motors. Additionally, the Branch's Equity Bank statement reflects a further deposit of Kshs. 200,000/-. It is therefore evident that the proceeds from the sale of the motor vehicle were duly deposited into the Branch's accounts.

72. Accordingly, there is no basis for directing the Respondents to return the motor vehicle or to procure a replacement vehicle of the same make for the Branch. In any event, since the Court has found that the Claimant participated in the deliberations by the BEC, where the sale of the motor vehicle was discussed, it follows that she was involved in the decision-making process that led to its

disposal. Accordingly, any sanctions imposed on the Respondents would necessarily extend to her.

73.As for the request to nullify and cancel the sale, it is noteworthy that the motor vehicle was sold on or about 15<sup>th</sup> June 2021, approximately five years ago, to a third party who is not a party to these proceedings. In these circumstances, granting the order sought would not be prudent.

**Orders**

74.In the final analysis, the Claim succeeds only to the extent that the Court finds that the BEC of the KUPPET Machakos Branch lacked the legal authority to sell motor vehicle registration number KCP 996D. Be that as it may, for the reasons outlined above, no consequential orders will issue.

75.In view of the relationship between the parties herein, there will be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 4<sup>th</sup> day of February 2026.**

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**STELLA RUTTO**

## **JUDGE**

### **In the presence of:**

For the Claimant	No appearance
For the Respondents	No appearance
Court Assistant	Catherine

## **ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

ORIGINAL