

REPUBLIC OF KENYA

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

CAUSE NO. E025 OF 2025

- 1) AMIN ILOTI
- 2) SULMAN OWUOR
- 3) KIBIBI OMERI
- 4) MASKAT SALIM
- 5) MEJUMAA CHIRAU
- 6) RUWA MPATE
- 7) GLADYS MBITHI
- 8) ALI MWAMREZI
- 9) QUEEN MSHIHIRI
- 10) MOHAMED SHAMAHUYA
- 11) MAURICE MWANYULE
- 12) AUGUST RUWA
- 13) JUMA MAJEPO
- 14) KENNEDY OKETCH
- 15) EDWIN WASONGA

Acting on their behalf and on behalf of the Dock Workers Union of Kenya

..... CLAIMANTS

VERSUS

SIMON KIPRONO SANG 1ST RESPONDENT

**REGISTRAR OF TRADE UNION 2ND
RESPONDENT**

AND

DOCK WORKERS UNION OF KENYA INTERESTED PARTY

JUDGMENT

The claimants are seeking the following orders:

- a. *A conservatory order or any equivalent or related relief under sections 41, 42, 43, and 44 of the Labour Relations Act restraining the 1st respondent from further use of any funds of the interested party, including taking further loans.*
- b. *The 1st respondent is to be directed to render accounts of the interested party for the last 3 years.*
- c. *An order be issued under section 42 of the Labour Relations Act for a forensic audit of the interested party's account to be undertaken and a forensic report be filed in court.*
- d. *An order directing the 1st respondent to refund the sum of Ksh. 52,000,000 and/or any other sum that will be confirmed by the forensic audit report, which has been misappropriated.*
- e. *A declaration that the 1st respondent violated articles 5, 8, 10, 12, 19, and 21 of the union constitution.*
- f. *A declaration that the suspension of the elected officials in the National Executive Committee violated Article 12(k) of the union constitution.*
- g. *A declaration that the 2nd respondent's removal of the claimants' names from the register without ensuring full compliance with the union constitution and articles 10 and 47 of the constitution was unlawful.*
- h. *An order be issued to lift the suspension issued by the 1st respondent against the claimants who are elected officials of the interested party, and payment of outstanding allowances.*
- i. *An order be issued to the 1st respondent directing that he allow the claimant who are elected officials to perform their mandate and functions without any victimisation.*
- j. *Costs of the suit.*
- k. *Any other relief the court deems fit to grant.*

Claim

The claimants are members of the interested party, and the 1st to 5th claimants are elected officials. The 1st respondent is the general secretary of the interested party. The 2nd respondent is the officer appointed under the Labour Relations Act (LRA) to oversee the registration and

operations of trade unions in Kenya. The interested party is a trade union registered under the LRA.

The claim is that the 1st respondent has violated sections 41, 42, 43, and 44 of the LRA, having misappropriated union funds and refusing to render accounts under section 42 of the LRA. There is a refusal to convene and render annual accounts, in contravention of a mandatory resolution under the law.

The claimants sought to understand how the 1st respondent left the union accounts with a negative balance. This statement of accounts was used to justify several loans, totalling Ksh. 52 million that had been taken without accounting for it.

The claim is that the 1st respondent has removed elected leaders from office to avoid addressing the misappropriation of funds within the union.

The claimants were elected officials of the union and seat in the NEC. Upon their election, the claimants noted the following:

- a) The union had not filed any audited accounts for the last 5 years as per article 10(3) and 21 (2) of the union constitution.
- b) No books of accounts were being maintained.
- c) The union accounts had a negative balance, and huge loans had been taken. For instance, the union had adopted a development plan, yet no progress has been made.
- d) The union had failed to have an Annual General Meeting as per article 10(3) of the constitution.
- e) The 1st respondent had employed staff in violation of the union constitution.

Regarding these concerns, the 1st respondent was unresponsive. The claimants filed a report with **Makupa Police Station, vide OB No. 52, on 13 June 2024**, regarding funds misappropriation. Instead of addressing the matter, the 1st respondent filed **Mombasa CMERC Cause No. E801 of 2024 – The Dock Workers Union v Amin Iloti & others** seeking orders of injunction to restrain elected officials from undertaking their work. These orders were not granted.

Upon failing to obtain positive orders from the court, the 1st respondent held a meeting in the absence of elected officials, in violation of the union constitution. He sought to suspend these election officials to stop questions on the misappropriation of funds. He thus wrote to the 2nd respondent requesting that the claimants be removed from the register. In January 2025, the

claimants visited the 2nd respondent and obtained extracts of the union officials' records. Indeed, their names had been removed from the register.

The claim is that the actions by the respondents are in breach of the fundamental rights and freedoms of the claimants and contrary to articles 10 and 47 of the Constitution.

Article 12(k) of the union constitution provides that only the conference may remove members of the NEC, not by the 1st respondent. A committee has to be formed to hear the member(s) before removal. The respondents used doctored minutes to remove the claimants from office, which is contrary to the constitution.

The claim is that the 1st respondent is incurring irregular, unauthorised, and unlawful expenditure of the union funds in contravention of the LRA and the constitution. There have never been budgetary estimates read and adopted at a conference of the union and the relevant union organs to enable the 1st respondent to incur expenditure from union funds. His continued incurring of expenditure is irregular, unauthorised, and hence unlawful.

The orders sought should be allowed to preserve members' rights and the union.

In evidence, the claimants called **Sulman Owuor the 2nd claimant**.

He testified that he was elected as an Executive Member of the union. As such, he became privy to the union's operations and was therefore competent to testify. The union has been unable to meet its financial obligations due to the 1st respondent's misappropriation of funds.

During the approvals, as a member of the budgetary committee, he asked the following questions:

- a. *The contract of Renson Juma Thova expired in April 2024 as the organising secretary was not renewed by the Board. However, the 1st Respondent has been paying him a net sum of Kshs.168, 454/=.*
- b. *The 1st Respondent has been paying Leonard Ochieng a sum of Kshs. 152,000/= as a legal officer, yet he is not qualified for that position and has never been employed by the Board.*
- c. *The last Respondent has been paying Issa K. Kanda a salary of Kshs 35,000/= as a driver, yet the Interested Party has no bus since the bus broke down about 5 years back. Further, the said Issa K. Kanda is above the retirement age of 60 years.*

- d. *The 1st Respondent has been paying Derick K. Mwaaoma a salary of Kshs. 45,000/= as a driver, yet the Interested Party has no bus since the bus broke down about 5 years back.*
- e. *Further, the 1st Respondent has been paying salary to Maurice Munyao and Lawrence N. Nvawa.*
- f. *The 1st Respondent has been paying salary to Cynthia Wanyonyi, who is the secretary general of Bottax Workers.*

Sulman testified that he was the chair of the union's budget and finance committee, with the main function of preparing the budget. The union's main source of income is member subscriptions. These are spent on salaries, officials' honoraria, and allowances for representatives, security, and shop stewards. Upon his election in 2024, in May, he was appointed to the committee chair. Despite having a finance policy, the 1st respondent has not adhered to it. The treasurer makes all the payments which have remained in the negative due to misappropriation by the 1st respondent.

The union's accounts have not been audited as required by law for the last 5 years. By letter dated 20 August 2025, the 2nd Respondent threatened to close the union due to the said failure. There was no compliance, and the 1st respondent continues to run the union on negative account balances.

Sulman testified that the 1st Respondent has not rendered accounts for the loans taken so far, nor for the purposes for which the money was spent. He has taken several loans for his own benefit, not for the union. There are bank statements and a letter from Port Sacco which confirms the above position.

Upon cross-examination, the witness confirmed that the union treasurer is the 3rd claimant. Since the claimants assumed office, the 1st respondent has refused to cooperate in the management of the union's financial affairs. Due to misappropriation of funds, they made a report at Makupa Police Station. Instead of addressing the issues raised, the 1st respondent filed a claim against them before the **Magistrates' Court in Mombasa CMELRC E801 of 2024**. As the secretary general, he has wasted the union's funds. The 1st respondent then suspended the claimants from office and issued them with show-cause notices on various counts to avoid questions of misappropriation of funds. A special committee of the NEC should have addressed such a matter, but a summary resolution was passed to remove the claimants from the office.

The claimants also called **Kennedy Oketch, the 14th Claimant** and an Executive Member of the union. Through the Certificate of Election dated 29 February 2024, he was elected as an Executive Member of the union. Thereafter, the union prepared the Minutes of the elections, and the 2nd Respondent registered his name as an executive member.

Oketch testified that he was shocked when he learnt that the 2nd Respondent had removed his name from the union's official list and, as a result, removed him as an executive member. Upon investigating why his name was removed, he learnt that the 1st Respondent alleged that he had failed to attend three (3) consecutive meetings. However, the 1st Respondent deliberately failed to apply for leave from work to attend the meeting and to notify the 1st Respondent of it. Previously, he received release orders from the employer upon the union's invitation to meetings convened by the 1st respondent.

Oketch testified that the manner in which the Respondents removed him as an executive member of the union violates Articles 10 and 47 of the Constitution and that he was never accorded a chance to be heard. The removal violated the union's constitution and, in the interests of justice, fairness and in showing` fidelity to the Constitution, the prayers sought should be granted.

Response

In response, the 1st respondent and interested party filed a joint reply.

The 2nd respondent did not attend these proceedings.

The 1st respondent and interested party (Union) case is that the allegations made by the claimants are unproven and should be dismissed with costs. Accounts of a trade union can only be restrained pursuant to section 41(1) of the LRA, only where there is sufficient evidence that there is unlawful expenditure of funds contrary to section 39 of the LRA. Or that there are specific funds which were approved or authorised to be expended on a particular activity of the union, but were diverted and expended on another unauthorised activity. The claimants must demonstrate interest beyond that of regular members within the union.

The response is that pursuant to Section 42 of LRA, it is the National Treasurer, the 3rd Claimant herein or any other person acting as such, who was statutorily mandated to render to the 2nd Respondent the account statement of the union, explaining the receipts of funds and how the same was expended and by law such mandated is not vested upon the 1st

Respondent. Contrary to the assertion that the 1st Respondent failed to explain how the 52,000,000 was expended, under the provisions of Section 42 of LRA and Article 19(3) & (8) of the union Constitution, such a mandate is with the National Treasurer, the 3rd Claimant.

The allegations that the 1st Respondent withdrew funds from the union's accounts are incorrect. The funds were withdrawn by various officers of the union, including the National Chairman, Mr Mohamed Mwasera; the Vice Chairman, Mr Gunda Kaneno; Amin Illoti; Maskat Salim; and Kibibi Omeri, the 1st, 4th, and 3rd Claimants, respectively. There is evidence captured in the bank statements lodged by the Claimants.

The 1st Respondent and interested party admit that the 1st to 5th Claimants are elected, but not all of them are officials. The 1st, 4th and 5th Claimants are trustees, and the 2nd and 3rd Claimants are officials, while the 6th to 15th Claimants are ordinary members of the union.

The allegations that the 1st Respondent and the union removed the claimants from office are not correct. By the NEC decision dated 13 December 2024, the 1st to 5th claimants were suspended from their respective positions, and none was removed, as alleged. Pursuant to the resolutions of NEC as contained in the minutes of 13 December 2024 and the letters to the 1st to 5th Claimants dated 13 December 2024, the decision to suspend them was made based on the evidence that was materially known to them. They have neither challenged the validity of the allegations nor their illegality, nor argued that any procedure cited was misconceived, misconstrued, or substantially inapplicable in their case.

The NEC did not remove the 1st to 5th Claimants from office; they were only temporarily suspended on account of the allegations made against them, and the decision to remove them rightly lies with the **Annual Conference or Special Conference**, as per Articles 10 or 11 of the union's Constitution.

The change to the union's register is a statutory matter within the 2nd respondent's jurisdiction. The court lacks jurisdiction to interfere with the register.

The fact that the union's books of account have not been audited does not imply that its funds have been misappropriated. The intention of Section 41(1) is opposed to what Section 42 of the LRA was intended to achieve. Therefore, it was illegal and unsound to freeze the union's bank account for non-compliance with Section 42.

The Claimants reported the misappropriation of funds to **Makupa Police Station on 13 June 2024**. They later normalised themselves and continued to approve, apply for, and withdraw

funds on behalf of the union, as shown in the bank statements. The decision of the 1st to 5th Claimants to continue operations despite those alleged complaints compromised their minds, leaving them conflicted and, in law, unable to sustain this suit against the 1st Respondent. Such claims arose from failure to remove the 1st Respondent from office through the Special Conference they requisitioned.

The 1st respondent and the union admitted that they filed **Cause No. E 801 of 2024 in the Chief Magistrates Court at Mombasa**. But they restate that the same was meant to restrain the activities of some of the Claimants from paralysing the operations of the union, and the same suit had been struck out and does not exist as by law.

The 1st Respondent issued a notice of the NEC meeting in consultation with the National Chairman, and he issued notice of the meeting to every member of the NEC. The notice was issued alongside the meeting agenda. The 2nd Claimant attended the said meeting and, in his contributions, agreed that the trustees had greatly disappointed the Board and even suggested that they be suspended for 2 weeks. He therefore participated in the meeting, assured the members of the NEC that he would not challenge their decision, and further apologised to the NEC. These were oral statements tendered as admissions before the NEC, which resolved to suspend the 1st to 5th Claimants and, in their places, appointed some members of the NEC to act in their positions. The decision to suspend and to appoint their replacements was communicated to the 2nd Respondent through a Form “Q”, and the 2nd Respondent acted in accordance with Section 35(2) of LRA and caused changes to the register of trade unions, in respect to the trustees and officers of the union.

Under Section 35(3) of the LRA, the 2nd Respondent conducted inquiries into the propriety or validity of the changes made by NEC, by letter dated 14 January 2025, and the union responded on 14 January 2025. Upon being satisfied with the procedure adopted by the union in suspending the 1st to 5th Claimants, the 2nd Respondent registered the changes and issued an extract from the register dated 15 January 2025. The allegations of the violations of the rights of the Claimants pursuant to Articles 10 and 47 of the Constitution are not supported by any evidence.

In the alleged misappropriation of funds, the 2nd Claimant was the Chairman of the union's Budget and Finance Committee. In contrast, the 3rd Claimant was the mandatory signatory to all union accounts before their suspensions. If there was any irregular expenditure, whether unlawful or unauthorised use of funds, the buck should stop with them. And by the rule or

principle of estoppel, they remain conflicted. The Claimants have not demonstrated with evidence whatsoever that the 1st Respondent had expended any funds of the union, nor have they shown that the 1st Respondent had procured a loan in the name of the union as alleged.

On the allegations made by the claimants, the court lacks jurisdiction on the following grounds:

a) The Claimants have commenced this suit on behalf of the interested party, which is a body corporate incorporated as a juristic person pursuant to Section 21 of LRA, with the capacity to sue and be sued.

b) In accordance with Section 2(a) of LRA, the General Secretary is the only authorised person to swear pleadings on behalf of the interested party, and he has been the one sued by the interested party, which the Claimants have represented.

c) The 1st Respondent has deposed an affidavit on his own behalf and that of the interested party in opposition to the entire Claim, meaning the interested party is a respondent to the Claim; it cannot also turn to be a Claimant as on the face of the Claim. In the circumstances, no party can appear in a suit as both a complainant and a defender. The import of this is that the Claim is incurably defective.

d) The Claimants are challenging the decision of the NEC, which was already transmitted to the 2nd Respondent vide a statutory Form Q and was acted upon pursuant to Section 35(2) of LRA and pursuant to Section 30 of the LRA, such decision could only be challenged by way of appeal within 30 days, which was unavailable to the Claimants when they lodged the instant Claim on 13 March 2025.

e) The Claimants did not tender any evidence in relation to any unlawful expenditure, which was contrary to Section 39 of the LRA, nor did they produce any evidence of an expenditure which was unauthorised.

In evidence, the 1st respondent, Simon Kiprono Sang, testified that he is the union's authorised representative as its General Secretary.

Sang testified that he issued a notice to all NEC members to attend the meeting on 13 December 2024. The meeting he convened in consultation with the National Chairman was by practice, and he sent a notice with the agenda of the said meeting. The notice was circulated through **WhatsApp, as is always the case, and the practice we adopted as NEC**

for convening our meetings, as personal service was found to be cumbersome and sometimes unattainable. From the notifications on his WhatsApp application, everyone received the notice, and on 13 December 2024, they proceeded with the meeting after attaining the quorum.

Those unable to attend were required to inform the chairman so that they could be recorded in the minutes. There was no apology from Amin Iloti, Kibibi Omeri, Maskat Salim or Mejuma Chirau. But Sulman Owuor attended the meeting and participated in its proceedings. The members, after long deliberations, decided to suspend Amin Iloti, Kibibi Omeri, Maskat Salim, Mejuma Chirau and Sulman Owuor in accordance with Article 18(13) of the constitution, by resolutions recorded in the minutes of the NEC dated 13 December 2024.

Sang testified that NEC believed Kennedy Oketch was a registered member, but he suddenly stopped attending meetings. Upon such 3 absences, he ceased to be a member of NEC, and, by NEC's resolutions, his membership was terminated. Consequently, a specific Form Q was filed to remove him. However, by the letter of the **1st Respondent dated 8 January 2025**, the witness was informed that Kennedy Oketch is not on the register of trade unions; hence, his case ended there.

Sang testified that the NEC weighed in the constructions of the provisions of Article 27(3) and 18(13) of the union Constitution and resolved that 1st to 5th Claimants were members of NEC and Article 27 (3) is a mixed grill, which include the decision against ordinary members, shop-stewards, other members of the committees constituted in accordance with Article 13 of the Constitution and branch officials. Article 27(3) of the Constitution was used to suspend them, and it also mandated the constitution of the *ad hoc* Committee to hear them, to receive a report back from the *ad hoc* Committee, and to either adopt or reject. After consultation, it was the considered view of NEC that NEC itself had decided to suspend the claimants, and it would have been procedurally unfair for NEC to re-sit on its own decision. It was therefore decided that the decision to suspend the said officers be remitted to the Conference of the union, either convened under Article 10 or 11 of the Constitution or in terms of Article 27(3)(g) thereof.

The NEC thereafter appointed some ordinary members of the NEC to act in the positions of the suspended members in the interim, pending the determination of their suspensions by the **Annual Conference or Special Conference**, whichever came first, but subject to an appeal by any of the suspended official or trustee, which to date has not happened. In appointing

members to act in the NEC, it considered the provisions of the LRA, which require that only registered persons can act in and conduct the business of a trade union. It noted the importance of the offices of trustees and treasurer, and that the appointed officers were required to be registered by the 2nd respondent to have the protection of the law in discharging those mandates. Accordingly, the witness applied to the 2nd respondent in Form Q dated 18 December 2024 for the change of officials.

The 1st to 5th Claimants did not challenge the changes. They had grossly miscondacted themselves, and Sulman Owuor admitted and offered an apology.

Regarding the alleged misappropriation of union funds, Sang testified that the union is a corporate body and that its account is managed or administered by the appointed signatories in accordance with Article 19(3) of the Constitution. The National Treasurer is the principal signatory and the only one mandated to open and maintain the account of the interested party. The treasurer was Kibibi Omeri, the 3rd Claimant. Whereas the treasurer is an obvious signatory of all accounts of the union, the other signatories are appointed by the NEC in accordance with Article 19(3) of the Constitution. The NEC had appointed Maskat Salim and Amin Iloti from the office of trustees. In contrast, he, the National Chairman (Mohamed Mwasera), and the Vice Chairman (Gunda Kaneno) were appointed from among union officials.

For any withdrawal of funds to happen, the cheque must be signed by at least three officers drawn from the three different groupings, namely;

- a. the National Treasurer,
- b. one trustee and
- c. One official.

The check must be signed by the Treasurer, Amin Iloti, or Maskat Salim, and by either the National Chairman or the Vice Chairman.

The Claimants have grounded their allegations for misappropriation on the bank statements, but have materially failed to disclose that the same bank statements, show that funds of the interested party were actually withdrawn from approvals of Amin Iloti, Kibibi Omeri, Maskat Salim, the 1st, 3rd and 4th Claimants, respectively and the signatures of Mohamed Mwasera and Gunda Kaneno, the National Chairman and Vice Chairman, respectively.

The bank statements have not shown that the 1st respondent made any cash withdrawals. The claimants are thus conflicted.

Sang testified that his office does not handle money. This is a function and duty of the National Treasurer, 3rd Claimant. In this regard, bank statements are insufficient to establish the expenditure necessary to justify the allegations made in court. It is not a statement of expenditure, but a mere transactional document showing cash movement from the account. The bank statements do not provide an explanation or reasons for the payment. It is a product of cash movements that reflects payments made, including salaries, bank commissions, PAYE, service providers, loan recoveries, and so forth.

The office of the National Treasurer under Article 19 (8) of the Constitution is mandated to file annual returns with the Registrar in respect of receipts and use of funds of the interested party. The 3rd Claimant has not stated in any way that the witness impeded or prevented her from performing her duties as the Treasurer. The Treasurer holds a statutory office, and nobody can interfere with her functions; she is the problem, and these are the accusations that led to her suspension. Sulman Owuor, the 2nd Claimant, has been the Chairman of the Budget and Finance Committee. Kibibi Omeri sits on that Committee as the union's National Treasurer. Therefore, the complaint is that the union has been operating without budgetary allocations, and to the extent they are bringing to the fore that they were actually deceitful and negligent in continuing to withdraw and use the funds without a budget.

Sang testified that he is the General Secretary of the union and the only authorised person capable of commencing any suit on behalf of the interested party, and the Claimants are not clothed with such power.

At the close of the hearing, both parties filed written submissions. These are analysed in the court's findings.

Determination

The issues which emerge for determination are:

Whether the claimants have *locus standi* to file this suit.

Whether the 14th claimant should be reinstated in the register of officials.

Whether the suspension of the 1st to 5th claimants is unlawful.

Who should protect the property of the IP?

Before delving into the issues addressed above, the LRA is concerned with:

... regulation, management and democratisation of trade unions and employers organisations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, ...

In regulating trade unions, the Registrar of Trade Unions, the 2nd respondent, is empowered to ensure that every trade union operates in accordance with the law. Hence, the 2nd respondent has the power to intervene where the property, funds, and accounts of the trade union are misused and/or misappropriated. Union members should not resort to the police to address such matters unless there is a serious lapse on the part of the respondents' offices.

Section 41 of the LRA allows the court to injunct any party for the use of unauthorised expenditures from union funds.

41. Injunction to restrain misuse of funds

(1) The Industrial Court may grant an injunction restraining unauthorised 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.

(2) If, when granting an injunction under this section, the Industrial Court cancels the registration of a trade union, employers' organisation or federation, The court may order that the funds of that trade union, employer's organisation, or federation be paid to the public trustee for disposal in accordance with the rules of that trade union, employer's organisation or federation.

To secure the trade union's property, funds, and other assets, section 43 of the LRA mandates the secretary general to file annual returns with the 2nd respondent, the Registrar of Trade Unions.

43. Annual returns

(1) The authorised representative of a registered trade union, employers' organisation, or federation, shall furnish annually by a prescribed date to the

Registrar a general statement of all receipts and expenditure during the year ending 31 December of the preceding year including—

The 1st respondent admitted that for the last 5 years, the union has not held an annual conference akin to the Annual General Meeting (AGM). The rationale was that every time the same is called, there is no attendance, hence no quorum.

Operationally, there are no annual returns. There is no approved budget or annual expenditures.

The recourse is section 43(3) of the LRA:

(3) The authorized representative referred to in subsection (1) shall simultaneously furnish to the Registrar—

(a) an inventory of the trade union or organisation's assets;

(b) a copy of the rules in force, including all alterations and amendments to the rules, and of all new rules; and

(c) a list of all changes of officials during the preceding year.

Save to seek changes in the list of officials, the 1st respondent has not filed an inventory of assets, rules or the annual returns for the union for over 5 years. None is available to the court in this regard. This has exposed the union, and this suit is evidence of the members' concerns through the claimants.

In these circumstances, a member of the union is allowed under section 43(4) of the LRA to seek copies of the general statement and, if denied, to move the court for its provision:

(4) Every member of a trade union, employers' organisation or federation is entitled to receive, free of charge on request, a copy of the general statement referred to in subsection (1).

The consequence of noncompliance is addressed under section 43(5) of the LRA:

(5) An authorized representative of any trade union or employers' organisation who—

(a) fails to comply with any of the requirements of this section;

(b) willfully makes or orders, causes or procures to be made a false entry in or omission from a general statement, copy or list delivered to the Registrar in terms of this section, commits an offence.

The claimants have since reported misappropriation of funds by the 1st respondent at Makupa Police Station. They made their civic duty.

Further, under section 46 of the LRA, members protected by the office of the 2nd respondent have the power to seek detailed accounts from the trade union. The members own the trade union's property, not the general secretary. The power is that:

46. Power to require detailed accounts

(1) The Registrar may, at any time, call upon the treasurer, the executive, or management board, by whatever name called, or any other official of a trade union or employers' organisation to render detailed accounts of its funds or the funds of any branch for any period, in the manner and containing such information as the Registrar may require.

(2) A person who fails to comply with a request made by the Registrar under Subsection (1) commits an offence.

In its entirety, Part V of the LRA is intended to secure the property of the trade union. By members invoking section 47 of the LRA, various efforts, including the intervention of the 2nd respondent, ought to have addressed any such matter or complaints in this case.

Indeed, the 1st respondent submitted that under section 3(1) of the Labour Institutions Act, the 2nd respondent has the power to regulate trade unions. Under sections 41, 42, and 43 of the LRA, there is a duty to ensure that the funds of a trade union are expended in accordance with sections 39 and 50 of the Act. Where there is good cause and reason to suggest that the funds have not been properly applied, the 2nd respondent is, under section 41(1) of the LRA, allowed to move the court to injunct union operations. Thus, the 1st respondent asserts that the claimants have not invoked the correct mandate is not correct.

Any member of the trade union is thus under a legal duty under section 47 of the LRA to move the court as the claimants have done.

On the first issue on the standing of the claimants to file suit, The 1st respondent has challenged the capacity of the claimants to file the instant suit on the basis that they cannot

act in the interests of the union since he is the secretary general and under section 2 of the LRA and the union constitution, he is the only one mandated to act or with his given authority. He further asserts that the claimants' challenge that the union has not rendered accounts and that he has misappropriated funds is a matter that only the office of the treasurer can address, as the recipient of the funds. The treasurer and the chairman are the 3rd and 1st claimants, respectively. They are conflicted and thus cannot urge a case against themselves.

Section 2 of the LRA allows the secretary general of a trade union to act on behalf of the trade union. The instant suit is filed by the claimants in their personal capacity, as stated in the preamble. They have joined the union as interested Parties, on the basis that the respondents have acted contrary to the dictates of the law and the union constitution. The claimants have thus outlined their grievances against the respondents, in view of their mandates and of their alleged acts against the interests of the union, the interested party.

The claimants have proper standing in this case. Their interest stems from their union membership. Their concerns arise from being material available upon being elected officials, the 1st to 5th claimants.

Concerning any misuse of trade union funds, Section 47(2) of the LRA allows the 2nd respondent, Registrar of Trade Unions, to move the court for protection or a member of the trade union:

(2) A complaint under this section shall be brought by—

(a) the Registrar; or

(b) a member of a trade union, employers' organisation or federation at the time of bringing the complaint of the trade union or the employers' organisation concerned.

Of interest is the allegations by the 1st respondent that the claimants are conflicted in urging their case. His rationale is that, as chairman and treasurer, the 1st and 3rd claimants have failed to render accounts and have gone ahead to make money withdrawals from the union's accounts. There is conflict in them seeking him to render an account for the funds they have withdrawn. However, as the secretary general, he is permitted to act in the union's best interests, but has done nothing. He has not preserved the union funds as required by his office. He only filed **Mombasa CMELRC E801 of 2024** after a police report was filed against him for misappropriation of funds.

As the secretary general, the 1st respondent is well aware that the magistrates' court lacks jurisdiction to address the affairs of a trade union. Such labour relations are exclusively within the court's jurisdiction. Filing a suit against elected officials before a court without jurisdiction is diversionary and wastes union funds for which he should render an account and make a personal repayment. Withdrawing the suit was most convenient under the knowledge that he was before a forum without jurisdiction.

Wasting union funds is regulated under section 39 of the LRA.

The 1st respondent admitted in his evidence that Accounts of a trade union can only be restrained pursuant to section 41(1) of the LRA, where there is sufficient evidence that there is unlawful expenditure of funds contrary to section 39 of the LRA. His filing **Mombasa CMELRC E801 of 2024** is one such case of unlawful expenditure of union funds. He violated the law through his conduct.

In his evidence, the 2nd claimant gave a chronology of events in which the 1st respondent incurred expenses to the loss and disadvantage of the union. No response or explanation was given.

The 2nd claimant testified that the 1st respondent employed Renson Juma Thoya as the organising secretary and has been paying him Ksh. 168,454 per month.

Part of the 1st respondent's duties is to run the lawful affairs of the union.

Indeed, at some point in these proceedings, Renson Juma Thoya and others sought to be enjoined as interested parties on the basis that employees' salaries had not been paid and that the union should be permitted to apply for overdrafts from the Bandari Sacco. This affirms and supports the claimants' assertions that the 1st respondent has indeed acted contrary to the union's interests.

The response that the 2nd claimant was the chairman of the budget committee does not remove the 1st respondent from accountability as the Secretary General. The response that the treasurer is responsible for the union's funds and that he is not involved is escapist. As the responsible officer for union affairs, the Secretary General does not address concerns regarding the contracting and employment of Renson Juma Thoya.

On 13 December 2024, NEC addressed the matter and contract of Renson Thoya. The 1st respondent reported to NEC that Thoya was on a contract that had expired and that the board had not approved his permanent employment.

The 1st respondent seems to have retained Renson Thoya on his own accord, without the necessary approvals. Such is an abuse of office.

The 1st respondent was also accused of making payments of Ksh. 152,000 to Leonard Ochieng as a legal officer. There is no effort whatsoever to defend these claims. There is no record of how Leonard Ochieng was sourced as a legal officer of the union. His qualifications to hold the office of legal officer were challenged. There is no response.

On the employment of Issa Kanda and Derick Mwaaoma as drivers of the union, yet there is no running vehicle, the 1st respondent attempted to explain that they have since been allocated other duties. These duties were not defined. The employment of Derick Mwaoma after retirement age was also not addressed by the 1st respondent. The picture of abuse of office.

Further, the claimants assert that the 1st Respondent has been paying Cynthia Wanyonyi, the secretary general of Bottax Workers, a salary. This is a serious allegation that requires the union to address firmly and decisively. Payment to another secretary general from funds meant for the union's purposes is both unlawful and a criminal offence.

The complaints made to Makupa Police Stations on misappropriation of funds were thus justified. Section 39 of the LRA applies in this regard.

The 1st respondent has misapplied the union funds.

The 1st respondent is in breach of section 31(5) of the LRA:

(5) No person who has been convicted of a criminal offence involving fraud or dishonesty shall be an official of a trade union or employer's organisation.

The extent is not defined. The claim seeking a forensic audit of accounts is thus necessary. This cannot be undertaken in the presence of the 1st respondent.

The 2nd respondent will ensure the forensic audit is undertaken at the union's cost. The claimants shall revive the report at Makupa Police Station to a logical conclusion.

On the issue of suspensions, the 1st respondent admitted that, in response to the NEC decision on 13 December 2024, the 1st to 5th claimants were suspended from office, but they have not

been removed from office. Indeed, a union official may be suspended from office upon a resolution. However, upon such suspension, the due process under articles 10, 47 and 41 of the constitution demands fair administrative procedure and fair labour relations. A hearing of the suspended officials is imperative. A suspension and then review of the register to remove them from office, with corrections by the Registrar of Trade Unions, is unlawful, irregular, and invalid.

The 1st respondent justified these suspensions on the basis that before suspending them, the claimants were aware of the evidence that was materially known to them, and they had neither challenged the validity of the allegations, illegality, nor, if any procedure was cited, they were misconceived, misconstrued and were substantially inapplicable in their case. However, a suspension is just an interim measure applied in employment and labour relations. It does not serve a finality. The core concern is allowing for a suspension, but it needs to be gone into to bring closure.

Indeed, in his evidence, Sang admitted that the NEC considered the suspension of the claimants, found a conflict under Article 27(3) of the Union constitution, and hence resolved that the matter be remitted to the national conference for deliberations and resolution. This was not done. The 1st respondent resorted to underhanded operations to have 2nd respondent change the register. This was before the NEC resolution was escalated to the national conference.

This finding arises from the evidence by the 1st respondent that following the NEC decision to suspend the 1st to 5th claimants it thereafter appointed some ordinary members of the NEC to act in the positions of the suspended members in the interim, pending the determination of their suspensions by the Annual Conference or Special Conference, whichever came first, but subject to an appeal by any of the suspended official or trustee, which to date has not happened. The acting position was reverted to substantive offices, and no conference was held. Instead, on 18 December 2024, the 1st respondent applied to the 2nd respondent to change the register under form Q.

This is an abuse of office.

Form Q is obtained under a procedure. Not a procedure adopted by the respondents.

The assumption that the claimants, as elected officials, were aware of matters facing them, hence the suspension, is immaterial. The due process and fair administrative action secured

under Article 47 of the Constitution require, before removal from the register of officials as deposited with the 2nd respondent, Registrar of Trade Unions, that the claimants be given a hearing. The respondents cannot move under the mistaken belief that they are the start and end of the union's large benefits. The due process of the position held by the 1st respondent is to secure all interests of the union. Acting otherwise violates the fiduciary duty placed upon him.

A mechanical application of section 35 of the LRA cannot hold. The enquiry envisaged to be conducted by the 2nd respondent must be holistic and not based on single reports by the 1st respondent. Sections 35(3) and (4) of the LRA mandate that:

(3) Before registering any change of officials or correcting any register, the Registrar may require the production of any relevant evidence of the change.

(4) If, after inquiry, the Registrar is not satisfied as to the validity of any appointment or the propriety of any proposed correction, the Registrar may refuse to register the change of officials or to correct the register.

Before the 2nd respondent can effect changes to the list of elected officials, the due process requires listening to the affected parties. A unilateral change, based on the word of the secretary general, against elected officials whom the members give a mandate, amounts to impunity on the part of the 1st respondent. It is a misapplication of the law permitting changes without justification.

The 1st to 5th claimants were denied their mandate due to the respondents' conduct. This cannot be blamed on the union, whereas the 1st respondent has opted to file a joint response.

The 1st respondent submitted on the case of **Dzila v Kwale County Assembly Service Board and another Petition No. E034 of 2024**, where the Supreme Court addressed itself to what constitutes a valid suspension. It held that an employer is entitled to suspend an employee when, on reasonable grounds, the employer suspects the employee to be involved in misconduct or poor performance and wishes to remove the employee from the shop floor to allow for investigations. However, the employee cannot remain on suspension indefinitely. The employer has a duty to invite the employee back to address the allegations made against him and, if the allegations are true, to issue a final sanction; if not, to return the employee to his role.

These are the tenets of articles 41 and 47 of the Constitution. Fair labour practices and fair administrative action do not operate in isolation. Each party to the dispute is entitled to these rights. They must be secured even in a scenario such as the trade union seeking to impeach its elected officials. It cannot be within the option of the secretary general to decide and propose the deregistration of these elected officials through the office of the 2nd respondent. usurping members' mandate is unlawful, wrongful and invalid.

The 1st respondent filed submissions and addressed each claimant's alleged wrongdoing. However, were they invited to defend themselves before an impartial committee as envisioned under the union constitution? Were they accorded due process under the LRA, the constitution or any other best practice? There is a resounding no.

From 13 December 2024, the 1st to the 5th claimants are entitled to payments/honoraria/allowances enjoyed by the other sitting officials of the union. The due payments are payable by the person of the 1st respondent without incurring such expense on the union. He single-handedly moved the suspension process without due process.

Regarding the orders seeking to restrain the 1st respondent from further use of the union funds, including taking further loans, in the interim, conservatory orders were issued, and court-directed access to funds was applied. With a forensic audit now necessary, the 2nd respondent shall address this with the cooperation of all parties herein. This will be tabled at the necessary organ of the union, and once approved, the matter will be addressed. However, a report by the 2nd respondent shall be filed in court for closure of the matter.

The forensic audit shall cover the last 3 years of union operations.

Regarding the 1st respondent taking Ksh. 52 million loans, the forensic audit addressed above shall suffice.

On the claim that the 1st respondent has violated 5, 8, 10, 12, 19, and 21 of the union constitution, as analysed above, the 1st respondent has misapplied union funds contrary to section 39 of the LRA. There is a police report at Makupa Police Station regarding this.

The 2nd respondent shall address the matter during the audit and, where necessary, revisit the reasons set out in the letter dated 20 August 2025 regarding the closure of the union for failure to file audited accounts and returns for over 5 years.

The 1st respondent is in abuse of office and has continued to retain several persons in the union's employment without the necessary approvals. Under sections 5, 8, 10, 12, 19, and 21 of the union constitution and section 39 of the LRA, the 1st respondent is not in good standing. In particular, the admission that there has been no annual conference for the past 5 years constitutes a direct breach of Article 10 of the union constitution.

The efforts to file an audit report in court during these proceedings are noted. However, such a report should be for the benefit of union members during the annual conference. To allow the members interrogate how their union dues have been applied. To engage the elected officials on how they have applied the resources placed at their disposal by the members. The audited accounts are not for the court's benefit. These are part of the members' benefits.

A declaration is hereby issued that the 1st respondent, Simon Kiprono Sang, is not a person in good standing for the operations of the union. He is in breach of Section 39 of the LRA.

The suspension of the 1st to 5th claimants is thus irregular, unlawful and not justified. For each claimant, the NEC shall constitute the necessary committee, comprised of persons not in conflict in the matter, to hear the claimant. The removal from the registrar by the 2nd respondent is unlawful; NEC membership shall revert to what it was before 13 December 2024, and Form Q shall reflect this position. All the due payments to other NEC members shall be made available to the claimants.

Hence, the suspension of the 1st to 5th claimants is hereby lifted.

In the penultimate, on the claim for costs, the claims addressed above, the 1st respondent opted to attend on his own behalf and on behalf of the union, despite being listed as a respondent and an interested party. The conflation of issues between the 1st respondent and the union cannot shield him from the personal responsibility addressed above. The 1st respondent shall pay 50% of the costs incurred by the claimants. The Union shall not pay costs.

Accordingly, judgment is hereby entered for the claimants against the respondents in the following terms:

- a) A declaration is hereby issued that there is a breach of the union constitution and Labour Relations Act by the person of Simon Kiprono Sang.**
- b) A declaration is hereby issued that the 1st respondent, Simon Kiprono Sang, is not a person in good standing for the union.**

- c) **The union shall file records necessary under section 42 of the Labour Relations Act with the 2nd respondent within 30 days for the last 3 years.**
- d) **The 2nd respondent shall cause to be undertaken a forensic audit of the union in terms of section 42(2) of the Labour Relations Act and file a report with the union and the court within 30 days from the date hereof.**

The attendant costs shall be paid from the union accounts as necessary.

- e) **For (c) and (d) above, mention on 24 March 2026.**
- f) **The suspension of the 1st to 5th claimants is hereby lifted.**

The payments due to NEC members from 13 December 2024 to date shall be processed and paid to the claimants who are elected officials accordingly.

- g) **The removal of the claimants from the register of elected officials, including the 14 claimants, is irregular, unlawful and without justification.**

The register shall be corrected to this extent and not later than 7 days from the date hereof unless union members conduct elections as authorized under the union constitution and the law.

- h) **The 2nd respondent shall amend the FORM Q and revert to the record of elected officials of the union as held on 13 December 2024.**
- i) **The person of Simon Kiprono Sang shall pay 50% costs due to the claimants.**

Delivered in open court at Mombasa on this 26th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court assistant: Omar

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