



**Waema & 2 others v Mbugua & 4 others (Petition 8 of 2020)
[2025] KEELRC 1225 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1225 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION 8 OF 2020**

**M MBARÚ, J
APRIL 30, 2025**

BETWEEN

**ROMAN WAEMA 1ST PETITIONER
LUCY KANYI 2ND PETITIONER
AHMED OMAR 3RD PETITIONER**

AND

**NICHOLAS MBUGUA 1ST RESPONDENT
PETER NJUNG'E 2ND RESPONDENT
GRACE NYAMBURA 3RD RESPONDENT
ALLIED WORKERS' UNION 4TH RESPONDENT
REGISTRAR OF TRADE UNIONS 5TH RESPONDENT**

JUDGMENT

1. The petitioners are seeking the following orders;
 1. A declaration that the purported dissolution of the Mombasa branch of the 4th respondent by the acts and/or omissions of, inter alia, the 1st, 2nd, 3rd and 4th respondents was, is and remains illegal and unprocedural, thereby null and void ab initio.
 2. A declaration that the 1st respondent, Mr. Nicholas Mbugua, the 2nd respondent Mr. Peter Njung'e, and the 3rd respondent Ms Grace Nyambura are unfit to hold public office for failing to represent the members of the 4th respondent adequately and contravening articles 10, 36, 41 and chapter 6 of *the constitution* as well as sections 25, 34, 39, and 44 of the *Labour Relations Act*.



3. A declaration that the 5th respondent's attempts at sanctioning the illegal and unprocedural dissolution of the Mombasa branch by the 1st, 2nd, and 3rd respondents without subjecting he said process to legal scrutiny were, are and remain illegal and unprocedural, thereby null and void ab initio.
4. A declaration that the respondents' actions and/or omissions constitute and/or amount to unfair labour practices, mistreatment of the petitioners, and gross abuse of office contrary to Article 41 of *the Constitution*.
5. A declaration that the respondents have violated or acted in contravention of the provisions of the LRA, Trade Unions Regulations 2012, and Trade Unions Accounts Regulations 2012.
6. An order directing the national vice-chairman of the 4th respondent to convene a national executive council meeting within 60 days from the date of judgment to appoint a general secretary under the law and the union constitution to hold office for the remainder of the current term.
7. An order directing the assistant national treasurer of the 4th respondent to render accounts for all the monies received into the Sidian Bank of Kenya account No. 01003020018889 since 2016 within 60 days from the date of the court's judgment, failing which an audit be carried out in respect of that account and an execution to issue against the 2nd respondent.
8. An order of a permanent injunction was issued prohibiting and/or restraining the respondents, either themselves, agents, servants, and/or employees, from harassing, preventing, barring, restricting, or interfering with the petitioner's performance, discharge, and/or execution of their duties in their elective positions in the Mombasa branch of the 4th respondents.
9. An order to pay such compensation for breach of the petitioners' constitutional rights as this court deems fit to determine.
10. The costs of this petition.
11. Such other or further orders or directions as the court may deem fit to grant to meet the interests of justice.

Petition

2. The petitioners are adults, registered members of the 2nd respondent and holding elective officers in the 4th respondent's Mombasa branch under the elections held on 1 February 2016;
Roman Waema, the branch secretary;
Ahmed Omar, the organising secretary and national Deputy Secretary General;
Lucy Kanyi, assistant secretary general and national assistant secretary general.
3. The 1st respondent is an adult and a member of the 4th respondent, holding the elective office of general secretary. The 2nd respondent is an adult and a member of the 4th respondent, holding the elective office of national chairperson. The 3rd respondent is an adult and a member of the 4th respondent, holding the elective office of national treasurer general. The 4th respondent is a registered trade union under the LRA. The 5th respondent is an office established under the LRA.



4. The petition states that the respondents have violated *the Constitution* of Kenya and *the Constitution* of the fourth respondent. They have engaged in unlawful acts that breach the law and denied the petitioners their right to fair administrative action by undermining their democratic rights and fair labour practices.
5. On 11 May 2007, under section 27 of the LRA, the fourth respondent was registered as a trade union. The 4th respondent has a constitution with the objectives of obtaining just and proper rates of wages, working hours, and other conditions of employment. The union is allowed to negotiate and provide settlement of disputes between employees and employers by conciliation, arbitration, or, as necessary, to safeguard the interests of its members.
6. The 4th respondent's constitution mandates every member to propagate the aims and objectives of the union. Every member has the right to submit any proposal through the branch secretary to the branch committee without delay, upon which an emergency meeting should be called. The 4th respondent is mandated to organise regional or area branches as decided by the national executive committee (NEC), and each branch is required to have a committee elected at the annual meeting held every 5 years. *The constitution* stipulates that any member of the Branch Committee may be removed from office by resolution of a branch committee supported by two-thirds of those present and voting at the meeting.
7. The funds of the 4th respondent's branches are placed within the docket of the branch treasurer, and all monies received should be deposited into a designated bank account in the name of the branch operated by the branch chair, branch treasurer, and secretary.
8. Under *the constitution*, the office of the 1st respondent is full-time under clause 13(d) and functions as the union's CEO. He must issue notices of all meetings and prepare the agenda for discussion.
9. Clause 13(a) of the 4th respondent's constitution requires the 2nd respondent, as the national chairperson, to enforce the observance of *the constitution* and its rules. Clause 13(g) requires the national treasurer to ensure proper bookkeeping and be responsible for all union accounts.
10. The petition is that following *the constitution* of the Mombasa branch of the 4th respondent union, in a meeting held on 1 February 2016 at Jumbo Club, Miritini, the branch committee was elected and the 5th respondent was notified through a letter dated 3 February 2016 through the Department of Labour, Mombasa County.
11. On 11 August 2016, under section 44 of the *Labour Institutions Act*, the Minister requested the branch treasurer, Mombasa branch, to render detailed accounts for 2015 under section 13(1) of the Trade Union Regulations, 2012. The first respondent, the general secretary, followed up to ensure compliance without success, necessitating the convening of the Mombasa branch meeting on 7 October 2017.
12. On 23 June 2018, the Mombasa branch held a meeting following a letter of the 1st respondent dated 20 June 2018, attaching minutes of an alleged meeting held on 27 April 2018. The branch members observed that the members alleged to have been at the meeting on 27 April 2018 were unaware of such a meeting. Through letters dated 9 July 2018 and 18 July 2018, the 1st respondent alleged that both the 1st and 3rd petitioners had absconded from office and were no longer allowed to transact business in their elective positions.
13. In a letter dated 24 July 2018, the 3rd petitioner informed the 5th respondent that the 1st to the 3rd respondent had violated the union constitution concerning the application of funds. On 2 August 2018, the Minister notified the 4th respondent, Mombasa Branch, for a detailed account of the union under section 44 of the LRA. The respondents failed to comply with section 42 of the LRA. The 1st



- respondent further denied the petitioners' access to the union cheques issued by Prime Fuels Limited, and a complaint was filed with the Commission on Administrative Justice (CAJ).
14. The petition states that the 1st respondent's leadership has been punctuated with wrangles, confusing stakeholders, and embezzlement of funds, hence exposing the 4th respondent's Mombasa branch to the risk of suspension for failing to comply with the law.
 15. Article 25 of the union constitution describes how a branch will be dissolved. A two-thirds vote of the members present as delegates/special conference is required. The petitioners discovered gross malfeasance in utilising the 4th respondent's funds, and the 1st respondent had usurped powers and taken control of the union organs. Efforts to seek accountability for the misuse of funds resulted in the dissolution of the Mombasa branch.
 16. Through letters dated 15 November 2018 and 20 November 2018, the 1st petitioner was surprised to see a letter dated 6 November 2018 from the 5th respondent alleging the dissolution of the Mombasa branch. He sought the notice leading to the dissolution, but no response was issued.
 17. The respondents' actions have violated the union constitution's objectives and the members' welfare. The Mombasa branch members will suffer prejudice following the government's directives to have huge volumes of all inbound cargo transported by the SGR.
 18. The petition states that the respondents have violated the petitioners' rights, and unless the orders sought in the petition are issued, they will suffer irreparable loss and damage.
 19. The petition is supported through the petitioners' joint affidavit.
 20. In evidence, the petitioners called Roman Waema, who testified that he is the branch secretary of the Mombasa branch. The branch was not formally dissolved. The letter dated 8 October 2018, clause 7 of the union constitution, was not applicable in the dissolution of the branch. The 5th respondent issued a letter dated 8 October 2018, before the petition was filed, and he had not seen the letter of dissolution.
 21. Waema testified that the letter dated 4 August 2020 by the 5th respondent to the 1st respondent indicates that the Mombasa branch was dissolved, but this was not the case. The 5th respondent referred to two sets of minutes, held on 22 September 2018, but they have different contents. The difference relates to the number of members. One set of minutes was signed on 26 September 2018, and the other on 24 September 2018. A committee sitting on one day can't have two sets of minutes.
 22. There was no notice convening the NEC to discuss the dissolution of the Mombasa branch, as alleged. The attendance records relied upon were not signed by the branch officials. If the branch was dissolved in 2018, members could not represent it at the NEC in 2019.
 23. The letter dated 13 October 2020 was written after the petition had been filed. It was written by the 1st respondent, the Chief Steward of Ken Freight E.A. Limited, and related to Lucy Kanyi, Deputy Secretary General of the 4th respondent. Within Ken Freight Limited, the 3rd petitioner is the chief shop steward. The respondents asked to remove the 3rd petitioner from her position on the shop floor because she had filed this petition. However, the 3rd petitioner has not resigned from her position or the elected position in the 4th respondent.
 24. Waema testified that the petitioners are still members of the 4th respondent and have not resigned from their elected positions. There is no union resolution suspending the petitioners from office. He sued the union, ELRC Mombasa Cause No. 812 of 2019, after his salary stopped being paid.
 25. Stella Kendi filed her affidavit from Sidian Bank stating that the union account had Ksh 91, 438.11 and attached the bank statement. These records demonstrate a breach of the union constitution in



- withdrawing funds. For money to be withdrawn, approval has to be obtained from the chairman, general secretary, and treasurer. The withdrawal must be made upon request from the NEC. In this case, there are no minutes for the requisitions and withdrawals. There are no approvals by the NEC.
26. Nicholas Ndungu, the first respondent, and Samuel Githire, the organising secretary, perform all bank withdrawals. On 17 February 2022 and 21 February 2020, the first respondent withdrew Ksh. 13,000 over the counter, but no documents have been filed to support the purpose of the withdrawal.
 27. On 16 April 2020, Samuel Githire withdrew Ksh. 90,000 over the counter. No document authorising the withdrawal exists.
 28. Upon the petitioner discovering these withdrawals from Sidian Bank, the 1st respondent changed the bank and opened a new account at Kingdom Bank. The Sidian Account belonged to the union. He only knew of the new account when the union issued a cheque on 17 March 2022 under Kingdom Bank, Koinange Street. The payment is to Okello Kinyanjui & Company Advocates for Ksh 50,000. The cheque is not personal but is under the union. The union's registered bank account is Sidian Bank. The members were not involved in the change of bank accounts.
 29. Waema testified that the union filed Mombasa Cause No. 22 of 2022, which the 1st respondents supported. There was no notice about this dispute. The suit is against Primefules (K) Limited. Samuel Githire signs the resolution to file suit, and the same person is authorised to make bank withdrawals. However, NEC should have approved the payments. One person signed the resolution of 24 March 2022.
 30. The last lawful elections of the 4th respondent were held in 2010. The letter dated 8 September 2016 by the 5th respondent refers to the Mombasa branch elections. The branches hold elections before the national election, and those elected become delegates for the national election. The last branch elections for Mombasa were in 2016, and delegates were sent to the national elections. Still, when the Mombasa branch officials went to the elections venue at Wida Highway Motel in March 2016, the place was full of the 1st respondent's relatives. The delegates refused to participate. The union had only 3 branches, Nairobi, Nakuru and Mombasa.
 31. Waema testified that since the union registration in 2007, he has known all the officials. According to the minutes of 27 April 2018;
 - a. Peter Njunge, the chairman and a driver, is now deceased. He was not present at the elections held in 2016;
 - b. Nicholas Mbugua, the general secretary;
 - c. Elijah Onyango, national vice chairman, a mechanic with Prime Fuels Limited;
 - d. Evanson Karanja, assistant organising secretary, unknown and not a member;
 - e. Grace Nyambura, national treasurer, was appointed acting after the office holder, Peter Mwaura, died that year. She was not a member of the union and was part of the persons who made withdrawals from the Sidian Bank account;
 - f. Wilson Kerai, 3rd trustee, not a member,
 - g. William Thomas Kombo, assistant national treasurer, a member of the union;
 - h. John Gakera, 2nd deputy secretary general, the 1st respondent's son and not a union member;



- i. Samuel Githire, the national organising secretary, is not a union member. He signed the NEC resolution on 24 May 2022 and has withdrawn monies from the union accounts.
 - j. Philip Mugwira, 2nd trustee, not a union member;
 - k. Lucy Kanyi, assistant general secretary, a member of the union;
 - l. Ahmed Omar, 1st deputy secretary general, a founder member of the union;
 - m. William Ogolla, 1st trustee and a union member, died in 2020. He did not attend the 2016 elections. He was sick and based in Nakuru.
32. Waema testified that of the 13 union delegates, 9 members were from one ethnic group, comprising relatives of the first respondent.
33. The 5th respondent refers to the union elections held on 1 February 2016. The From Q was rejected because the post of assistant treasurer had been omitted, yet it existed in *the constitution*. The 5th respondent stated that two posts, branch organising secretary and assistant organising secretary, had been created, yet they did not exist in the union constitution.
34. The 5th respondent directed that the elections be repeated. The 1st respondents did not conduct the election, and the petitioners did not see this letter. The 1st respondent did not disclose this letter. The address on the letter, alleged to have been set to the Mombasa branch, does not belong to the branch.
35. The letter dated 13 August 2018 never reached the petitioners at the Mombasa branch. It was sent to the 1st respondent. The petitioners did not act on the letter since it was not sent to them. The 1st respondent did not offer leadership to the Mombasa branch as advised by the 5th respondent. Hence, the letter dissolving the Mombasa branch dated 25 September 2018 was only received by the 1st respondent per minutes of NEC held in Mlolongo, head office on 22 September 2018. The reasons for the dissolution were that membership had dropped to below 500. The minutes are signed by two people instead of the 13 present.
36. The 5th respondent declined the dissolution through a letter dated 8 October 2018.
37. The 1st respondent resent the same minutes with a slight change: membership had fallen below 500, to read that members have reduced from 650 to 380. The attached minutes are by the same persons but dated 24 September 2018.
38. The 1st respondent abused his office by withdrawing union funds without approval or stating the purpose. He moved the union account without authorisation or a resolution by NEC or members, and the petition should be allowed as prayed.
39. In reply to the petition, the 1st to 4th respondents filed the Replying Affidavit of Nicholas Mbugua, the 1st respondent and general secretary of the 4th respondent. He avers that the petition does not raise any matter on any constitutional violation and is an abuse of the court process. The petition is premature, and the petitioners have not exhausted the mechanism provided by *the constitution* under clause 10(e), which requires any member aggrieved by the decision of the NEC to file an appeal to the Delegates Conference within 30 days. The petition is time-barred under the union constitution since the NEC met on 22 September 2018, and no appeal was filed.
40. The petitioners were office bearers under the 4th respondent upon registration on 17 December 2007. They ceased the elected positions upon opening and running a parallel trade union in the name and guise of the 4th respondent. The petitioners then willfully absconded from duty and failed to report



- to work. They were required to sign an attendance book upon reporting to work, but declined in 2018 and failed to report to work thereafter.
41. The respondents' case is that in the meeting held on 27 April 2018, the 1st petitioner attended and was informed of non-attendance of duty. On other occasions, the 4th respondent issued the 3rd petitioner a warning letter on account of absconding from duty on 9 July 2018. Despite absconding from duty, the 3rd petitioner continued to issue members' receipts by a parallel office run by the petitioners. Evidence of such receipts is one dated 20 August 2020.
 42. Mbugua avers that on 18 July 2018, he wrote to the County Labour Officer informing them that the 1st and 3rd petitioners had absconded from duty and were not mandated to carry on transactions on behalf of the 4th respondent. The 4th respondent's membership decreased because the present members were withdrawing from the union's Mombasa branch. Due to reduced numbers, the NEC passed a resolution to dissolve the Mombasa branch in a meeting held on 22 September 2018.
 43. Clause 25 of *the constitution* distinguishes the mechanisms for dissolving the union branches, such as the Mombasa branch. Clause 10(e) of the 4th respondent's constitution provides that all decisions by the NEC are binding on the union and its members. The membership of the Mombasa branch violated clause 7(a) of *the constitution*, which requires a branch not to have fewer than 1000 members. The decision to dissolve the branch was also necessitated by the fact that elections were not repeated after the expiry of the term in 2016.
 44. On 13 August 2018, the 5th respondent wrote to the 4th respondent about the Mombasa branch's failure to conduct its elections and stated that failure to do so would result in the branch's suspension.
 45. Aggrieved by the decision to conduct the elections as directed by the 5th respondent within 30 days, the 1st and 3rd petitioners unlawfully opened a parallel branch in the exact location as the dissolved Mombasa branch. They started recruiting members without disclosing that the Mombasa branch had been dissolved.
 46. Mbugua avers that on 20 September 2019, he wrote to the 5th respondent that the petitioners had opened a new office with a similar name to the 4th respondent's Mombasa branch. Such acts are illegal since the branch is dissolved. The petitioners were notified of their conduct through a letter dated 26 September 2019, through the office of the 5th respondent. The County Labour Officer was notified and directed to conduct investigations. This was established to be correct, and the parallel branch was not registered. The petitioners are aware that NEC has since dissolved the Mombasa branch, and the remedy is not to open a parallel branch but to file an appeal. The petitioners have acted outside the law, and the orders sought in the petition should not be issued but instead dismissed with costs.
 47. In evidence, the respondents called Nicholas Mbugua, who testified that the RTU, the 5th respondent, dissolved the Mombasa branch of the 4th respondent. The branch does not exist. Form Q was not filed for the union elections held in 2022.
 48. Mbugua testified that the petitioners were Mombasa branch officials. Only Waema was in the Mombasa Branch, while Nyambura and Ahmed were in the NEC. Elections are held every five years, and the two have since left the NEC. The removal of the two from the NEC was not challenged in court.
 49. Members are called to a general meeting in the union elections, and notice must be in writing. The notice for calling for elections was not filed and should have gone to all branches through the RTU, which should have presided over the elections.



50. Upon cross-examination, Mbugua testified that under clause 12 of the union constitution, elections are held after 5 years by the delegates' conference. The records of the delegates are not filed for the 2016 and 2022 elections. From 2016, 5 years lapsed in 2021, as the secretary general, his term lapsed like all other NEC members. Before another election, the general secretary should issue a 6-month notice.
51. The Mombasa branch had fewer than 1000 members, and the 5th respondent issued a notice of dissolution. The Mombasa branch was lawful when it maintained 1000 members or above. As the general secretary, the Certificate of De-registration has not been filed. There has been no communication with the branch about the dissolution. Through a letter dated 13 August 2018, the 5th respondent informed the 4th respondent that the Mombasa branch had been suspended. The continued operations of the branch were unlawful. He convened the NEC, and a resolution was passed to dissolve the Mombasa branch, which had less than 1000 members. On 22 September 2018, there were two NEC meetings, and different minutes were taken. The first second meeting was in response to the 5th respondent.
52. Mbugua testified that the 4th respondent's constitution has provisions on how to use union funds. These include the payment of salaries, court cases, compensation, medical, RTU fines, and subscriptions.
53. The financial year ends on 31 December, but no audited accounts have been filed. The petitioners only filed the ATM account. As the general secretary, he was authorised to make over-the-counter withdrawals. The money is submitted to the treasurer for rendering accounts. There were accounts shared with NEC. There was no change of bank account from Sidian Bank to Kingdom Bank, as alleged. The Sidian Bank account related to the union's project with a different partner, but no records were filed. There is no union resolution to open a different bank account.
54. In reply to the petition, the 5th respondent argues that the petitioners have failed to set out the rights alleged to have been violated by the 5th respondent. The orders sought against the respondent are not stated.
55. The 5th respondent directed all trade unions, including the 4th respondent, to hold elections between January and August 2016. The 4th respondent held their elections on 1 February 2016. However, the 5th respondent declined to register the results of the elections because the branch created and filled posts that do not exist in the 4th respondent's constitution.
56. In a letter dated 8 September 2016, the 5th respondent informed the 4th respondent's Mombasa branch of the decision to decline to register the elected officials and advised conducting fresh elections. In a letter dated 13 August 2018, the 5th respondent advised the 4th respondent, the general secretary, that unless fresh elections were held, the Mombasa branch would be suspended, and operating would be contrary to the law.
57. On 27 September 2018, the 5th respondent received the letter dated 25 September 2018, indicating that the NEC had resolved to dissolve the Mombasa branch under clause 7 of the constitution. In a letter dated 8 October 2018, the 5th respondent informed the 4th respondent that clause 7 of the constitution did not apply to the dissolution of the Mombasa branch, as such would contravene Rule 8(b) of the union constitution.
58. In a letter dated 26 October 2018, the 5th respondent wrote to the 4th respondent that the Mombasa branch had contacted the office and indicated that it had 1,800 members. The 4th respondent responded on 31 October 2018 and showed that, based on the records, the Mombasa branch had 327 members. These communications were shared between the 4th respondent and the Mombasa branch.



The 5th respondent then informed the petitioners of the decision to dissolve the Mombasa branch on 4 November 2018.

59. Article 8(b) of *the constitution* provides the mechanism for the dissolution of the union branch.
60. On 2 October 2020, the County Labour Officer, Mombasa, informed the 5th respondent of an unregistered union office with identical branding as the 4th respondent in Mombasa. The decision to dissolve the Mombasa branch was made by the 4th respondent, NEC, and the petitioners have failed to state what violations exist by the 5th respondent to justify these proceedings.

No witness was called.

Determination

61. At this point, the matter has passed through the hands of several judges. It relates to the question of the dissolution of the 4th respondent, the dissolution of the Mombasa branch going back to elections held in 2016, and the election of the petitioners as officials.
62. From the pleadings, the evidence and written submissions, the issues which emerge for determination can be summarised as follows;
- a. Whether the dissolution of the 4th respondent, Mombasa branch, was procedural and or lawful;
 - b. Whether the decision of the 5th respondent in approving the dissolution of the 4th respondent's Mombasa branch is lawful
 - c. Whether the 1st, 2nd, and 3rd respondents are fit to hold office under the 4th respondent;
 - d. Whether the respondents are in violation of the LRA and hence the court directs the national vice-chairman of the 4th respondent to convene a national executive council meeting within 60 days to appoint a general secretary;
 - e. Whether an order directing the assistant national treasurer of the 4th respondent to render accounts for all the monies received into the Sidian Bank of Kenya account No. 01003020018889 since 2016, within 60 days, should be issued;
 - f. Who should pay costs?
63. It is a common cause that the petitioners were elected as the 4th respondent, Mombasa branch officials, following the 5th respondent's notice issued in 2016.
64. The petitioners argue that the 1st petitioner was elected as the branch secretary, the second petitioner was elected as the organising secretary, and the 3rd petitioner was elected as the assistant secretary. Following the national elections for the 4th respondent, the 2nd and 3rd petitioners were elected as the deputy secretary general and assistant secretary general, respectively.
65. Under the LRA and the 4th respondent's constitution, the term of office is 5 years.
66. In a notice dated 3 February 2016, the Labour Officer, Mombasa County, informed the 5th respondent of the Mombasa branch elections held on 1 February 2016 at Jumbo Club, Miritini. The Labour Officer indicated as follows;
- Kombe Thomas elected as chairman.
- Masinde Mukwana elected vice chairman.
- Roman Waema elected branch secretary.



Lucy Kanyi elected as assistant secretary.

Ahmed Omar elected organising secretary.

Abubakah Kombo elected deputy organizing secretary;

Ruth Nyamina elected branch treasurer.

John Gakera, elected committee member, and

Elijah Onyango elected Committee member.

67. These returns by the Labour Officer are copied to the respondents.
68. However, through a letter dated 8 September 2016, the 5th respondent declined to register Form Q over the elections because the post of Assistant Treasurer, which was scrapped, still exists under the current registered constitution. The two new posts created for the branch organising secretary and the assistant organising secretary do not exist under *the Constitution*.
69. Therefore, the 5th respondent indicated that elections can only be conducted for the existing posts until *the constitution* is amended.
70. The 5th respondent directed that you are advised to repeat the elections as soon as possible, and thereafter, you may amend *the constitution* to accommodate the changes.
71. This letter and notice were sent to the first respondent and copied to the Mombasa branch secretary and the Labour Officer, Mombasa County.
72. The petitioners' case is that they did not receive this notice, and the address used was not for the branch.
73. Under the various communications, the petitioners' address is registered as;
Kenya Long Distance Truck Drivers & Allied Workers Union, Mombasa
Box 42334-80100
Mombasa.
While the 5th respondent used the following;
The Branch Secretary,
Box 1578-80100
Mombasa.
74. The returns filed by the Labour Officer, Mombasa County, on 1 February 2016 noted the following addresses for the petitioners;
Roman Waema, P.O. Box 21553, Mombasa,
Lucy Kanyi, P.O. Box 83268, Mombasa, and
Ahmed Omar, P.O. Box 519724, Mombasa.
75. Where did the 5th respondent obtain the address to communicate with the petitioners to repeat the Mombasa branch elections? Did the 1st respondent correct the communications as the overall responsible officer?
The answers are in the negative.



76. What is apparent to the court is that the petitioners continued running the Mombasa branch without knowing the 5th respondent's communication dated 8 September 2016.
77. The 1st respondent, the general secretary, did nothing to resolve the situation. He continued communicating with the 5th respondent, disregarding operations at the Mombasa branch.
78. This can be discerned from the various communications between the 1st and 5th respondents.
79. On 13 August 2018, the 5th respondent informed the 1st respondent that the Mombasa branch had not acted on the notice to repeat elections and risked suspension. The 5th respondent observed that Form Q had not been registered for the Mombasa branch.
80. What did the 1st respondent do? He called NEC on 22 September 2018 and resolved to dissolve the Mombasa branch. The reason is that Mombasa had contravened clause 7 of the union constitution by having fewer than 1000 members.
81. To the letter dated 25 September 2018, the 1st respondent attached minutes for the NEC meeting on 22 September 2018. The branch secretary for the Mombasa branch was not a member of the NEC. Lucy Kanyi and Ahmed Omar were noted as absent without apologies.
The subject notice for the NEC meeting has not been filed.
82. Upon cross-examination by the petitioners' counsel, Mr. Mbugua, the 1st respondent admitted that the NEC meeting and the notice were not filed.
83. The NEC members asked about the Mombasa branch, and the 1st respondent informed the meeting that the branch officials had absconded from duty. Despite several letters and reminders, they had refused and failed to attend to their office duties. The 1st respondent also informed the NEC that the 5th respondent had directed the Mombasa branch to repeat elections held on 1 February 2016, but had failed to do so. The branch had fewer than 1000 members required to have a branch, so the NEC agreed to dissolve the Mombasa branch.
84. Upon receipt of the 4th respondent's resolution dated 25 September 2018, the 5th respondent, through notice dated 8 October 2018, informed the 1st respondent that;
Dissolution Of Mombasa Branch...
Rule 7(a) of the union constitution provides that no branch office shall be opened with fewer than 1000 members. Rule 8(b) provides that the NEC may disband any branch that fails to comply with *the constitution* and rules of the union...
Please note that the Mombasa branch already exists, and the provisions of Rule 8(b) are the ones applicable in this case. ...
Therefore, Proper disbandment procedures should be followed per the union constitution before our office effects the dissolution.
85. In a letter dated 22 October 2018, the 1st respondent, in response to the 5th respondent's letter of 8 October 2018, indicated that the NEC had met on 22 September and resolved to disband the Mombasa branch office. In this letter, the 1st respondent indicated that NEC met,
... on 22 September 2018 and resolved to dissolve the above branch because the branch had contravened Rule 8(b) of the union constitution as they have not increased their membership to the required 1000 members but instead reduced from 650 members to



380 members which contravenes our constitution. They have refused to conduct repeat elections as ordered by the Registrar because of wrangles between themselves. ..."

86. The minutes attached to confirm the resolution are dated 22 September 2018.
87. Again, for the NEW meeting, Lucy Kanyi and Ahmed Omar are noted as absent without apologies.
88. Did the NEC meet after the 5th respondent's letter dated 8 October 2018?
89. This cannot have been done through the meeting dated 22 September 2018. The resolution resulting from the meeting held on 22 September 2018 was addressed by the 5th respondent accordingly. After the response dated 8 October 2018, the 1st respondent cannot have convened the NEC retroactively.
90. There is sheer manipulation of records to fit a purpose.
91. The 1st respondent could not respond appropriately when asked about the two-minute sets. The minutes are replicas of each other, created solely to disband the Mombasa branch office.
92. Initially, through a notice dated 25 September 2018, the first respondent wanted the Mombasa branch dissolved for allegedly having fewer than 1000 members. It is not stated how many members were registered as of that date. The 5th respondent corrected this in a letter dated 8 October 2018, indicating that the membership was 650. The 1st respondent indicated that the membership was 380 as of 22 October 2018. There is no record to confirm the exact number of the Mombasa branch membership as of 22 October 2018.
93. Fundamentally, the 1st respondent did not involve the Mombasa branch membership or the elected officials.
94. In moving for the dissolution of the branch, the 1st respondent acted suo motto and manipulated the records.
95. The 5th respondent should have taken note of the records submitted before issuing the notice dated 26 October 2018, dissolving the Mombasa branch. Indeed, the 5th respondent acknowledged that,

“... I wish to inform you that by a letter written to us by the Branch Secretary and another dated 2 August 2018 and copied to you, they have indicated that the branch currently has 1800 members. (A copy of the same is attached for your reference.) Please confirm the branch membership from the branch register and revert to us. ...”
96. These communications ended with the 5th respondent's notice dissolving the Mombasa branch through a notice dated 4 November 2018. The notice is sent to the petitioners through the following address;

Kenya Long Distance Truck Drivers & Allied Workers
Box 1051
Mombasa.
97. Mr. Waema emphatically testified that the petitioners did not receive this notice, which was never sent to their addresses.
98. Under section 25 of the LRA, a trade union can register a branch. The authorised representative of the trade union is allowed to issue notice to the RTU on the dissolution of a branch under section 25(3) of the LRA,



- (3) The authorised representative specified under subsection (2) shall give notice to the Registrar in writing of the dissolution of any branch of a trade union, employers' organisation or federation
99. In the case of Raphael Otieno Odumo & 2 others v Charles Natili & 5 others [2015] KEELRC 1112 (KLR) the court held that where a branch of a trade union is dissolved without the due process and observance of the rules of natural justice, the members of the affected branch being condemned unheard, that is engaging in unfair labour practices and hence null and void. In the case of Kenya Union of Kenya Post Primary Teachers (KUPPET) (Kajiado County Branch) (Suing on Behalf of George Mulunda Kasawa (Grievant)) v Teachers Service Commission & another [2022] KEELRC 12720 (KLR), only a member of the trade union can move for the dissolution of the branch. This calls for interrogation of the reasons leading to the dissolution.
100. A party or member of the trade union acting for the branch can therefore not be condemned unheard before a dissolution of the union branch. To do so would negate the provisions of Section 25 of the LRA. The power vested in the general secretary is for the benefit of the union members, including the branches. To act suo motto to the affected branch's disadvantage is wrongful and unlawful. The contestations that occurred at the Mombasa branch, including leadership wrangles and the elected officials' commitment to acts of misconduct by absconding from duty, should have been addressed within the provisions of the union constitution with a conclusion. The LRA and the [Employment Act](#) were available where the union constitution did not meet the law's threshold.
101. The first respondent did not notify the petitioners of the de-registration/dissolution of the Mombasa branch. Upon the expiry of their tenure following the elections on 1 February 2016, ending on 31 January 2021, they remained in office without a lawful mandate as required under section 25 of the LRA. The requirement to hold fresh elections and make financial returns was not communicated.
102. The address of service does not belong to the petitioners. The 1st respondent contravened his mandate under the Union constitution and the LRA.
103. The motions leading to the 5th respondent's notice dissolving the Mombasa branch on 4 November 2018 are devoid of merit. Without the due process in the NEC meeting leading to the communication of the 1st respondent dated 22 October 2018, the same is ultra vires, null and void as held in Carilius B Ochieng & another v Mama Maria Obura & 11 others [2014] KEELRC 131 (KLR)
104. The court finds the dissolution of the 4th respondent's Mombasa branch wrongful and unlawful. The 1st respondent's act of moving the 5th respondent to issue notice dissolving the Mombasa branch was contrary to fair labour practices and hence illegal and unconstitutional.
105. Whether the 1st, 2nd, and 3rd respondents are fit to hold office under the 4th respondent, the general secretary, the 2nd respondent and chairman, and the 3rd respondent, the national treasurer.
106. The petition states that the respondents have mismanaged the affairs of the 4th respondent union, particularly the application of funds. The 1st respondent opened a new account from Sidian Bank or Kingdom Bank without approval and has continued to operate and withdraw union funds without NEC approval and render an account.
107. As addressed above, the 1st respondent, as the general secretary and responsible officer of the 4th respondent under the LRA, carries higher responsibility over the union affairs. Called by the members to render an account, this is a lawful and legitimate requirement. The petitioners are members of the 4th respondent. Whether elected or not, whether their branch was dissolved or not, there exists a mandate upon the 1st respondent and, by extension, the respondents to ensure proper accounts are rendered to the members.



107. The unconstitutional and unbalanced dissolution of the Mombasa branch is apparent; the respondents have jointly and severally failed to render proper accounts. This includes the 5th respondent, as the officer given the responsibility to call upon a trade union, such as the 4th respondent, to render accounts, this office, by allowing itself to be misled by the 1st respondent through manipulated records, has failed in its legal mandate.
108. The 1st respondent testified and admitted that the fourth respondent at Kingdom Bank opened another account. The account was meant for a special project by a donor. He agreed that he had made various cash withdrawals to make payments as authorised under the LRA.
109. The LRA regulates a trade union's operation, including its assets, which include money. Under section 42(1) of the LRA, a union treasurer is responsible for the union funds and must give accounts to the members annually.
- (1) In this section, "official" means the treasurer of a trade union, employers' organisation or federation and every other official responsible for the accounts of a trade union, employers' organisation or federation for collecting, disbursing, keeping in custody or controlling its funds or moneys.
110. The 1st respondent did not file any audited accounts, which caused the 3rd respondent to do so. The 5th respondent has not stated that the office received the annual returns from the 4th respondent from 2016. This violates Section 42(3) of the LRA,
- (3) An account rendered under this section shall specify—
- (a) all amounts received or paid by the official since assuming office or, if the official has previously rendered an account, since the date of the last account;
- (b) the balance remaining in the possession of the official at the time of rendering the account; and
- (c) all bonds, securities or other property of the trade union, employers' organisation or federation entrusted to the custody of, or under the control of, the official.
112. The 5th respondent has not applied powers under Sections 44 and 46 of the LRA. This gives the RTU the mandate to seek accounts and, where not done, to inspect the accounts and direct as necessary.
113. Fundamentally, a union such as the 4th respondent should only operate the official bank account registered with the Minister pursuant to section 48(2) of the LRA. Whether the 1st respondent allowed the 4th respondent to receive donor funds, the union bank account registered with the Minister was the union's official bank account. To act otherwise without the NEC and Minister approval is both unlawful, null and void. This is the improper application of the 4th respondent to secure illegal bank accounts without the Ministerial notice and approval. This is in breach of section 50(2) (b) of the LRA. The breach is profoundly captured under section 50(9) and (10) of the LRA as follows,
- (9) No person shall—
- (I) request that an employer pay money deducted in accordance with this section into an account other than the account designated by the Minister in the notice; or
- (ii) use any money deducted in accordance with this section for any A purpose other than the lawful activities of a trade union or a trade union federation.
- (10) An employer or any person who contravenes the provisions of this section commits an offence



114. The provision that no person shall request an employer to pay money ...into an account other than the account designated by the Minister ... in this case includes money received from third parties for and on behalf of the trade union. Where the 1st respondent asserts that the 4th respondent had partners and donors operating a project for the members, such funds should have been deposited into the official bank account known to the Minister. Moving from Sidian Bank to Kingdom Bank without the approval of the Minister is a direct breach and violation of section 50(9) of the LRA.
115. The 1st respondent failed to file any records on funds deposited by the alleged donors into the Kingdom Bank. Operating a bank account at Kingdom Bank other than the official account at the Sidian Bank of Kenya account No. 01003020018889 is illegal, and the respondents are jointly and severally in breach of the law.
116. As members of the 4th respondent, the petitioners seek accounts of the union funds, including funds received from third parties and illegally deposited at the Kingdom Bank. The 5th respondent's office shall cause an inspection of accounts held for and on behalf of the 4th respondent, whether at the Sidian Bank of Kenya account No. 01003020018889 and at Kingdom Bank or other banks and institutions and report to the court under the LRA. Such a report shall be undertaken at the personal cost of the 1st, 2nd, and 3rd respondents without causing the 4th respondent any loss.
117. To allow the 5th respondent to undertake its mandate as above, the Sidian Bank of Kenya account No. 01003020018889 shall remain frozen unless the court approves any expense. Employers who remit union dues to this account shall continue to do so until the 5th respondent can complete the inspection and audit.
118. The apparent breach of the petitioners' rights and freedoms led to this petition, which is filed on a good foundation. The 1st, 2nd, and 3rd respondents, the secretary general, chairman, and treasurer of the 4th respondent, are hereby found personally liable for the breach and shall meet the compensation due to the petitioners. This shall be paid without placing the 4th respondent at any loss.
119. In addressing a breach of constitutional rights, the court in *Ogila v Dawa Life Sciences Limited* [2025] KEELRC 1144 (KLR) held the respondents liable to pay damages of Ksh. 2,000,000. In the case of *Gichuru v Package Insurance Brokers Ltd*, the Supreme Court reduced the award of damages from Kshs. 5,000,000.00 to Ksh. 2,000,000.00. In the case of *VMK v CUEA* [2013] eKLR, the court awarded Kshs. 5,000,000.00 as exemplary damages for discrimination. In the case of *Kenya Railways Corporation v Omboto & another* [2025] KECA 537 (KLR), upon the finding that there were constitutional rights violations, the court affirmed an award of Ksh. 5,000,000.
120. In this case, the court finds an award of Ksh. 2,000,000 is appropriate for all the petitioners due to the constitutional rights and freedoms violations by the 1st, 2nd, and 3rd respondents.
121. On costs, if the petition is successful, the 1st, 2nd, and 3rd respondents shall jointly and severally meet the costs due to the petitioners. The 5th respondent, being a public office, is responsible for inspecting and auditing the 4th respondent. The 5th respondent shall enforce the court's orders at the cost of the 4th respondent.
122. Accordingly, judgment is hereby entered for the petitioners against the respondents in the following terms;
 - a. A declaration that the dissolution of the Mombasa branch of the 4th respondent is unprocedural, hence illegal, null and void;



- b. A declaration that the respondents have jointly and severally violated the constitutional rights of the petitioners;
- c. The petitioners are hereby awarded Ksh.2,000,000 in damages to be paid personally by the 1st, 2nd, and 3rd respondents;
- d. The 5th respondent shall attend and inspect all bank accounts (s) held by the 4th respondent, including Sidian Bank of Kenya account No. 01003020018889 since 2016; render an audit and submit a report to the court within 60 days at the costs of the 4th respondent;
- e. The petitioners are awarded costs;
- f. Mention in 60 days on 30 June 2025.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF APRIL 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

