



Iloti & 14 others (Acting on their Behalf and on Behalf of the Dock Workers Union of Kenya) v Sang & another; Dock Workers Union of Kenya (Interested Party); Thoya (Intended Interested Party) (Cause E025 of 2025) [2025] KEELRC 2309 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2309 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E025 OF 2025
M MBARŪ, J
JULY 31, 2025

BETWEEN

AMIN ILOTI 1ST CLAIMANT
SULMAN OWUOR 2ND CLAIMANT
KIBIBI OMERI 3RD CLAIMANT
MASKAT SALIM 4TH CLAIMANT
MEJUMAA CHIRAU 5TH CLAIMANT
RUWA MPATE 6TH CLAIMANT
GLADYS MBITHI 7TH CLAIMANT
ALI MWAMREZI 8TH CLAIMANT
QUEEN MSHIHIRI 9TH CLAIMANT
MOHAMED SHAMAHUYA 10TH CLAIMANT
MAURICE MWANYULE 11TH CLAIMANT
AUGUST RUWA 12TH CLAIMANT
JUMA MAJEPO 13TH CLAIMANT
KENNEDY OKETCH 14TH CLAIMANT
EDWIN WASONGA 15TH CLAIMANT
ACTING ON THEIR BEHALF AND ON BEHALF OF THE DOCK WORKERS
UNION OF KENYA

AND

SIMON KIPRONO SANG 1ST RESPONDENT



REGISTRAR OF TRADE UNION 2ND RESPONDENT

AND

DOCK WORKERS UNION OF KENYA INTERESTED PARTY

AND

RENSON JUMA THOYA INTENDED INTERESTED PARTY

RULING

1. The intended 2nd interested party, Renson Juma Thoya, filed an application dated 17 July 2025 seeking orders:
 - a. Spent.
 - b. Pending hearing the hearing and determination of this application, the court be pleased to enjoin the intended interested party as the 2nd interested party.
 - c. Pending hearing and determination of this claim, the court be pleased to order the Bandari Sacco to pay the salaries and wages arrears for the employees of the 1st interested party and continue to pay the same when they fall due.
 - d. Pending the hearing and determination of the claimant, this court be pleased to order the 1st respondent, the 2nd and 3rd claimants to facilitate the payments of recurrent expenditure to cover the operational costs of the 1st interested party.
2. The 2nd intended interested party, Thoya, supported the application through his Affidavit and avers that he is the executive officer of the interested party union and the current supervisor of the employees of the union. The claimants, as registered trustees of the union, have been members of the union and draw their salaries from the Kenya Ports Authority regularly.
3. On 13 March 2025, the court issued interim orders and confirmed them on 3 July 2025, specifying how the union's funds should be withdrawn. However, both parties, the claimant and respondents, have made it difficult for the employees to earn their salaries when they fall due. As a consequence, there are arrears for 3 months. The statutory dues under sections 17 and 18 of the *Employment Act* [the Act] have not been remitted, and the union has failed to pay salaries when due.
4. Thoya avers in his affidavit that some employees of the union are under financial distress due to non-payment of rent, and children are off school.
5. The court, seized of the dispute, must protect the rights of employees and create a balance between the parties herein. It is only fair and just that Bandari Sacco be ordered to pay the salaries and wages due pending the approval mechanisms herein. Further, the court is to direct the 1st respondent, together with the 2nd and 3rd claimants, to attend and verify the accuracy of the figures from the processed payroll.
6. The 1st respondent and interested party filed the Replying Affidavit of Simon Kiprono Sang, who avers that on the court orders issued on 13 March 2025 and ruling on 3 July 2025, there has been no concurrence in the matter in which the funds are to be applied for the reasons that the claimants are still on suspension. It is against public policy that suspended officials would carry a greater responsibility without being conflicted.



7. The 1st respondent avers that in 2022 and 2023, the union lost 890 members to promotions, and the Ministry froze further employments; hence, KPA has not employed more employees to replace those promoted. The income of the union went down from 7.3 million to 4.46 million. This affected operations, and the union has been unable to pay statutory dues and Sacco funds.
8. Before the claim was filed, the union had internal arrangements with its banker to give an overdraft to pay salaries, which stalled following court orders on 13 March 2025. The union is a corporate member of Bandari Sacco and is serving a loan of Ksh. 3.26 million per month from an income of Ksh.4.46 million and hence the union is in debt.
9. The 1st respondent avers that there was a proposal that the union should take an overdraft for paying salary arrears and consider other avenues for raising avenues. There is a projection of 2000 new employees at KPA and hence new members of the union, and once this is achieved, the union will be able to meet its financial obligations.
10. In reply, the claimants filed the Replying Affidavit of Sulman Owuor, the 2nd claimant, who avers that the grievances by the employees addressed by Thoya in his application should be ventilated through the union as the interested party herein. The executive officer and administrator of the union is George Otieno, and there is no evidence of Thoya having been appointed to act in such a position.
11. Sulman avers that together with the 3rd claimant have been approving the payments of salaries as submitted by the 1st respondent, but have noted that the contract of Thoya expired in April 2024, and was not renewed by the board. The 1st respondent has been paying him Ksh. 168,454 without a contract. Further, the 1st respondent has been paying Leonard Ochieng Ksh . 152,000 as a legal officer, yet he is not qualified as such and has never been employed by the Board. There is a payment to Issa Kanda, Ksh. 35,000 as a driver, yet the union has no bus which broke down 5 years ago, and he is over 60 years old and should have since retired. The 1st respondent has been paying Maurice Munyao and Lawrence Nyawa without justification. There is a payment to Cynthia Wanyonyi, who is the secretary general of Bottax Workers, and on this basis, the application by Thoya should be dismissed.

Determination

12. The 2nd proposed interested party [Thoya] is seeking joinder in these proceedings as an interested party. He avers that he is currently the executive officer of the interested party, the union. The union has 12 employees who have gone without payment of wages and salaries for 3 months, and hence, Bandari Sacco should be directed to make the payments, together with the arrears.
13. In reply, the first respondent and the union take the view that compliance with the court orders issued on 3 July 2025 has been difficult primarily because there is no concurrence, as the claimants are suspended officials and hence are conflicted. Such a view negates the interim orders which were to subsist pending hearing of the claim on a priority basis.
14. The 1st respondent further seeks to be allowed to pursue an overdraft facility with Bandari Sacco to pay salary arrears. This is the core of the application by Thoya for the employees of the union.
15. The Replying Affidavit by the 1st respondent, in relation to the application by Thoya, suggests that the instant application should have been filed by the union, rather than as herein filed.
16. Should Thoya be enjoined as a 2nd interested party in these proceedings?
17. Under Rule 55[1] of the *Employment and Labour Relations Court [Procedure] Rules*,



55. [1] The Court may, on its own motion where it considers it fit, or upon application by a party, serve or order service of a pleading on any person whom it is satisfied may be interested, affected or necessary for efficient and final determination of the dispute.
18. Hence, the principles for joinder of a party in the proceedings should be the necessity and effectiveness of making a final determination on the matters. These principles are not far removed from what the Supreme Court held in *Okoti v Portside Freight Terminals Limited & 12 others* [2025] KESC 44 [KLR] that;
- " Any interested party or amicus curiae who signals that he or she intends to steer the Court towards a consideration of those 'new issues' cannot, therefore, be allowed."
19. More fundamentally, a party may be enjoined in proceedings as an interested party based on the principles outlined in *Awach & 6 others v Registrar of Trade Unions & 2 others; Water Services Workers Union [Interested Party]* [2025] KEELRC 2218 [KLR].
- " .. an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is the one who will be affected by the decision of the court when it is made, either way. A party could be enjoined in a matter for the reasons that:
- a. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
 - b. Joinder to provide protection of the rights of a party who would otherwise be adversely affected in law;
 - c. Joinder to prevent a likely course of proliferated litigation."
20. In this case, on 3 July 2025, the court delivered a ruling regarding an application filed by the claimants on 13 March 2025. The core issue in the application was a conservatory order or any equivalent or related relief under Sections 41, 42, 43, and 44 of the *LRA* restraining the 1st respondent from further use of any funds of the interested party, including taking of additional loans. The union is to be allowed to make necessary expenses for the operation of the union, subject to the union's approval and anticipation of such expenses by the 1st and 3rd claimants – Amin Iloti and Kibibi Oeri.
21. The court addressed the matter and issued orders including:
- a. Pending the hearing and determination of the claim, a conservatory order is issued restraining the 1st respondent from using any funds of the interested party Union, including taking additional loans, unless allowed to make necessary expenses for the union's operations, subject to approval of such expenses by the 2nd and 3rd claimants—Sulman Owuor and Kibibi Oeri—the assistant general secretary and national treasurer of the Union.
 - b. On the orders [a] above, the court shall hear the main claim on a priority basis.
22. The matter has not proceeded for hearing and determination on a priority basis due to these intervening applications and counter-application, including the instant application by Thoya.
23. As an employee of the union, Thoya and the other 12 employees are under the supervision of the 1st respondent, the union's general secretary. All matters that arise out of the shop floor are under his control and management.



24. Despite Thoya being the executive officer, under the provisions of Section 2 of the *Labour Relations Act* [LRA], the person with authority to manage the affairs of the union falls under the general secretary, the 1st respondent.
25. To thus purport to act out of the law and seek to be enjoined in these proceedings for and on behalf of the employees of the union, such can only be interpreted with the sole purpose of stalling these proceedings and retaining the status quo to avoid a conclusion. The 1st respondent made presentations through the appointed officer to the union, stating that it is under financial constraints due to low membership. However, there is a high expectation that finances will improve with the recruitment and promotions of 2000 members at the Kenya Ports Authority.
26. At the core of this dispute, which the court had directed to be heard on a priority basis, is the question of the application of the union's funds, the interested party.
27. In reply, the claimants, through the Affidavit of Sulman, raise issues with the payments made by the union, including to officers and persons without contracts, and for positions which would normally require approval by the Board. The fact that there is no vehicle yet, but there is a driver on the payroll, is noteworthy. The concern about paying another general secretary of Bottax Workers remains. Essentially, before any signatory can sign any accounts, clarifications must be provided. This is why the position of the 1st respondent exists—to address such matters with the elected officials. The claimants have filed suit seeking accountability for this reason.
28. Without pre-empting the main hearing, the 1st respondent and Thoya, as the general secretary and executive officer respectively, are accountable to the interested party and its members. The need to clarify any matter, particularly the use of union funds, should be considered standard and not viewed as interference with operations. That is the purpose of the union. Members pay their dues and, in return, they expect accountability. The election of union officials is a governance mechanism to ensure that, through these elected officials, there are procedures in place for the 1st respondent to provide accounts. Before any expenditures are approved, proper explanations must be given.
29. The essence of sections 41 to 44 of the *LRA*.
30. To enjoin Thoya to act for the employees and seek to be paid directly from Bandari Sacco would be to conflate issues, mar the proceedings and in essence, to direct a third party, Bandari Sacco, to make payments to employees already regulated and under the control of the 1st respondent. That will not aid the course of justice. It will only prolong the proceedings herein and alter the nature of the claim by the claimants.
31. The claimant's case should be heard on the merits and on a priority basis as directed on 3 July 2025. Where the employees through Thoya are aggrieved, recourse is to address through the interested parties and 1st respondent who are parties in these proceedings. The prayers sought to direct Bandari Sacco to make payments to the union employees are far-fetched as this is not the employer. These employees remain the concern and responsibility of the union, and through the 1st respondent, the accrued wages and salaries should be addressed.
32. On 23 July 2025, the court directed the 1st respondent and interested party to file an affidavit and address the pending budget approval. This was to be completed by the close of business on 25 July 2025. An affidavit was filed without the directions issued.
33. There is no budget pending approval or submission to assist the court in giving any meaningful directions. The failure to address this issue so far, and the inability to follow court directions, do not promote the swift disposal of the matter.



34. Where the 2nd and 3rd claimants are alleged to have failed to approve the budget and payments, none have been brought to the court's attention to address and give directions.
35. This shall suffice.
36. Accordingly, the application dated 17 July 2025 is hereby dismissed. The matter shall be set for hearing of the main claim.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 31 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

