



**Iloti & 14 others (Acting on their behalf and behalf of the Dock Workers Union
of Kenya) v Sang & another; Dock Workers Union of Kenya (Interested Party)
(Cause E025 of 2025) [2025] KEELRC 1971 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1971 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E025 OF 2025**

M MBARŪ, J

JULY 3, 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
GLDYS 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
15) EDWIN WASONGA 15TH CLAIMANT
**ACTING ON THEIR BEHALF AND 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

RULING

1. The claimants, acting on their behalf and on behalf of the interested party, filed an application dated 13 March 2025, under the provisions of sections 41, 42, 43 and 44 of the Labour Relations Act (LRA), seeking orders:
 - a. Spent
 - b. Pending the hearing and determination of this application, 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.
 - c. Further to prayer (2) above, the 1st respondent shall ensure all necessary expenses are brought to the attention of the 2nd claimant at least 7 days in advance, and the 2nd claimant shall not irresponsibly withhold approval and shall keep a receipt for court assessment.
 - d. Pending the hearing and determination of the petition [claim], a conservatory order or any equivalent or related order 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 further loans.
 - e. Spent.
 - f. After the hearing and determination of this claim, a conservatory order will be issued to stay the decision of the first respondent to suspend the petitioners [claimants], who are elected officials of the interested party.
 - g. Costs of this application should be provided for.
2. The Supporting Affidavit of Amin Iloti supports the application and the 1st claimant and trustee of the interested party. He avers that the claimants are elected officials of the interested party in various capacities and sit in the National Executive Committee (NEC). They were elected into office in 2024 when they noted the following:
 - a. The interested party did not file any audited accounts for the last five years, per articles 10(3) and 21(2) of the union constitution.
 - b. No books of account were being maintained.
 - c. The union accounts had a negative balance, and huge loans had been taken. For example, the union had taken a development loan, but no developments were made.
 - d. The union failed to hold an annual general meeting (AGM) as required by article 10(3) of the constitution.



- e. The 1st respondent had employed staff violating the union constitution.
3. In his affidavit, Iloti avers that the claimants have sought to understand from the 1st respondent why the accounts held by the union had a negative balance and a statement of accounts to justify several loans at ksh. 52 million and how the funds had been spent. The 1st respondent has remained unresponsive and hence the complainant reported the matter to Makupa Police Station under B No. 52 on 13 June 2024.
 4. The 1st respondent has been uncooperative. The claimants sought to have an Annual Conference in line with Article 10 of the union constitution, but the first respondent made calculated efforts to ensure it was unsuccessful. The 1st respondent vowed to remove the elected officials for the issue of misappropriation of funds to stall.
 5. The 1st respondent filed Mombasa Chief Magistrate Court ELRC Cause No. E801 of 2024—Dock Workers Union v Amin Iloti & others seeking an injunction to restrain the elected officials from undertaking their work. The court decided to grant the orders.
 6. Upon failing in the suit before the Magistrate's court, the 1st respondent convened a meeting in the absence of some officials, violating the constitution and sought to suspend the elected officials and the trustee. The 1st respondent wrote to the second respondent seeking to remove the names of the claimants. The 2nd respondent did not make changes because the first respondent had not complied with the union constitution.
 7. Iloti avers that the claimants visited the second respondent in January 2025 and obtained extracts that had removed them as union officials. The respondents' actions violate the claimants' fundamental rights and freedoms and are contrary to natural justice under articles 10 and 47 of the constitution.
 8. Removing the claimants' names from the elected officials violates Article 12(k) of the United Constitution, which provides that the conference may remove a member of the NEC. No conference has been held. The constitution also states that a committee should be appointed to hear the parties before removing an elected official. In this case, the respondents used doctored minutes to remove the claimants from office.
 9. The 1st respondent is incurring irregular, unauthorised, and unlawful expenditures of union funds without authorisation per the constitution. Upon removing the claimants, the first respondent obtained another loan from Bandari Sacco, to the prejudice of the claimants.
 10. No budgetary estimates have been read and adopted through a conference of the union and relevant organs of the union to enable the 1st respondent to spend the union funds. Unless the orders sought are issued, the claimant will suffer loss and damage.
 11. In reply, the 1st respondent and the interested party (the Union) filed the Replying Affidavit of Simon Kiprono Sang, the Union's general secretary. He states that the court lacks jurisdiction to hear the claim on the grounds:
 12. As per the extract from the 2nd respondent and decision made on 15 January 2025, by dint of section 30 of the LRA, the decision was only subject to challenge in court within 30 days. The challenge has since suffered statutory bar, and the court lacks jurisdiction.
 13. The claimants served court documents on 27 March 2025 that were missing pleadings. Contrary to Rules 7 and 8 of the Employment and Labour Relations Court (Procedure) Rules, the claimants did not file a Memorandum of Claim and Verification Affidavit. By implication, there is no suit before the court.



14. There are more than 70 claimants who have filed an incompetent claim on behalf of the union. By dint of section 2(a) of the LRA, the 1st respondent is the sole authorized representative of the union whom the claimants purport to represent without authority under the LRA.
15. The court has no jurisdiction to determine whether allegations of misappropriation of funds or unlawful expenditure are merited under section 41 of the LRA as the first claimant's evidence is a mere bank statement showing credit and debit accounts. Without evidence from an independent expert, the allegations of misappropriation of the union's funds are an act in vain.
16. The 1st respondent asserts that the claimants should have been aware of the role of the 2nd respondent, both in law and under the Labour Institutes Act (LIA), which should have been invoked before initiating this suit. The allegations that the claimants are elected union officials are false. They are made contrary to section 35 of the LIA, which prohibits a person from acting for a trade union if the 2nd respondent has not registered such a person. The extract from the 2nd respondent dated 15 January 2025 only bears the names of the 1st to 5th and 15th claimants. It is therefore unlawful for the 6th to 14th claimants to purport to file a suit on behalf of the union.
17. Under the claim, the 1st respondent is sued in his capacity regarding the union's administrative duties, contrary to section 8 of the LIA. Under section 2 of the LRA, the union's NEC bears the collective responsibility of the union.
18. The 1st respondent avers that he convened the NEC under article 12(3) of *the constitution* on 13 December 2024, which the 4th claimant attended. The 1st to 5th claimants were accused of gross misconduct, and a resolution was passed to suspend them. The claimants have not challenged the NEC decision.
19. The allegations that the first respondent irregularly withdrew Ksh . 5 million from the accounts are false. MCELRC Cause No. E801 of 2024 was genuinely filed for and on behalf of the union due to the claimants' continued interference with its operations, including stopping salary payments to its employees.
20. The letter of the 2nd respondent, dated 8 January 2025, communicated that the 14th claimant's name does not appear in the register. The 14th claimant was not removed from office as alleged. NEC informed the claimants why they were suspended from office, and the 2nd respondent was served with the necessary documents. The 2nd respondent made a lawful inquiry under section 35 of the LRA.
21. The orders sought should not be issued. The union has suffered financial embarrassment on multiple fronts, including from dealers who repaired the detained union bus. There are threats to auction it for failure to pay. The union has defaulted in making statutory payments to KRA, NSSF, SHA, Housing Levy, and other charges. The union has defaulted in making loan repayments through the check-off system for employees.
22. Under article 19(6) of the union constitution, the union can secure loans for any purpose on condition of approval by the relevant organs. The orders sought by the claimants are designed to cripple the union and should thus be dismissed with costs.

The 2nd respondent did not attend.

23. The 1st respondent and the union further filed a Notice of Preliminary Objections dated 2 April 2025 on the grounds:



- a. The claim is filed contrary to the mandatory provisions of Rule 7 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
- b. There is no valid claim before the court, and the proceedings are fatally defective and incapable of being cured by any amendment or otherwise.
- c. The claim should be struck out with costs.

Both parties attended and filed written submissions.

24. The claimants assert that the 1st respondent has violated the union constitution and has withdrawn funds from the union accounts without following proper procedures or obtaining approvals. Section 43 of the LRA stipulates that the union's general secretary must provide annual statements of accounts and expenditures of all monies received by the union. The 1st respondent has not fulfilled this obligation. This serves as the foundation for the grant of the orders sought, which should be issued temporarily pending the hearing and determination of the main claim.
25. The first respondent and the union submitted that the claim is incompetent because it was filed without the authority of the union's authorised representative per section 2 of the LRA. The sixth to fifteenth claimants are not union officials and, as ordinary members, cannot file suit as described.
26. The 1st to 4th and 14th claimants have since been suspended, and the 2nd respondent has approved them. An extract from the 2nd respondent confirms this fact; hence, they cannot act for the union as they purport to in these proceedings. The orders sought in this case should not be issued as they are premised on a fatally defective suit and should be struck out with costs.

Determination

27. The 1st respondent and the union raise questions of law, which the claimants opted not to respond to in their affidavits or written submissions.
28. It is imperative that these objections be addressed before proceeding with the instant application, as they affect the suit.
29. The first respondent and the union question whether the claim was filed contrary to Rule 7 of the Employment and Labour Relations Court (Procedure) Rules (the Court Rules) and object that it is fatally defective and incapable of being amended.
30. Rule 7 of the Court Rules states that when filing a claim, the claimant must abide by the mandatory provisions. In this regard, under Rule 7(3) of the Court Rules:
 - (3) A statement of claim filed under sub-rule (1) shall be accompanied by —
 - (a) an affidavit verifying the correctness of the facts in the statement of claim;
 - (b) a list of witnesses;
 - (c) a witness statement; and
 - (d) a list and copies of the documents relied upon, which shall be chronologically arranged, flagged and paginated.
31. In this case, the claimants filed the suit on 13 March 2025, together with a Notice of Motion of the same date seeking interim orders. There is an Affidavit of Amin Iloti in support. There is a Verifying Affidavit from all the claimants. The List of Witnesses is listed and filed.



32. The claimants are attending court represented by their advocates.
33. The motions of Rule 7 of the Court Rules are met.
34. The first respondent further raises the issue that the suit is fatally defective as the claimant seeks to file the suit on their behalf and that of the union, while they have no authority to act for it. As the general secretary, the first respondent has not given written authority to act.
35. In the Memorandum of Claim filed on 13 March 2025, the claimant identifies as members and elected officials of the Dock Workers Union. Their membership with the union is not disputed. The issue is that the 1st to 5th and 15th claimants have been suspended from office by the NEC with the approval of the 2nd respondent. Furthermore, the 6th to 14th claimants are ordinary union members.
36. The 1st respondent further admits that the 2nd and 3rd claimants are registered as assistant general secretary and national treasurer of the union, respectively. The 6th to 15th claimants are ordinary members of the union.
37. This fact is not contested by the claimants, who are members of the union. Having enjoined the union as an interested party under the Court Rules, the claimants have the liberty to urge their case before the court. The merits of the claim cannot be addressed in the interim.
38. The 1st respondent and the union further contend that the claimant's case relies on the decision of the 2nd respondent to remove them from the register of union officials via the notice dated 15 January 2025. Therefore, under section 35(6), the claim should have been lodged within 30 days, which it was not; consequently, it is time-barred.
39. The claimants have not responded to these submissions.
40. However, the issues in dispute include the suspension of the claimants as elected officials of the union, misappropriation of union funds, violation of article 12(k) of the union constitution, and failure to undertake an audit of the union accounts for the last five years. The remedies sought in the Memorandum of Claim reflect these issues.
41. The only matter that arises from the claimants against the 2nd respondent on the removal from the register is addressed in terms of non-compliance with the union constitution and articles 10 and 47 of *the constitution*, 2010.
42. Thus, to separate claims and have one against the second respondent and the other for the other listed issues would be to engage in unnecessary multiplicity of suit.
43. Although the 2nd respondent is a respondent, there is not attendance or response to urge its case. The 1st respondent and the union attend in their capacity and not for the 2nd respondent.
44. Based on the orders sought, the claimants request conservatory orders restraining the 1st respondent from further use of union funds or taking loans, and only permitting necessary expenses with the approval of the 1st and 3rd claimants.
45. The threshold for granting conservatory orders was outlined in the case of *Peter Gatirau Munya v Kithinji & 2 others* [2014] KESC, where the Supreme Court stated that:

Conservatory orders, unlike interlocutory injunctions, are not connected to private-party issues such as “The prospects of irreparable harm” occurring during the case or “high probability of success” in the applicant’s case for orders of stay. Instead, conservatory orders should be granted based on the inherent



merit of the case, considering the public interest, constitutional values, and other relevant factors such as proportionality and priority levels attributed to the specific causes.

46. At this stage, the court must be satisfied that, on the face of it, the claimants as applicants have a prima facie case that warrants protection from being rendered futile. Equally important, the court must consider the public interest when granting or denying the conservatory order. More fundamentally, overall, the constitutional
47. Guided by the above binding authority, I am required to ensure that, on the face of it, the applicant has Being rendered ineffective. I must also consider whether the public interest supports granting or withholding the Order. Finally, I must assess whether Constitutional values and the rights enshrined in the Bill of Rights would be undermined if conservatory orders are not granted.
48. Established a prima facie case that warrants protection from
In *Okoti v Portside Freight Terminals Limited & 12 others* [2025] KESC 44 (KLR), the Supreme Court of Kenya held that when granting conservatory orders, the court must consider the allegations of contravention of fundamental rights and freedoms under *the Constitution*. These allegations must be relevant to whether to grant or decline the conservatory orders.
49. In this regard, have the claimants raised a prima facie case? Are there allegations of contravention of the rights and freedoms in the Bill of Rights under *the Constitution*?
50. Starting with the last question, the claimants have argued that the respondents' failure to hear them before taking adverse action against them violated their rights under articles 10 and 47 of *the Constitution*. The right to a hearing is sacrosanct under the Bill of Rights in *the Constitution*. These allegations must be addressed on the merits.
51. On the second part, a *prima facie* case was defined by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya* [2003] KECA 175 (KLR) as follows:
I would say that in civil cases it is a case in which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party, as to call for an explanation or rebuttal from the latter.
52. It is not in dispute that the second claimant is the assistant general secretary and the third is the union's national treasurer. More importantly, the 1st, 4th and 5th claimants are the union trustees.
53. In this capacity, these claimants, including the other claimants noted to be ordinary union members, have raised questions about the union's financial status.
54. The position of trustees of the union is protected to the extent that, under section 37 of the LRA, all property of the union vests in them. Section 37(1) requires that:
(1) All property, whether movable or immovable, of a registered trade union, employers' organisation or federation shall vest in its trustees for the use and benefit of the trade union, employers' organisation or federation and its members.
55. Therefore, where the 1st, 4th and 5th claimants raise concerns over the application, use, and benefit of union property, whether movable or immovable, the court must stop all else and address firmly and within the law.
56. The 1st respondent and the union admit that the claimants attend on their behalf and for 70 other claimants. A trade union exists to agitate for the rights of unionisable employees on the shop floor.



Matters between the union and its members affect the shop floor, and the impact spreads to all unionisable employees.

57. The interest thereof goes beyond the claimants.
58. The Supreme Court in *Okoiti v Portside Freight Terminals Limited & 12 others* [2025] KESC 44 (KLR) acknowledges that the general welfare of the public warrants recognition and protection, as the public as a whole has stakes in it.
59. The court finds that granting the conservatory orders sought will uphold constitutional values and fundamental rights in the Bill of Rights, including the claimants' rights to fair labour practices and fair administrative action.
60. Accordingly, the court finds the claimants have an arguable case that may be rendered nugatory if the sought conservatory order is not issued. The court further found that the public interest favours granting the orders sought.
61. The following orders are hereby issued;
 - 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.
 - c. Costs to abide by the outcome of the claim.
 - d. The court shall serve the 2nd respondent with the pleadings herein to allow 14 days' right of response.
 - e. Hearing directions to issue.
 - f. Costs to abide by the outcome of the claim.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 3 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

