



National Union for Water and Sewerage Employees Union v Garissa Water and Sewerage Company Ltd; First Community Bank Garissa Branch & another (Garnishee); Mutuku & 3 others (Interested Parties) (Cause 1162 of 2018) [2024] KEELRC 13223 (KLR) (26 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13223 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1162 OF 2018
NJ ABUODHA, J
NOVEMBER 26, 2024

BETWEEN

NATIONAL UNION FOR WATER AND SEWERAGE EMPLOYEES UNION CLAIMANT

AND

GARISSA WATER AND SEWERAGE COMPANY LTD RESPONDENT

AND

FIRST COMMUNITY BANK GARISSA BRANCH GARNISHEE

COMMERCIAL BANK OF KENYA GARISSA BRANCH GARNISHEE

AND

MARY NDUNGE MUTUKU INTERESTED PARTY

RUFUS OLELA OSOTSI INTERESTED PARTY

PHILEMON OTIENO ATIK INTERESTED PARTY

ANN BURUGU INTERESTED PARTY

RULING

1. By an application dated 5th June, 2024 the applicant sought orders inter alia that:
 - a. That the Honorable Court do issue a Garnishee Order Nisi attaching the Respondent's "Accounts Numbers 29769xxxxx" held at First Community Bank Limited, Garissa Branch and Kenya Commercial Bank Limited Garissa Branch Account Number 11077xxxxx respectively/ or payment of accumulated amount of Kshs. 13,660,701.60/= to the Claimant's Account



number 011202012xxxxx Held at Co-operative Bank Buru Buru Branch Nairobi pending hearing and determination of the application.

- b. That the Honorable Court be pleased to issue a Garnishee Order absolute attaching the accumulated amount of Kshs. 13,660,701.60/= together with Costs and interest at Court rates from the Respondent's _Account Numbers 29769xxxxx" at First Community Bank, Garissa Branch and Kenya Commercial Bank Limited Garissa Branch Account Number 11077xxxxx respectively for payment of accumulated amount of Kshs. 13,660,701.60, 000/= as at May 2024 to the Claimant's Account number 011202012xxxxx held at Co-operative Bank Buru Buru Branch Nairobi being the amount in respect of which an order was given in favor of the Applicant/Claimant herein on 14th February,2019 which amount has not been paid off in full and has accumulated as stated above.
 - c. That the Respondent to be Ordered to remit union dues as and when due in default execution to issue.
2. The application was supported by the Affidavit of one Elijah Otieno Awach who deponed among others that:
- i. That I am the Claimant/Applicant's General Secretary herein therefore competent to swear this affidavit.
 - ii. That on 14th February, 2019 the Honorable court gave the following orders:
 - a. That the Notice of motion dated 11th October 2018 is compromised in the following terms.
 - b. That the Respondent shall liquidate the sum of Kshs 764,822 by way of installments as follows;
 - c. That a sum of Kshs. 300,000.00 be paid on or before 21st February 2019 to the claimant union.
 - d. That A sum of Kshs. 60,000.00 be paid per month on or before 15th March 2019 and 15th day of each succeeding month from March 2019 till payment in full.
 - e. That the Respondent to continue deducting and remitting the monthly union dues when it is due
 - f. That in Default execution to issue.

(Annexed see a copy of the court decree issued on 12/4/2019 and a copy of Union deduction schedule for permanent staff who are our members covering July 2015-July 2020 marked EOA-1).
 - iii. That the Decree of the Court dated 12th April, 2019 was extracted and served on the Respondent for Compliance and Order absolute were issued on 28 August,2020 and on 8th December 2020 respectively. Copies of the Order Absolute issued on 8th December 2020 and 20th December 2021 respectively are annexed as EOA-2.
 - iv. That the Respondent has so far paid off Kshs. 300,000/= in March 2019 and later on paid off Kshs 60,000/=in month of April 2019 leaving a balance of Kshs. 404,000.00 as at April 2019 which amount accumulated to the tune of Kshs. 1,932,000/= as at July 2020 according to additional membership.



- v. That Kshs. 1,932,000/= was executed through garnishee proceedings in December 2020 and a balance of Kshs. 2,000,000/= executed on 11th March 2022 leaving a balance of Kshs. 13,660,701.60/= as at May 2024 for which the respondent has refused and or neglected to pay hence these garnishee proceedings. Copies of the RTGS showing transfers of Kshs.1,932,000/= and Kshs 2,000,000/ dated 17th December 2020 and 11th March 2022 respectively are marked as EOA-3
 - vi. That the Respondent maintains Account Numbers 29769xxxxx at First Community Bank, Garissa Branch with the 1st Garnishee and Kenya Commercial Bank Limited Garissa Branch Account Number 11077xxxxx being 2nd Garnishee respectively and the Respondent is a signatory to the said Bank Accounts in which an amount capable of satisfying decretal sum of Kshs. 13,660,701.60/= as at May 2024 is kept.
 - vii. That the Claimant is an organization with urgent financial needs like payment of salaries and allowances, rent for union Headquarters and union branch offices, union organization and recruitment drive, and loans which the union is unable to meet and is suffering loss and damages since some of the union offices have been locked due to lack of payment of monthly rents and risks being auctioned as a result of the Respondent's action and or inaction. Copies of the Notice from the Registrar of Trade Union dated 31st December 2022 and 13th June 2023 for Annual returns are marked as EOA-4.
 - viii. That to date the money due, owing and payable to the applicant/Claimant union by the Respondent as at May 2024 is the sum of Kshs. 13,660,701.60 /.=.
 - ix. That the Respondent has no reason at all to withhold the Claimant's cash and is just being vindictive since no reason has been advanced by the Respondent to justify why it is withholding the Claimants 'Union dues now amounting to Kshs.13,660,701.60/= despite court Order.
 - x. That the Respondent has been acting with impunity, disobeying court orders and expressing open defiance and the most obvious case in issue is the disobedience of the Court order of 14th February, 2019 and it is only fair and just that this Honorable Court do proceed to issue Garnishee Orders to the Garnishees to facilitate compliance of the Court Order issued against the Respondent.
 - xi. That the non-payment and disobedience of the court order issued on the 14th February 2019 by the Respondent has been done with malice, bad faith, ill intent, ill motive with the major driving factor being to frustrate and is aimed to paralyze the applicant/Claimant operations financially to the extent that the Claimant cannot be able as a result to file annual returns.
 - xii. That the Respondent has refused to pay the aforesaid Union dues despite the Court Order yet the Respondent receives a monthly member's subscription in excess of Kshs.1,000, 000/= and the refusal to pay the Applicant/union the aforesaid union dues is intentional, ill intended, purposeful and not for lack of funds and is inexcusable and unacceptable and amounts to utter disregard to this court's Orders.
3. This application was placed before the Court on 10th July, 2024 and the Court allowed the same and issued interim orders against the 2nd garnishee. The Court however did not make any order against the 1st garnishee in view of the Replying Affidavit filed on 24th June, 2024 which showed that it held no funds on behalf of the Judgment Debtor. The Court eventually discharged the 1st garnishee from the proceedings.



4. By an application dated 1st July, 2024, Mr. Maosa who appeared for the Interested Parties herein sought among others, the discharge of the orders issued by the Court 10th July, 2024. The application was premised among others on the grounds contained in the affidavit of Mary Ndunge Mutuku sworn on 1st July, 2024 in which she stated among others that:
- a. That, I am the 1st Interested Party in this application; hence competent to swear this Affidavit.
 - b. That I have the authority of the other Interested Parties to swear this Affidavit.
 - c. That National Water & Sewerage Employees is the Principal Union in the Water Sector in Kenya.
 - d. That on the 1st of October, 2016, a Form J, on Notice of Change of Name was duly served upon the Registrar of Trade Unions signifying the change of Name from National Union of Water and Sewerage Employees (NUWASE) to Kenya Union of Water and Sewerage Employees (KUWASE). A copy of the said Notice and the entire bundle of Documents are annexed herewith marked "MNM T.
 - e. That, on or about the 18th March, 2020, the Registrar of Trade Unions (E. N Gicheha Mrs) duly published a Notification to the General Public in terms of Forms K and L to the effect that she had issued a Certificate of Change of Name from National Union of Water and Sewerage Employees (NUWASE) had been changed to Kenya Union of Water and Sewerage Employees (KUWASE). A copy of the said certificate of change of name is annexed herewith marked "MNM 2.
 - f. That on a similar date on 18th March, 2020, the said Registrar of Trade Unions equally published a certificate of Alteration of Rules for Kenya Union of Water and Sewerage Employees. A copy of the said Certificate of Alteration of Rules together with the Abstract of the officials of the said Kenya Union of Water and Sewerage Employees as at the 19th February, 2021 is annexed herewith marked TMNM 3".
 - g. That the applicant Elijah Otieno Awach in the Notice of Motion for enforcement of the Garnishee dated 5th June, 2024, is listed in the Abstract of 19- February, 2021 as the National General Secretary of Kenya Union of Water and Sewerage Employees in terms of the annexed marked "MNM 4".
 - h. That the interested parties who are officials of the National Union of Water and Sewerage Employees were aggrieved by the said Change of Name on the part of the Registrar of Trade Unions; and they instituted a Constitutional Petition to challenge the change of name being Petition No. 35 of 202L currently awaiting allocation of a hearing date.
 - i. That in the Notice of Motion dated 5th June, 2024, before the Honourable Court Mr. Elijah Otieno Awach has signed the pleadings as signed the pleadings as the National General Secretary of National Union of Water and Sewerage Employees (NUWASE).
 - j. That as per the current documentation with the Registrar of Trade Unions which office is the Depository of Trade Unions; National Union of Water and Sewerage Employees (NUWASE) is defunct: save for the pending Petition to reverse and/or declare the said change of Name as null and void.
 - k. That in the circumstances, the said Mr. Elijah Otieno Awach, is guilty of Non-Disclosure of Material facts to the Honourable Court that National Union of Water and Sewerage



Employees is defunct and therefore, cannot transact by having a bank account and execution of court papers.

5. Further by a Motion dated 2nd October, 2024, Mr. Duwane for the Respondent sought in the main that the Court sets aside the orders issued on 24th September, 2024 and further that the Court sets aside the orders issued on 11th (sic) July, 2024 pending the hearing and determination of the application. The application was supported by the affidavit of Mohamed Dolal who deponed among others that:
- a. That I am the Manager of the Applicant herein and therefore competent and duly authorized to swear this affidavit on behalf of the Applicant.
 - b. That The Applicant's (GAWASCO) Operational utility account held at Kenya Commercial Bank, Account No. 11077xxxxx . was frozen to the extent of KES.13,660,701.00/- through a garnishee nisi order dated 11th July 2024. Despite the Applicant's efforts to set aside the said orders, the Honourable Court, on 24th September 2024, further affirmed that the Applicant's operational account shall remain frozen to the extent of KES.13,660,701.00/=/. This has crippled the Applicant's ability to perform its statutory functions, (herewith attached is a copy of the Court dated 24th September, 2024 marked as MD-1)
 - c. That I wish to state that the Honourable Court failed to acknowledge that the Garnishee Order nisi dated 11th July 2024 was obtained through fraudulent means and misrepresentation of facts, as there is no valid decree or judgment from this Court in respect of the amount of KES 13,660,701.00/= upon which the nisi order could be anchored, (herewith attached are copies of the Court decree order dated 12th April, 2019 and 17th July, 2018 marked as MD-2A& B)
 - d. That I wish to affirm that the undisputed fact remains that, the Claimant apart from filing their application dated 5th June, 2024 seeking the attachment of the Applicant's account, which led to the issuance of the Garnishee Order nisi dated 11th July 2024 by Honourable Justice J.N, Abuodha, the Claimant has failed to demonstrate how they arrived at the claim of KES 13,660,701.00/= . This amount, upon which the garnishee nisi order was anchored, has not been substantiated.
 - e. That in the application dated 5th, June, 2024, the Claimant has failed to demonstrate how the original decree of KES 764,822 escalated into a claim of KES 13 million. The Claimant's inability to clearly explain or substantiate this significant discrepancy is evident throughout their application, particularly in paragraphs 2, 3, 4, 5, and 6 of the supporting affidavit sworn by Elijah Otieno Awach in support of the Claimant's application dated 5th June 2024. Their continued failure to provide any reasonable basis or supporting evidence for the inflated amount clearly indicates that the said orders were obtained through fraudulent misrepresentation of facts herewith attached is a copy of Claimant's Application dated 5th June, 2024 marked as MD-3)
 - f. That the Applicant (GAWASCO) was previously engaged in a legal dispute, ELRC CAUSE NO. 1162 of 2018, with the National Union of Water and Sewerage Employees. This dispute led the parties to reach a compromise, culminating in a consent recorded before the Honourable Justice Abuodha J. N on 14th February 2019, pertaining to the amount of Kenya Shillings Seven Hundred and Sixty Four Thousand Eight Hundred and Twenty-Two (Kshs. 764,822).
 - g. That it is important to note that there is no decree in place to be executed against as the applicant herein has fully settled the decree and evidence of the same has been provided herein.



The Applicant has fully complied with this decree, and all payments have been settled in full. The aforementioned consent pertained solely to the aforesaid specified amount and did not affect any other alleged amounts. Furthermore, the consent reached between the parties did not suspend the standard mode of attachment against county government assets.

- h. That despite the satisfaction of the aforesaid decree/consent, imposters bearing the names Elijah Awach & Nelson Othoo who purports to act for the union, in furtherance of their illegality and without any rightful basis, has filed a garnishee application dated 5th June 2024 against Applicant. They are seeking attachment of Kshs. Thirteen Million Six Hundred and Sixty Thousand Seven Hundred and One (Kshs. 13,660,701.00) for reasons known only to them, through what appears to be a mastery of fraudulently means, misrepresentation of facts and material non-disclosure.
- i. That Furthermore, the another faction /officials of the National Union of Water and Sewerage Employees filed an application opposing the choreographed and brazen act of fraud, perpetuated by a group of fraudster purporting to litigate as the officials the National Union of water and Sewerage Employees Union through misrepresented several facts, non-disclosure of material facts to facilitate their unauthorized illegal garnishee process against the Applicant, (herewith attached is a copy of the Application dated 16th July, 2024 marked as MD-5).
- j. That Due to the wrongful attachment of the Applicant's funds held in the following accounts: A/c No. 11077xxxxx at Kenya Commercial Bank (KCB) and A/c No. 29769xxxxx at First Community Bank under false pretences, which has severely impaired the Applicant's ability to meet its statutory obligations.

Claimant'/Applicant's Submissions

6. Mr. Othoo for the applicants submitted in the main that the respondents had not demonstrated grounds to warrant the setting aside of the order nisi. The respondent did not mention whether there was non-disclosure of material facts. Concealment of material documents or misrepresentation. Mr. Othoo further submitted that the applicant failed to show that the consent was entered into irregularly.
7. According to Mr. Othoo, the claimant flagged the respondent's account number 11077xxxxx for garnishee on 22nd August, 2024 and the respondent and garnishee continued to operate the account from 14th July, 2024 when the garnishee order was served with order nisi to 22nd August, 2024 when the account was attached. Further the respondent was served with garnishee application dated 5th June, 2024 but chose not to attend Court. The respondent could not therefore describe the order nisi as ex-parte yet they failed to attend court. No reason had been advance by the respondent for not attending court. The respondent further failed to demonstrate that they were never served.
8. It was Mr. Othoo's further contention that the respondent was a party to the consent from which the decree it was now challenging was issued. The decree has never been appealed neither has the respondent sought to have it set aside or reviewed.
9. Mr. Duwane for the respondent submitted in the main that the respondent was a public body that served essential service of water to the people of Garissa County and the issuance of garnishee orders has made it impossible for the respondent to perform its functions causing great damage to the public in Garissa County. According to Counsel, the orders were issued by way of material non-disclosure and misrepresentation as the claimant sought to satisfy a decree which had been fully settled.
10. Counsel further submitted that the respondent was a public corporation established under Garissa County Water Management [Act No. 18 of 2018](#) and is protected under section 21 of the [Government](#)



Proceedings Act. The respondent further submitted that the garnishee application was incompetent since taxation of the Bill of Costs had not been done in accordance with section 94 of the Civil Procedure Act. According to Counsel, a garnishee order once served operates as an injunction. It prevents the garnishee from paying money to its customer until the order is made absolute or discharged.

11. According to the respondent, the satisfaction of any decree against the National or County Government should be obtained through a certificate containing particulars of the decree issued by the Court and served on the Attorney General as required by section 21(2), (2), (3) and (5) of the Government Proceedings Act.
12. The main issue being around the garnishee order nisi issued on 10th July, 2024 and whether the same should be made absolute or discharged, the Court directed parties to file submissions urging their respective positions. Counsel submitted that an interlocutory order that has been obtained through misrepresentation or concealment of material facts will on the application of the person aggrieved, be set aside or discharged. In that regard Counsel relied on the case of Edward Karanja Ragui -vs- Barclays Bank of Kenya Ltd [2002] eKLR.
13. Mr. Maosa for the Interested Party on the other hand submitted that the two parties Elijah Awach and Nelson Othoo who were professing to be the agents of the claimant were fraudsters out to extort money by compromising the pending matters using the name of the claimant. According to counsel, there was a pending suit being ELRC Petition No. 35 of 2021 in which the illegal and questionable change of the claimant's name by the Registrar is being contested. According to Counsel, the Petition concerned the fact that as per the records of the Registrar of Trade Unions, the name "National Union of Water and Sewerage Employees (NUWASE) does not exist to warrant being used in the execution of the garnishee orders.
14. The bona fide officials of NUWASE being the interested parties have challenged the said change of name which was done at the behest of the Registrar of Trade Unions. Counsel therefore submitted that the if the garnishee proceeds are released to the purported office bearers of a defunct union, chances of recovering the said huge funds will be minimal and innocent contributors would suffer detriment. Further, NUWASE was defunct by 14th February, 2019 and therefore could not open and operate a bank account.

Determination

15. Pursuant to an application dated 9th July, 2018, Hon. Justice Byrum On'gaya on 17th July, 2018 upon being satisfied that the respondents was served entered interlocutory judgment for Kshs. 764, 822/- which was owing to the claimant/union as union dues from June, 2017 to June 2018. The learned Judge further directed the respondent to continue deducting and submitting the same to the claimant when it is due through account No. 011202012xxxxx Co-operative Bank of Kenya Buru Buru held in the name of the Union. It would appear the respondent did not obey the Court Order prompting the Claimant to file an application dated 11th October, 2018 seeking to summon the respondent's Managing Director and the Finance Manager Messrs. Yusuf Mohammed Ibrahim and Yusuf Bare respectively to appear before the Court and show cause why they should not be committed to civil jail for having disobeyed the Court Order issued on 18th July, 2018. The application was ordered served for inter partes hearing on 25th October, 2018. It is not clear what happened in between but by a consent note signed by both parties and filed on 14th February, 2019, the parties herein entered into a consent in which the respondent agreed to liquidate the sum of Kshs. 764,822/- in instalments of Kshs. 300,000/- on or before 21st February, 2019, a sum of Kshs. 60,000/- per month on or before 15th March, 2019



- and thereafter on 15th day of each succeeding month until payment in full. The respondent further undertook to deduct and remit the monthly union dues when it was due and in default execution was to issue (emphasis mine).
16. Following the above consent, the claimant extracted a decree on 12th April, 2019 which in effect captured the terms of the consent between the parties. It would appear the respondent did not honour the consent hence the decree, prompting the claimant (now decree-holder) to file an application dated 27th August, 2020 seeking a garnishee order nisi in respect of respondent's Account number 297698290 held at First Community Bank, Garissa Branch for payment of Kshs. 1,932,000/- pending hearing and determination of the application. The claimant further sought the making of the order absolute with interest at Court rates and an order that the respondent continue to deduct and remit monthly union dues which amount had not been paid in full. To the application the claimant attached a schedule showing the outstanding union dues which then stood at Kshs.1,040,483/-.
 17. This application was heard inter partes and on 1st December, 2020, Lady Justice Mbaru rendered her ruling thereon and stated among others that "...Accordingly the Order Nisi is hereby declared absolute and the following orders issued:
 - i. The claimant shall forthwith be paid from deposits held by the garnishee in the attached account to the credit of the respondent, judgment debtor, namely Kshs. 1,932,000 from account No. 297698290 Garissa Branch;
 - ii. (.....not relevant....)
 18. A formal order based on the above ruling was extracted on 1st December, 2020 (same day). Apparently no payment was made immediately and once again the claimant moved the Court and had summoned the respondent's Managing Director and the Finance Manager Messrs. Yusuf Mohammed Ibrahim and Yusuf Bare respectively summoned to appear before it on 22nd December, 2020 to show cause why they should not be committed to civil jail for having disobeyed the Court Order issued on 11th December, 2020. This appearance was averted when the respondent paid the sum of Kshs. 1,932,000/-. The parties were ordered to engage and serve [sic] the ongoing balances and due from 1st December, 2020.
 19. It would seem that once again the respondent did not honour their side of the bargain by paying the balance of the union dues if any, to the claimant and also continuing to deduct and remitting the union dues to the claimant's designated account as initially ordered by the Court. I say so because by yet another application dated 10th August, 2021, the claimant once again sought a garnishee order against the respondent's Account number 297698290 held at First Community Bank, Garissa Branch for payment of Kshs. 2,000,000/- being outstanding union dues covering the period August 2020 to July, 2021 which remained outstanding when the respondent paid Kshs. 1,932,000/-. This application was allowed ex parte by Lady Justice Monica Mbaru who issued garnishee order nisi on 15th November, 2021 which was later made absolute on 20th December, 2021.
 20. It is important to note that throughout the events including the Court processes adumbrated to above, the respondent did not question the legality of the various orders made by the Court. No application is found on record seeking merit review of the legality of these orders or an appeal against them. Further the respondent has not credibly denied or produced any rebuttal against the sums claimed by the claimant. Apart from broadly wondering how the amount, the subject of the garnishee proceedings was arrived at, they did not present before the Court critical factual evidence to the contrary to back their position. This Court being of coordinate jurisdiction cannot sit on appeal against orders issued by my colleagues in the exercise of their judicial discretion.



21. The Interested Parties on the other hand have alleged that NUWASE ceased to exist when its name was changed to Kenya Union of Water and Sewerage Employees (KUWASE). By a letter dated 18th March, 2020 attached to the replying affidavit of one Elijah Otieno Awach sworn on 3rd September, 2024 in response to the application dated 1st July, 2024 by the Interested Parties herein, the Registrar of Trade Unions acknowledged the change of the Unions name from NUWASE to KUWASE and accordingly issued a certificate reflecting the change.
22. Section 27(1) and (8) of the [Labour Relations Act](#) provides in material part that:
- 27 (1) A trade union, employers’ organisation or federation may resolve to—
- (a) change or replace its constitution; or
 - (b) change its name.
- (8) A change in the name of a trade union, employers’ organisation or federation does not—
- (a) affect any right or obligation of that trade union, employers’ organisation or federation;
 - (b) render defective any legal proceedings by or against it and any proceeding instituted under the former name may be continued or commenced by or against it under the new name.
23. The above implies that a Union may resolve to change its name as happened here and further the fact a Union has changed its name has no effect on any right or obligation of that trade union, employers’ organisation or federation and further does not render defective any legal proceedings by or against it and any proceeding instituted under the former name may be continued or commenced by or against it under the new name.
24. Therefore the contention that because the decree herein was issued in favour of NUWASE which has since been replaced by KUWASE, cannot be enforced by the latter is flawed. KUWASE remains a successor in title to NUWASE and has the locus standi to enforce any rights that accrued to NUWASE and is equally bound by any obligations against it.
25. The Court albeit guardedly, notes that section 27 of the [Labour Relations Act](#) is quite elaborate on the procedure to be followed if there is any objection to change of name or constitution. There were allegations that that a petition being ELRC Petition No. 35 of 2021 challenging the change of the Union’s name has been lodged by the Interested Parties before this Court (Manani J), however no such proceedings were exhibited before me to appreciate the nature and purport of the Petition. I comment no more.
26. The matter herein involves arrears of Union dues deducted from unionisable employees as per the operative CBA but not remitted to the claimant union as per provisions section 48(2) read together with section 50 of the [Labour Relations Act](#). The right to join or not join a trade union is a fundamental labour right recognised by ILO Convention No. 87 on Freedom of Association and Collective Bargaining and Convention 98 on the Right to Organise and Collective Bargaining Convention. This right is further protected under article 41 of our national Constitution as one of the fundamental labour relations rights. The actions by the respondent of collecting union dues from employees and failing to remit the same to the claimant does not fall short of unfair labour practise whose sole intention is to cripple or weaken the claimant union financially and make it ineffective in representing its members. This Court cannot countenance such unconstitutional behaviour and will not hesitate to nip the same in the bud.



27. I have taken time to review and consider the history of this matter starting with the initial order issued by my brother Justice Byrum Ong'aya way back on 17th July, 2018 and subsequent orders issued by my sister Lady Justice Mbaru particularly the garnishee orders and I am persuaded that the respondent is the sort of party to a litigation that has no reputation of obeying the orders of this Court unless coerced. I would therefore not hesitate to declare the garnishee order issued on 10th July, 2024 absolute and further direct as has been done on more than one occasion by my colleagues who have handled this matter that the respondent do continue to deduct and remit the monthly union dues in accordance with section 50 of the *Labour Relations Act*.
28. As I conclude, I would like to state that smooth industrial relations is not only good for the workplace but necessary for industrial peace and economic growth. Close cooperation between the unions as workers representatives and the employer is therefore a critical element of good industrial relations and ought to be engendered. The Court therefore took the extra-ordinary step of fast tracking this ruling in view of the several applications and counter-application that were being filed by the parties herein thereby convoluting the issues in dispute. It is my hope that I have done my competent best and any party aggrieved by my decision may consider escalating the same to the next echelon of our judicial hierarchy and not revert to me on the same issues I have endeavoured to comprehensively deal with in this ruling.

Disposition

- i. Garnishee order issued on 10th July, 2024 is hereby made absolute with the consequence that the funds so garnished be forthwith released by the garnishee to the Claimant/Decree-holder.
- ii. The respondent do continue to deduct and remit to the claimant-union's designated account, the monthly union dues in accordance with section 50 of the *Labour Relations Act*.
- iii. In view of the nature of this matter being an industrial relations issue, the Court makes no order as to costs to preserve the relationship.

DATED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2024

DELIVERED VIRTUALLY THIS 26TH DAY OF NOVEMBER, 2024

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

