



**Republic v Cooperative Bank of Kenya Limited & 2 others; Kenya Union
of Water and Sewage Employees (Exparte Applicant) (Judicial Review
E017 of 2023) [2023] KEELRC 1880 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1880 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW E017 OF 2023
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

COOPERATIVE BANK OF KENYA LIMITED 1ST RESPONDENT

BASHIR AHMED MOHAMED 2ND RESPONDENT

CENTRAL BANK OF KENYA LIMITED 3RD RESPONDENT

AND

**KENYA UNION OF WATER AND SEWAGE EMPLOYEES EXPARTE
APPLICANT**

JUDGMENT

1. The applicant trade union for judicial review orders filed the application for leave to commence these proceedings on 12.05.2023 through its General Secretary Elijah Otieno Awach. Upon hearing the application for leave, the court granted the leave to commence the motion for judicial review application. The notice of motion was filed on 15.05.2023. The applicant made prayers for orders:
 - a. An order of certiorari does issue to bring into this court and quash the decision of the 1st respondent dated 03.05.2023 flagging or freezing the applicant’s bank account number 01120201219200 held at the Cooperative Bank of Kenya Buruburu Branch.
 - b. An order of prohibition to issue restraining the 1st respondent and or servants and or employees from continuing and or proceeding with flagging or freezing the applicant’s gazetted bank account number 01120201219200 held at the Co-operative Bank of Kenya Buruburu Branch.



- c. An order of mandamus to compel the 1st respondent and or its agents and or servants to permit and or allow the applicant union to operate its bank account number 01120201219200 held at Co-operative Bank of Kenya Buruburu Branch.
2. The application is based on the grounds stated in its body, the statutory statement on record and the verifying affidavit sworn on 12.05.2023 by Elijah Otieno Awach together with the attached exhibits.
 3. The 1st respondent has opposed the application by filing the replying affidavit of Jackson Oire, the 1st respondent's legal officer sworn on 26.05.2023 together with the attached exhibits.
 4. The 2nd respondent filed his replying affidavit sworn on 12.06.2023 opposing the application.
 5. The applicant states that the union is a registered trade union with membership of 3,000 members. The Union's last elections were held in the year 2021 when its current officials were elected.
 6. The union holds its gazetted bank account number 0112020219200 with the 1st respondent, wherein sums belonging to the union members are held. The union runs its affairs including payment of salaries and allowances to its employees and officials, paying office rent, recruitment of members, training amongst other costs, from said bank account.
 7. On 26.04.2023 the applicant's general secretary issued cheque number 000580 for the sum of Kshs.24,000/= to one of the applicant's staff Mr. Julius Amba Otieno, who on presenting the cheque at the bank, was informed that that the bank account had been flagged, and that there was a change in the specimen signature of the 2nd respondent, the union's National Chairman.
 8. The applicant's General Secretary went to the bank and met with the 1st respondent's legal officer, who gave him a letter confirming the change of the specimen signature. He then left the bank and headed back to the office of the applicant, and informed its members of these events and the effect it would have on their salaries. The members were disappointed, given that they had secondary school going students who were expected to return to school on 10.05.2023.
 9. The applicant states that the decision by the 1st respondent was drastic, had the effect of grounding the union operations, and was detrimental to the members and employees of the union who had not been paid salaries from January 2023 on account of orders granted by the court on 18.01.2023 in Miscellaneous Application number E152 of 2023 but which orders were vacated on 13.03.2023.
 10. It is the applicant's case that the 1st respondent condemned the applicant unheard, and as a result violated the applicant's right to a fair hearing as enshrined under article 50 of [the Constitution](#) and the rules of natural justice.
 11. That the change of specimen signature of the 2nd respondent was made without material disclosure, and, that the 1st respondent did not have the authority to freeze the account of the applicant without a resolution by the applicant's National Executive Committee, presented to the Bank by the General Secretary.
 12. That the applicant's general secretary was not informed of the change of specimen signature until the cheque was dishonoured on 26.04.2023. The applicant's bank account is a cooperate account governed by the applicant's constitution and rules, and that the 1st respondent erred in making changes to the account without adhering to it.
 13. On the part of the 1st respondent it is stated that the bank is guided by the Cooperative Banking Account General Terms and Conditions, in performing its duties.



14. That on or about 14.03.2023 the 1st respondent received a letter from the applicant's acting Secretary General, George Olwalo, requesting for a change in signatories to the disputed bank account, citing resolutions of the National Executive Council meeting passed on 11.03.2023.
15. In reply, the 1st respondent wrote to the union declining the request and asked the union to furnish it with a letter from the Registrar of Trade Unions approving the change of signatories.
16. On 15.03.2023 the 1st respondent received a letter from the applicant's treasurer, Walter Muga, disputing the purported National Executive Council meeting held on 11.03.2023 allegedly convened by George Olwalo and the resolutions passed thereunder.
17. On 31.03.2023 the 1st respondent received another letter from George Olwalo instructing the bank to change the signatories to the account following the resolutions that were passed at the National Executive Council meeting held on 11.03.2023 arguing that the consent of the Registrar of Trade Unions was not required as long as due procedure had been followed in appointing the signatories.
18. On 03.04.2023 the 2nd respondent wrote to the 1st respondent and requested for a change of his signature specimen. The 1st respondent acted on this request, on the basis that it has no duty to decline a request to amend the signature specimen of a bank customer, whether the account held is an individual account or a group account.
19. It is the 1st respondent's case that there was a lot of uncertainty as to the leadership of the applicant union, with part of its leadership claiming that there had been a National Executive Council meeting held on 11.03.2023 while the other leaders disputed the same. As a result, there was confusion as to who was the Secretary General between George Olwalo and Elijah Awach and based on this, and relying on clause 1.22 of the Cooperative Banking Account General Terms and Conditions, the 1st respondent was convinced that it had a duty to secure the disputed bank account from unauthorized access.
20. The 1st respondent made the decision to temporarily flag the account against any withdrawals pending the resolution of the dispute regarding the bona fide signatories of the account, and the decision freezing the account was communicated to the applicant union through the letter dated 26.04.2023.
21. On 26.04.2023 the 1st respondent received a letter from Elijah Awach claiming that the union was not aware of the change of signature specimen and further requesting for copies of the letter from the 2nd respondent giving instructions to the bank regarding his change of signature. The 1st respondent replied vide its letter of 03.05.2023 and confirmed having received a letter from the 2nd respondent requesting to update his specimen signature, but declined to avail to the union the change of signature request form, since it was a confidential bank document.
22. The 1st respondent maintains that the decision to freeze the account was not taken whimsically or unreasonably but prudentially to protect the account from unauthorized access.
23. On the part of the 2nd respondent it is argued that Elijah Otieno Awach was suspended from holding the position of General Secretary, and that George Olwalo was appointed as general secretary in acting capacity. That the circumstances leading to the replacement of Mr Awach were preceded by a criminal case no E162 of 2023 wherein he was charged with forgery of signatures of union officials and wanton withdrawals of money.
24. That Elijah Otieno Awach has been irregularly directing union members to divert monies into separate accounts. The 2nd respondent maintains that the union does not at the moment have any salary obligations to any of its members, nor does it have any rental arrears.



25. The 2nd respondent urged the Court not to allow the prayers prayed for by Elijah Otieno Awach in the instant proceedings for reasons that he is not acting in the best interest of the union, and, that the 1st respondent is justified in protecting the finances of the union. That the court should enforce the court order dated 17.03.2023 barring Otieno Awach from taking part in the affairs of the union and to allow the acting General Secretary to be made a signatory of the unions account, so as to settle all the financial obligations of the union.
26. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
27. To answer the 1st issue, the material on record show that the officials of the applicant union are in dispute about the valid officials of the union and the valid signatories to the union's bank account held at the 1st respondent's Buruburu Branch. The 1st respondent has no authority to resolve that dispute but within its obligations as a bank is required to act prudently by protecting the deposits credited in the account until the dispute at hand is resolved. The 1st respondent has established that the freeze of the applicant's account is consistent with clause 1.22 of the Co-operative Banking Account General Terms and Conditions thus, "The Bank may at any time freeze the account of the customer if and so long as there is any dispute or the bank has doubt for any reason (whether or not well founded) as the person or persons entitled to operate the same, without any obligation to institute inter pleader proceedings or to take any step of its own initiative for the determination of such dispute or doubt." By the letter dated 26.04.2023 addressed to General Secretary, the 1st respondent notified the applicant about suspension of the account thus, "...due to the dispute regarding the change of signatories, the bank has temporarily flagged the account against any withdrawals pending resolution. The 1st respondent has shown that the notification was per clause 3.5 of the Consumer Guide for Bankers in Kenya thus, "Unless there are exceptional circumstances, a bank should not suspend or close an account without giving notice to the account signatory at least fourteen (14) days' notice. However, if the bank is required to freeze the account with statutory requirements or legal obligation, a post freeze notice should be given of the customer promptly." It is the 1st respondent's case that the post-freeze notice was given to the applicant promptly. The Court therefore returns that the 1st respondent has discharged its obligations as a bank per prevailing bank's regulatory provisions so that the applicant cannot fault the bank at all. As submitted for the bank, it is a neutral party to the dispute involving the applicant's officials and bank signatories and it cannot be validly sued for executing its mandate.
28. To answer the 2nd issue, the Court returns that there is no justification to issue the three judicial review orders of mandamus, certiorari, and prohibition as prayed for because the applicant has not shown that the dispute about the authorised signatories and leading to the freezing or flagging of the account has not been resolved. The replying affidavit of the 2nd respondent confirms that Elijah Otieno Awach's status as General Secretary is subject of the applicant's disciplinary process and is as well subject of criminal proceedings in Milimani Criminal Case No. E162 of 2023 in a charge of forgery contrary to section 345 as read with section 349 of the penal code and whose particulars are thus, "Elijah Otieno Awach on 12.02.2021 at Nairobi within the Republic of Kenya with intent to defraud, forged a signature on National Executive Committee minutes purporting it to have been signed by Ahmed Bashir Mohammed.
29. The Court considers that Elijah Otieno Awach camouflaged as the named trade union whereas he was moving as an individual to file the application. The Court considers that he should personally meet the costs of the proceedings and not the named trade union applicant.

In conclusion the application herein is hereby dismissed with orders the said Elijah Otieno Awach to personally meet the costs of the proceedings herein for the 1st and 2nd respondents.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 04TH AUGUST, 2023.**

BYRAM ONGAYA

PRINCIPAL JUDGE

