



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 50 OF 2018**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA NATIONAL UNION OF NURSES.....CLAIMANT**

*VERSUS*

**ECO BANK KENYA LIMITED.....1<sup>ST</sup> RESPONDENT**

**KENYA COMMERCIAL BANK GROUP LIMITED.....2<sup>ND</sup> RESPONDENT**

**THE REGISTRAR OF TRADE UNIONS.....3<sup>RD</sup> RESPONDENT**

**SIMON KIBII.....4<sup>TH</sup> RESPONDENT**

**JOHN BIIY.....5<sup>TH</sup> RESPONDENT**

**LUCY TANUI.....6<sup>TH</sup> RESPONDENT**

**ALINCE YAHUMA.....7<sup>TH</sup> RESPONDENT**

**GRACE KINYANJUI MUTHONI.....8<sup>TH</sup> RESPONDENT**

**ALI GABOW ABDULAHI.....9<sup>TH</sup> RESPONDENT**

**JUDGMENT**

The Claimant herein a duly registered Trade Union whose mandate is to represent the interests of the nurses on matters employment and labour relations pursuant to the Labour Relations Act, No. 14 of 2007.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are financial institutions offering banking executorship and trust business within the meaning and regulations of the Banking Act, duly authorised to perform such functions.

The 3<sup>rd</sup> Respondent is the Registrar of Trade Unions operating within the parent Ministry of East Africa Community, Labour and Social Protection.

The 4 to 7<sup>th</sup> Respondents are employees of Uasin Gishu Public Service Board and are all serving in the designation of nurse save for the 5<sup>th</sup> Respondent who has since been dismissed by the said board.

The 8<sup>th</sup> Respondent is an employee of Lamu County Public Service Board, serving in the designation of a nurse and the 9<sup>th</sup> Respondent is a former employee of the said Lamu County Public Service Board, who has since retired from service since December, 2015.

In its Claim the Claimant union contends that there has been fraudulent diversion and use of union funds into ungazetted and unauthorized Bank Accounts being account numbers 0073205026433901 and 1177568497 held at the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's Banks respectively.

The Claimant contends that it operates two accounts one being the gazetted account and the other being the authorized account where all monies received from the remittances from its members are remitted in accordance with Section 39 of the Labour Relations Act.

The Claimant further contends that contrary to the provisions of Part VI Section 48 (1), (2) and (3) of the Labour Relations Act No. 14 of 2007 the 4<sup>th</sup> to 7<sup>th</sup> Respondent caused the opening of an account with the 1<sup>st</sup> Respondent Bank being Account No. 0073205026433901, Eldoret Branch and proceeded to receive remittances of union dues deducted from members of the Claimant union from 18 counties.

The Claimant avers that it further discovered the existence of yet another improper, unlawful and unconstitutional Bank Account held at the 2<sup>nd</sup> Respondent Bank being account number 1177568497 at its Lamu Branch with the 8<sup>th</sup> and 9<sup>th</sup> Respondents being signatories thereto. It is further contended that this act is contrary to the provisions of Part VI Section 48(1), (2) and (3) of the Labour Relations Act No. 14 of 2007.

The Claimant further avers that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents actions

are in breach of Section 48(2)(a-b) (i) and (ii) of the Labour Relations Act as they have colluded with strangers and entertained unlawful accounts whose aim was to defraud the Claimant union of its dues.

The Claimant maintains that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are in breach of the Constitution and in particular Article 41 of the Constitution.

In its Amended Memorandum of Claim the Claimant Union seeks the following reliefs:-

1. That this Court be pleased to issue an Order of Permanent closure of the Bank Account No. 0073205026433901 in the 1<sup>st</sup> Respondent's Eldoret Branch bearing the 4<sup>th</sup> to 7<sup>th</sup> Respondents as signatories and transfer all the funds therein to the Claimant's Gazetted bank Account whose details are:-

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

2. That this Court be pleased to issue an Order of Permanent closure of the Bank Account No. 1177568497 in the 2<sup>nd</sup> Respondent's Lamu Branch bearing the 8<sup>th</sup> and 9<sup>th</sup> Respondents as signatories and transfer all the funds therein to the Claimant's Gazetted bank Account whose details are:-

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

3. That this Court be pleased to quash the instruments used in opening Bank Account No. 007320526433901 being operated in the 1<sup>st</sup> Respondent's Eldoret Branch and Account No. 1177568497 being operated by the 2<sup>nd</sup> Respondent's Lamu Branch.

4. That this Court be pleased to issue an Order directing the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents to jointly pay ALL FUNDS transacted in the Bank Account No. 0073205026433901 from the time of its opening, the same that amounts to Kshs.9,686,463.15 with interest at Court rate into the Claimant's Gazetted bank Account whose details are:

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

5. That this Court be pleased to issue an Order directing the 2<sup>nd</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents to jointly pay ALL FUNDS transacted in the Bank Account No. 1177568497 from the time of its opening, the same amounts to Kshs.840,000 with interest at Court rate into the Claimant's Gazetted bank account whose details are:

Kenya National Union of Nurses

Bank; Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account No 202776507

6. That this court be pleased to issue an Order directing the relevant criminal investigation department to commence forthwith criminal investigations into the operations of the two accounts herein and the Employers who are fraudulently diverting the Union dues to these two accounts.

7. That this court be pleased to issue an Order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to immediately transfer ALL MONIES in possession into the Claimant's Gazetted Bank Account or Authorized Account as specified below:

Kenya National Union of Nurses Bank;

Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account Number No. 20277G5079.

OR

Bank; Co-Operative Bank Branch; Aga Khan Walk.

Account Number; 0112030951520

8. That, this Court issue an order directing any employer who may have channelled the union dues into the two accounts in the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to pay the Claimant from its own kitty all sums of monies owed to the Claimant as union dues which the culprit employers has diverted into these two unauthorized and fraudulent accounts after deductions the members' wages as provided for under Sec. 19(6) of The Employment Act, 2007 Laws of Kenya and to continue in remittance of the said dues to the Claimant's Bank Accounts in prayer no 4 above.

9. That this court be pleased to order any persons, firm corporate, individual employer or agent of any employer who by virtue of choice, association and knowledge necessitated the fraudulent transaction of the Bank Account No. 0073205026433901 being operated in the 1<sup>st</sup> Respondent's Eldoret Branch and Bank Account No. 1177568497 in the 2<sup>nd</sup> Respondent's Lamu Branch to pay the Claimant compensation for economic damages at court rate and discretion.

10. That this Court be pleased to grant such orders or relief as it deems fit and just in the circumstances.

11. That the cost of this suit be borne by the Respondents.

The firm of M'Njau and Mageto on behalf of the 4<sup>th</sup> to 7<sup>th</sup> Respondents filed a Memorandum of Response and Counter Claim on 29<sup>th</sup> May, 2018, in which they aver that the Bank Account No. 0112030951520 held at Co-operative Bank Aga Khan Walk Branch Nairobi that is referred to by the Claimant union as the authorized bank account is actually an illegal and unauthorized bank account as the same was opened and continues to operate without gazettement and is being used to siphon monies belonging to members of the union.

The 4<sup>th</sup> to 7<sup>th</sup> Respondents further contend that contrary to the Claimant's assertion the Bank Account No. 0073205026433901 held at the 1<sup>st</sup> Respondent's Eldoret Branch is proper, lawful and constitutional as it was opened and operated in accordance with the union Constitution Chapter XI (2) and that they (the 4<sup>th</sup> to 7<sup>th</sup> Respondents) are the rightful signatories to the said account.

The 4<sup>th</sup> to 7<sup>th</sup> Respondents further contend that the Claimant through its Secretary General has been operating an illegal bank account being account number 01120309515209 at Co-operative Bank Aga Khan Walk which is being used to siphon funds from members of the union in clear violation as confirmed from the Ministry of Labour, Social Security and Services Department of Labour that the same was not gazetted as required by law.

The 4<sup>th</sup> to 7<sup>th</sup> Respondents sought for Judgment as against the Claimant in terms of the following reliefs:

1. An Order directing that the Account No. 0112030951520 held at Cooperative Bank Aga Khan Walk Branch which is unauthorised and illegal be permanently closed.
2. Costs and interest of the Counter Claim at Court rates.
3. Any other reliefs which this Court deems fit and just to grant.

The 4<sup>th</sup> to 7<sup>th</sup> Respondent urged this Court to dismiss the instant Claim with costs and enter judgment in its favour in terms of the reliefs sought in their counterclaim.

The 2<sup>nd</sup> Respondent on the other hand filed its Statement of Defence on 11<sup>th</sup> June, 2018 in which it admits having opened a joint account No. 1177568497 at their Lamu Branch on 29<sup>th</sup> December, 2015 with the 8<sup>th</sup> and 9<sup>th</sup> Respondents as its beneficiaries and/or signatories thereto following receipt of a request from the said 8<sup>th</sup> and 9<sup>th</sup> Respondent and duly filed, signed and executed account opening forms presented to the 2<sup>nd</sup> Respondent.

The 2<sup>nd</sup> Respondent contends that it at all times carries out its financial obligations in accordance with the law and has never at any point conspired with the 8<sup>th</sup> and 9<sup>th</sup> Respondent to defraud the Claimant of any union dues or monies as alleged by the Claimant herein.

It is further its contention that it has never infringed on the Claimant's members' Constitutional rights as envisaged under Article 41(2)(c) of the Constitution of Kenya, 2010 or Section 48(2) of the Labour Relations Act.

The 2<sup>nd</sup> Respondent further contends that it has no interest whatsoever in the subject account number 1177568497 and further that it is willing to comply with any orders that may be issued by this Court in relation to the monies held in the said account No. 1177568497.

The 2<sup>nd</sup> Respondent contends that the instant claim against it is unwarranted and that the same ought to be dismissed with costs.

The 1<sup>st</sup> Respondent also filed a Memorandum of Response in Court on 4<sup>th</sup> July, 2018, in which it admits having opened the Account No. 0073205026433901 at its Eldoret Branch on 20<sup>th</sup> March, 2017 in the name of Kenya National Union of Nurses, Uasin Gishu County.

It contends that the said Bank Account was opened following presentation of duly signed Account opening forms and supporting documentation by the 4<sup>th</sup> to 7<sup>th</sup> Respondents being union officials and signatories to the said account.

The 1<sup>st</sup> Respondent further avers that the said Bank Account is not the National Bank Account but rather a Branch Account that was opened under the provisions of Chapter XI (2) of the Claimant Union's Registered Constitution.

The 1<sup>st</sup> Respondent contends that it has not committed any fraudulent activities in relation with the said Account Number 0073205026433901 as alleged by the Claimant herein and that in opening the said account it did not contravene the provisions of Article 41(2)(c) of the Constitution of Kenya, 2010 and Section 48 (2) (a-b (i) and (ii)) of the Labour Relations Act.

The 1<sup>st</sup> Respondent insists that it has no claim whatsoever to the monies held in the aforementioned account and that it will abide by any directions given by this Court on the same.

The 1<sup>st</sup> Respondent insists that the Claimant has no Claim against it and that the instant Claim has been made in bad faith and ought to be dismissed with costs to the 1<sup>st</sup> Respondent.

In its response to the Defence and Counter Claim filed in Court on 8<sup>th</sup> November, 2019 the claimant insists that it was illegal for the 4<sup>th</sup> to 7<sup>th</sup> Respondents to proceed and open accounts without authority both in law and fact.

It further contends that the Claimant sent a Notice to the said 4<sup>th</sup> to 7<sup>th</sup> Respondent dated 17<sup>th</sup> November, 2017 in respect of alleged breach of the Claimant's Constitution and requested for their responses on the said issues. It is further contended that The Respondents neither responded to the allegations nor appeared for the National Executive Council (NEC) meeting that was set for 16<sup>th</sup> February, 2018.

In the NEC Meeting held on 16<sup>th</sup> February, 2018 the Claimant avers that it was resolved it dissolves its Uasin Gishu Branch as it was affirmed that the 4<sup>th</sup> to 7<sup>th</sup> Respondents had opened the said account for fraudulent purposes only.

The Claimant contends that none of the Respondents contested the said dissolution save for the 5<sup>th</sup> Respondent whose protest was none the less dismissed for lack of merit.

The Claimant union maintains that the 4<sup>th</sup> to 7<sup>th</sup> Respondents are guilty of fraud and illegalities for purporting to advance interests of a disbanded union, purporting to be union officials of the union when in fact they were not and in the process opened an account without proper authorization with an aim to siphon and/or divert union money for selfish gain.

The Claimant urged this Court to dismiss the Response by the 4<sup>th</sup> to 7<sup>th</sup> Respondents and the Counter Claim filed therein and instead enter judgment in its favour as against the said 4<sup>th</sup> to 7<sup>th</sup> Respondents herein.

The 8<sup>th</sup> and 9<sup>th</sup> Respondent did not enter appearance or file defence in this matter.

Parties agreed to disposed of the Claim by way of written Submissions.

**Submissions by the Parties.**

The Claimant submitted that the 4<sup>th</sup> to 7<sup>th</sup> Respondents are not officials of the claimant and have never held such positions at any time and therefore lack the requisite capacity to open an Account for the Claimant.

The Claimant further avers that the 4<sup>th</sup> to 9<sup>th</sup> Respondents lack the requisite *locus standi* to open and/or authorize the opening of the Claimant's Bank Accounts. The Claimant further submitted that the Claimant's acts were fraudulent and they worked in collusion with the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to fraudulently divert funds into the said illegal accounts for their own selfish gain.

The Claimant further contended that it only has two (2) gazetted accounts that receive dues deducted from its members being Account Number 202776507 (Barclays Bank) and 01120309515209 (Cooperative Bank).

It is further contended that opening of such accounts is well provided for under Chapter XI (1) of the Claimant's Registered Constitution.

The Claimant further contends the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on one hand and the 4<sup>th</sup> to 9<sup>th</sup> Respondents have breached various provisions of her Constitution and in particular Chapters XI, XXI in relation to opening and operation of union accounts and Article 41(2)(c) of the Constitution of Kenya, 2010 and Sections 37,39, 48 and 50 of the Labour Relations Act.

The Claimant further submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent Banks deliberately failed to follow due process and/or conduct due diligence before opening the subject accounts.

The Claimant maintains that this Court is clothed with the requisite jurisdiction under Section 47(1)(a) of the Labour Relations Act to hear and determine the instant Claim. The Claimant relied on the decision in the case of **Lawrence Nyaguti Ochieng and 7 Others v Union of Kenya Civil Servants & 3 Others (2015) eKLR**.

In conclusion the Claimant urged this Court to allow its Claim in terms of the reliefs sought in the Amended Memorandum of Claim.

#### **1<sup>st</sup> Respondent's Submissions**

The 1<sup>st</sup> Respondent in its Submissions maintains that the Account Number 0073205026433901 opened at its Eldoret branch was lawful and that the same was a branch account and not a national account. It is further submitted that the 4<sup>th</sup> to 7<sup>th</sup> Respondent did avail all the requisite account opening documents prior to the opening of the said account. The 1<sup>st</sup> Respondent relied on the provisions of Chapter XI of the Claimant Union's Constitution.

The 1<sup>st</sup> Respondent further submitted that it has no specific interest in the said Bank Account Number 0073205026433901 and further that no evidence has been tendered by the Claimant herein to demonstrate its interest and/or intent by it to defraud the Claimant Union.

The 1<sup>st</sup> Respondent maintains that the Claimant has failed to prove its case as against it and in particular it has failed to prove its allegation of Fraud. The 1<sup>st</sup> Respondent cited the case of **Central Bank of Kenya v Trust Bank Limited & 4 Others (1996) eKLR** and **Evans Kidero Speaker of Nairobi City County Assembly and Another (2018) eKLR**.

The 1<sup>st</sup> Respondent further submitted that in providing banking services to the 4<sup>th</sup> to 7<sup>th</sup> Respondents it did follow and apply the normal and standard procedure as it does to all other customers. It is further the 1<sup>st</sup> Respondent's Submission that the instant Claim in the circumstances ought to be dismissed with costs to the 1<sup>st</sup> Respondent.

#### **4<sup>th</sup> to 7<sup>th</sup> Respondents' Submissions**

The 4<sup>th</sup> to 7<sup>th</sup> Respondent on their part submitted that they lawfully opened the Bank Account Number 007320502643901 to serve the Claimant's Uasin Gishu branch as its union officials pursuant to the provisions of Chapter XI (2) and (4) of the Union Constitution.

The 4<sup>th</sup> to 7<sup>th</sup> Respondents contend that they have wrongly been enjoined to the instant Claim as they are neither custodians nor remitters or diverters of union funds. They further contend that the instant Claim ought to be dismissed with costs.

The 4<sup>th</sup> to 7<sup>th</sup> Respondents further submitted that the Claimant has failed to prove its case as against them on the issue of fraud and therefore urged the Court to dismiss the Claim. For emphasis the 4<sup>th</sup> to 7<sup>th</sup> Respondents cited the Court of Appeal decision in the case of **Kinyanjui Kamau v George Kamau Njoroge (2015) eKLR**.

In conclusion the 4<sup>th</sup> to 7<sup>th</sup> Respondents urged this Court to dismiss the instant Claim and allow its counter claim in terms of the reliefs sought therein.

#### **Analysis and Determination**

Having considered the Amended Claim and its supporting documents, the Responses thereto together with the supporting documents, the submissions filed by the parties hereto and the authorities cited, the issues for determination are:

1. Whether the 4<sup>th</sup> to 9<sup>th</sup> Respondents had the *locus standi* to cause the Bank Account Numbers 007320502643901 and 1177568497

to be opened.

2. Whether the Account Numbers 007320502643901 and 1177568497 have been handled in an illegal manner.
3. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conspired in any way with the 4<sup>th</sup> to 9<sup>th</sup> Respondent to commit any fraud.
4. Whether the Claimant is entitled to the reliefs sought in its Amended Claim.

**Whether the 4<sup>th</sup> to 9<sup>th</sup> Respondents had the locus standi to cause the Bank Account Numbers 007320502643901 and 1177568497 to be opened**

The Claimant maintains that the 4<sup>th</sup> to 9<sup>th</sup> Respondent had no *locus standi* to cause the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to open the account numbers 007320502643901 and 1177568497. It further contends that Claimant union operates two accounts where all the monies so deducted from the wages of all her members should be channelled being:

Kenya National Union of Nurses Bank;

Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account Number No. 20277G5079.

OR

Bank; Co-Operative Bank Branch; Aga Khan Walk.

Account Number; 0112030951520

It was further contended that the opening of the two separate accounts was only meant to fraudulently obtain money from the Claimant union meant for its members and was done contrary to the provisions of Article 41(c) of the Constitution of Kenya, 2010, Sections 48 (2) (a-b) (i) and (ii) of the Labour Relations Act, 2007 as well as the Claimant Union's Constitution.

The Respondents on the other hand maintained that the 4<sup>th</sup> to 9<sup>th</sup> Respondents in the capacity as branch union officials and after completing the requisite account opening documents at the 1<sup>st</sup> and 2<sup>nd</sup> Respondent Banks the said banks accounts were opened for branch office and not for the national office.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents maintained that they followed due process and that they both had no intent to defraud the Claimant in anyway as they had no interest with the said sums held in the two accounts.

The 4<sup>th</sup> to 9<sup>th</sup> Respondents contend that they opened the said accounts as branch accounts and not national accounts.

The Claimant union does not dispute the membership of the 4<sup>th</sup> to 9<sup>th</sup> Respondents were at some point its branch officials. The said Respondents maintained that the said accounts were opened as branch accounts and that they had the requisite capacity to do so.

Chapter XI part 2 of the Union's Constitution provides as follows:

*“The treasurer of every branch of the union shall cause a bank account to be opened in the name of the branch of the union and shall ensure that all money belonging to the union received by him is paid into he said account immediately upon receipt of such monies, provided that branch treasurer shall be permitted to retain in cash a sum not exceeding twenty thousand shillings to pay minor expenses. All cheques for withdrawals of money for such branch bank account shall be signed by the branch secretary and any other two signatories, that is branch treasurer, the branch chairperson and or branch trustee. **Provided that the branch shall account for such withdrawals to the national treasurer.**”*

[Emphasis added]

Further Chapter XVII (5) provides that –

**Branch Treasurer**

*The Branch Treasurer shall be a person capable of maintaining clear records of all funds of the Branch. He shall be responsible for the funds of the Branch and shall maintain all necessary books of accounts and records. He shall ensure that no payments are made from Branch funds under his/her control unless a payment voucher has been prepared and authorized in accordance with the provisions of the Trade Union Accounts Regulations and shall ensure that funds are remitted to accounts and records. He shall ensure that no payment is made from Branch funds under his/her control unless a payment voucher has been prepared and*

authorized in accordance with the provisions the Trade Union Accounts Regulations and shall ensure that funds are remitted to the Union's National Treasurer in accordance with the provisions of Chapter XIII (3) of this Constitution.

From the 4<sup>th</sup> to 7<sup>th</sup> Respondents Further List of Documents there is a certificate of Registration for Kenya National Union of Nurses Uasin Gishu Branch dated 29<sup>th</sup> October, 2013 issued by the Registrar of Trade Unions.

Further document 2 is an extract from the Registrar of Trade Unions

indicating the 4<sup>th</sup> to 7<sup>th</sup> Respondents as branch officials of the said Uasin Gishu branch.

From the foregoing and in light of the fact that the Claimant Union does not dispute the fact that the said respondents were or used to be branch officials I find that they had the requisite locus standi to cause the opening of the two accounts being 007320502643901 and 1177568497 as branch accounts and that the two accounts are distinct from the national accounts held by the Claimant union.

#### **Whether the Account Numbers 007320502643901 and 1177568497 have been handled in an illegal manner**

From the above, the 4<sup>th</sup> to 9<sup>th</sup> Respondents in their capacity as union officials opened the bank account numbers 007320502643901 and 1177568497 as branch accounts. However, the union Constitution at Chapter XI part 2 and 3 provides as follows:

*1. The national treasurer shall cause a bank account to be open and maintained in the name of the Union and shall ensure that all money belonging to the union received by him is paid into the said bank account immediately upon the receipt of such money provided that the national treasurer shall be permitted to retain in cash a sum not exceeding fifty thousand shillings to pay minor expenses. All cheques for withdrawals of money shall be signed by the national treasurer, Secretary General and nation Chairperson. In the event of them being sick or out of the country, their deputies shall sign all Union cheques.*

*2. The treasurer of every branch of the union shall cause a bank account to be opened in the name of the branch of the union and shall ensure that all money belonging to the union received by him is paid into the said account immediately upon receipt of such monies, provided that branch treasurer shall be permitted to retain in cash a sum not exceeding twenty thousand shillings to pay minor expenses. All cheques for withdrawals of money for such branch bank account shall be signed by the branch secretary and any other two signatories, that is branch treasurer, the branch chairperson and or branch trustee. Provided that the branch shall account for such withdrawals to the national treasurer.*

*3. All the money collected by the branches shall be the property of the union. Ordinary branch expenditure shall be paid from branch funds of money allocated to it by the National Executive Council. All cheques of check-off system shall be crossed and shall be neither paid in cash nor be paid into branch bank account but shall be sent to the national headquarters' bank account.*

*4. The funds of the Union may be Used only for the following objects –*

- a) The payment of salaries for Executive and Employees of the Union in line with Trade Union/ Corporate practices in Kenya.*
- b) The payment of allowances and expenses of officers of the Union line with Trade Union/ Corporate practices in Kenya*
- c) The payment of expenses for administration of the Union including audit of accounts of the funds of the Union.*
- d) The prosecution or defence of any legal proceedings to which the union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising but of the relations of any member with his/her employer.*
- e) The conduct of Trade Disputes on behalf of the Union or any member thereof.*
- f) The compensation for loss arising out of Trade disputes.*
- g) Such allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment as the National Executive Council may from time to time prescribe.*
- h) The payment of any fine or penalty imposed upon the Union under the provisions of the Trade Union Act, provided that the funds of the Union shall not be applied either directly or indirectly in payment of the whole or any part of any fine or penalty imposed upon any member or other person by sentence or order of a court of justice.*
- i) The payment of subscription and fees to any Federation of Trade Unions to which the Union may be affiliated.*
- j) The financial year of the Union shall end on 31st June of every year. Copies of the Annual Statement of accounts shall be supplied to members by the Secretary General upon request.”*

From the above provisions, it is clear that the said branch accounts are not to operate independently of the national office gazetted union account. The 4<sup>th</sup> to 9<sup>th</sup> Respondents cannot purport to run the said accounts in a manner that contravenes the Union Constitution.

No evidence has been availed by the 4<sup>th</sup> to 9<sup>th</sup> Respondents to prove compliance with the provisions of Chapter XI part 2 and 3 of the union Constitution with respect to funds held at the branch account. The said officials have not produced evidence of compliance with the requirement of the branch to account for all expenditure and pay all other funds to the National Headquarters bank accounts.

### **Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conspired in any way with the 4<sup>th</sup> to 9<sup>th</sup> Respondent to commit any fraud**

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are financial institutions who maintain

that they have no interest in the sums held on behalf of the union branches. They further maintain that the accounts opened were done in a procedural manner and that the accounts are maintained as branch accounts and not national accounts.

Both the 1<sup>st</sup> and 2<sup>nd</sup> Respondent attached the requisite Bank account opening forms duly filed by the branch union officials prior to the opening of the said bank accounts.

The Claimant union contends that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are working with the 4<sup>th</sup> to 9<sup>th</sup> Respondents to defraud the union of its dues.

No evidence was tendered on any fraudulent dealings between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the 4<sup>th</sup> to 9<sup>th</sup> Respondents respectively.

I therefore find that the account opening was done in a systematic and procedural manner except that they do not appear to have considered the union's constitution on maintenance of such accounts. In absence of any evidence to the contrary the 1<sup>st</sup> and 2<sup>nd</sup> Respondents carried out instructions issued to them by the 4<sup>th</sup> to 9<sup>th</sup> Respondents on behalf of the respective union branches and there was no evidence of conspiracy to defraud the Claimant Union.

### **Whether the Claimant is entitled to the reliefs sought in its Amended Claim**

The law governing relations between trade unions and employees is contained in Article 36 and 41 of the Constitution, parts VI, VII, VIII and IX of the Labour Relations Act in particular Section 48, 49 and 50 of the Labour Relations Act provide for deduction and remittance of trade union dues.

Chapters XI, XIII and XX of the Claimant Union Constitution provides for funds held by respective branches, how the said funds will be handled by the branch officials as well as the discipline of such union branch officials.

From the foregoing, I find that the Claimant has proved its case on a balance of probabilities and is entitled to the following reliefs:-

1. An Order of permanent closure of the Bank Account Numbers 007320502643901 and 1177568497 held at the 1<sup>st</sup> and 2<sup>nd</sup> Respondent banks respectively.

2. An Order that the funds held in the two accounts being 007320502643901 and 1177568497 be transferred forthwith to the Claimant's gazetted bank account whose details are:

Kenya National Union of Nurses Bank;

Barclays Bank of Kenya

Branch; Queensway Branch Nairobi

Account Number No. 20277G5079

3. An Order be and is hereby issued quashing the instruments used in account opening for the account numbers 007320502643901 and 1177568497 held at the 1<sup>st</sup> and 2<sup>nd</sup> Respondent banks.

4. An Order be and is hereby issued to the 4<sup>th</sup> to 7<sup>th</sup> Respondents to jointly account for all the funds transacted in respect with Bank Account number 007320502643901 held at the 1<sup>st</sup> Respondent's Uasin Gishu Branch being Kshs.9,686,463.15/- and to refund any money not properly spend in accordance with the Union's Constitution.

5. An Order be and is hereby issued to the 8<sup>th</sup> to 9<sup>th</sup> Respondents to jointly account for all the funds transacted in respect with Bank Account number 1177568497 held at the 2<sup>nd</sup> Respondent's Lamu Branch being Kshs.840,000/-

6. The Claimant is also entitled to costs of this Claim to be paid by the 3<sup>rd</sup> to 9<sup>th</sup> respondents.

The Claim against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents stands dismissed with no order for costs for the 1<sup>st</sup> and 2<sup>nd</sup> respondents as they had a responsibility to open accounts for the branches only in compliance with the Union Constitution which they had a responsibility to call for in addition to all other account opening documents.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF FEBRUARY 2020**

**MAUREEN ONYANGO**

**JUDGE**