



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO.12 OF 2017**

**JOHN BIIY.....CLAIMANT**

**VERSUS**

**SETH PANYAKO.....1<sup>ST</sup> RESPONDENT**

**REGISTAR OF TRADE UNION.....2<sup>ND</sup> RESPONDENT**

**KEENYA NATIONAL UNION OF NURSES....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The claimant, John Biiy filed applications dated 27<sup>th</sup> January, 2017 and another dated 2<sup>nd</sup> February, 2017. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed application dated 30<sup>th</sup> January, 2017.
2. The 2<sup>nd</sup> Respondent did not enter appearance or file any responses herein.
3. Local Authorities Provident Fund (LAPFUND) has applied to be enjoined as an interested party same for LAPTRUST (UMBRELLA) Retirement Fund Board of Trustees.
4. The Claimant is seeking for orders that the 1<sup>st</sup> Respondent should be suspended from office of the General Secretary of the 3<sup>rd</sup> Respondent and the Deputy General Secretary of the 3<sup>rd</sup> Respondent to assume such office in an acting capacity until the suit herein is heard. That the 1<sup>st</sup> Respondent should be restrained from undertaking any transaction on behalf of the 3<sup>rd</sup> respondent; from making any emotive public declarations and pronouncements on behalf of the 3<sup>rd</sup> Respondent and that he be ordered to surrender the official property of the 3<sup>rd</sup> Respondent which includes a Toyota Prado Registration No.KCC 757R, Toyota Noar Registration No KBV 269N, a lap top, an ipad, office smartphone No.0711337321 and these be handed over to the 3<sup>rd</sup> respondent. That an order be issued restraining the 1<sup>st</sup> Respondent from unilaterally taking any disciplinary action against the Claimant on any other official, employee or staff of the 3<sup>rd</sup> respondent.
5. The Claimant is also seeking for orders that the 2<sup>nd</sup> Respondent be ordered to commission an independent forensic audit into the affairs of the 3<sup>rd</sup> Respondent to ensure that the funds and assets are protected from misappropriation or illegal/irregular payments and that the office to summon the National Executive Council of the 3<sup>rd</sup> Respondent to make a decision to protect the assets of the 3<sup>rd</sup> Respondent and also to meet and make a decision for the better running of the affairs of the 3<sup>rd</sup> respondent. That the

Nairobi Central OCPD or OCS be directed to provide assistance necessary to secure the offices of the 3<sup>rd</sup> Respondent located at Uchumi House, 14<sup>th</sup> floor Agha Khan Walk for purposes of executing the orders above.

6. On the second application, the Claimant is seeking for orders that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents be ordered to pay the Claimant his allowances of Kshs.80,00000 per month for January, 2017 and all subsequent months while serving as the chairman of the 3<sup>rd</sup> Respondent and that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents be restrained from convening and proceeding with the 3<sup>rd</sup> respondent's National Executive Council meeting purporting to call upon the Claimant to defend himself against the charges set out in a letter dated 26<sup>th</sup> January, 2017. The Claimant is also seeking that the orders of stay made on 31<sup>st</sup> January, 2017 be set aside and discharged.

7. The applications are supported by the claimant's affidavits and on the grounds that the Claimant is the current national chair and member of the 3<sup>rd</sup> Respondent to ensure implementation and adherence with the constitution of the 3<sup>rd</sup> Respondent union and thus with an overriding fiduciary duty to protect union assets. The 1<sup>st</sup> Respondent as the general secretary is also the chief executive officer of the 3<sup>rd</sup> Respondent with responsibilities to ensure compliance with the union constitution.

8. That the 1<sup>st</sup> Respondent has mismanaged the union financial and other resources in violation of the constitution for his own gain and for his close acquaintances and he has refused to account for the same. From 1<sup>st</sup> June, 2016 and 23<sup>rd</sup> December, 2016 the union vehicle Toyota Prado KCC 757R which is assigned to the 1<sup>st</sup> Respondent for his union activities disappeared and could not be traced for months. There is reason to believe such vehicle was out for the private use by the 1<sup>st</sup> Respondent especially in his political campaigns for Senator, Kakamega County for 2017.

9. Other grounds to support the application are that in February, 2016 one Lucy Mwangi the wife to the 1<sup>st</sup> Respondent and who was previously employed by the 3<sup>rd</sup> Respondent under permanent and pensionable terms left her employment without notice and in breach of her contract and in doing so she was allowed to abscond duty and has never cleared with the 3<sup>rd</sup> Respondent and continues to be in possession of property that was not surrendered being a lap top, an ipad and office smartphone. In June, 2016 the 1<sup>st</sup> Respondent made irregular payment of Kshs.150, 000.00 to his wife Lucy Mwangi when she had not supplied anything or worked for the 3<sup>rd</sup> respondent. There is reason to believe that the 1<sup>st</sup> Respondent has made payment to Ms Mwangi in colossal amounts and thus the 3<sup>rd</sup> Respondent should be audited.

10. Other grounds are that the 1<sup>st</sup> Respondent has unilaterally disbanded branches of the 3<sup>rd</sup> Respondent including Lamu, Nandi, and Bomet without involving the national executive council (NEC). The 1<sup>st</sup> Respondent has gone further to usurp the powers of NEC to discipline branch officials contrary to 3<sup>rd</sup> Respondent constitution.

11. The 1<sup>st</sup> Respondent has declined the claimant's request to convene a meeting of NEC in accordance with 3<sup>rd</sup> Respondent constitution so as to discuss the financial status of the union due to irregular payments, unpaid NEC allowances, inventory of assets including vehicles and immovable assets. The demand that the Claimant should make a deposit of Kshs.309, 650.00 to defray the NEC meeting costs is an effort meant to frustrate him and the proposed meeting. Such requirement to deposit the money is outside the union constitution. The requirements that the Claimant should secure the endorsement of NEC by two-thirds so as to have a meeting are an arbitrary precondition.

12. The 1<sup>st</sup> Respondent is now engaging in witch-hunt owing to the claimant's persistent questions and demands to give account and has therefore commenced unsubstantiated accusation and wild allegations against the Claimant and made notice of gross insubordination to his office. The Claimant has then opened a whatsapp group and published the union constitution allegedly to unauthorised person contrary

to the law.

13. The 1<sup>st</sup> Respondent acting in cohorts with LAPFUND purported to sign an MOU between them and 3<sup>rd</sup> Respondent misleading members to join LAPFUND, a provident fund in blatant violation of section 132 of the County Government Act which law is mandatory and requires county employees to subscribe to an existing pension scheme for staff and officers of local government. This MOU is in threat to union members rights under article 43 of the constitution.

14. On the application of 2<sup>nd</sup> February, 2017, the grounds are that the Claimant as the national chairman of the union is a member of both NEC and National Governing Council and earning Kshs.80, 000.00 monthly allowances which the 1<sup>st</sup> Respondent has refused to pay. Under the union constitution there are 15 NEC members and for a meeting the quorum should be two-thirds. The 1<sup>st</sup> Respondent as the general secretary is supposed to convene any NEC meeting when required in accordance with the constitution and stating the time, place and date.

15. In July, 2016 the Claimant wrote to the 1<sup>st</sup> Respondent to convene the meeting of NEC but he blatantly refused as he knew the agenda was going to address his financial improprieties and irregular payments. To avoid such scrutiny the 1<sup>st</sup> Respondent commenced witch-hunt against the Claimant alleging that he is not a member of the union notwithstanding that he is a nurse at Moiben Health Centre in Uasin Gishu; he has been suspended by the county government on 30<sup>th</sup> September, 2014; he was unlawfully dismissed on 6<sup>th</sup> October, 2015; and since he has filed a claim with the court in Cause No.1801 of 2015 (Nakuru). The above notwithstanding, the union members elected him as the chairperson the constitution recognise such election.

16. The 1<sup>st</sup> Respondent has been calling for meetings without informing the claimant. On 3<sup>rd</sup> February, 2017 the Claimant was called to show cause for breach of constitution which was meant to frustrate the hearing of this case.

17. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents in the application dated **30<sup>th</sup> January, 2017** are seeking for orders that the interim orders of 27<sup>th</sup> January, 2017 be set aside or varied and that the court do issue an injunction prohibiting the Claimant from prosecuting the instant case through the media or press.

18. The application is supported by the affidavit of the 1<sup>st</sup> Respondent and on the grounds that on the interim orders of the court contravene section 47(1) and (2) of the Labour Relations Act (LRA) where by suspending the 1<sup>st</sup> respondent, the orders contravene the law and thus unconstitutional and prejudicial to the 3<sup>rd</sup> Respondent union as all properties held are not with the 1<sup>st</sup> Respondent but with the union trustees. Any complaint by a union member can be filed in court or the 2<sup>nd</sup> Respondent but the Claimant is not a member of the 3<sup>rd</sup> Respondent union and cannot therefore purport to raise a complaint of this nature and obtain the orders granted.

19. The 1<sup>st</sup> Respondent also avers in his affidavit that as the 3<sup>rd</sup> Respondent general secretary, where the Claimant has allegations of bribery, fraud or any evidence of mismanagement of funds the relevant institution to deal is the Ethics and Anti-corruption Commission, the Police, Director of Criminal Investigations, the office or the DPP. The orders made against the 1<sup>st</sup> and 3<sup>rd</sup> Respondent are therefore not merited as the responsible officer to take charge of finances of a union is regulated under section 42(1) of the LRA. The treasurer of a trade union is responsible for the accounts by collecting, disbursing, keeping and controlling the same. Such an officer is not a party herein to warrant the grant of orders issued and hence the orders seeking the same be set aside.

20. In reply to the claimant, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have also attached the affidavits of Henry Adolwa, Purity Matu, and Charles Alisoreng being the trustees of the 3<sup>rd</sup> Respondent and affirm that they are seized of all assets of the union and are signatories to union accounts and no payment has been made without authority. All assets have been used for the benefit of the union. There is no prove of any

irregular payments, no motor vehicle has been reported missing and all other assets are in safe keeping by the trustees. There are no orders sought against the trustees challenging failure to undertake their role effectively and or outside the law.

21. There is also the affidavit of Agnes Mundaru the 3<sup>rd</sup> Respondent National Treasurer who avers that all funds of the union are handled in accordance with the union constitution and there is no record of misuse, misapplication, misappropriation or any activities that requires a forensic audit. The orders sought cannot issue against the 1<sup>st</sup> Respondent as the national treasurer is responsible for all union funds and is not a party herein.

22. In reply to the application by the 1<sup>st</sup> and 3<sup>rd</sup> respondent, the Claimant filed his Replying Affidavit on 20<sup>th</sup> February, 2017 and avers that the application is incompetent and instead of seeking to vary and set aside the court orders the Respondents ought to have filed an appeal. No law was contravened by the court giving interim orders on 27<sup>th</sup> January, 2017 as the court has jurisdiction to suspend any union official/officer on good grounds. There is evidence that union funds have been misappropriated and union property misapplied and should be returned to the 3<sup>rd</sup> Respondent in accordance with the union constitution.

23. The allegations that the Claimant is not a 3<sup>rd</sup> Respondent member is false as there is record for such unionisation and the election to the position of chair confirms the same.

24. The 2<sup>nd</sup> Respondent is a proper party herein as section 42(2) recognises the office as one where a complaint can be lodged. There is clear evidence that a forensic audit should be done to ascertain the correct financial status of the union accounts and use of property.

25. The 1<sup>st</sup> Respondent in violation of the union constitution has gone ahead to dissolve union branches contrary to chapter 6 of the union constitution. There is a leadership vacuum in Nyeri upon dissolution of the branch and a claim by Mary Wairimu Gitindi has been filed to with the court in Nyeri, Cause No.31 of 2017.

## **Determination**

The 3 applications from both sides can be summarised on the following issues;

Whether the court should suspend the 1<sup>st</sup> Respondent from office;

Whether the 1<sup>st</sup> Respondent should be barred from undertaking any transactions on behalf of the 3<sup>rd</sup> Respondent union;

Whether the 1<sup>st</sup> Respondent should be made to surrender 3<sup>rd</sup> Respondent assets/property in his possession;

Whether the 1<sup>st</sup> and 3<sup>rd</sup> Respondents should be restrained from taking disciplinary action against the Claimant or any member of staff of 3<sup>rd</sup> respondent;

Whether the 2<sup>nd</sup> Respondent should be directed to undertake a forensic audit of the 3<sup>rd</sup> Respondent funds and assets;

Whether the claimant's allowances should be paid;

Whether the orders of 27<sup>th</sup> January, 2017 should be set aside; and

Whether the Claimant should be prohibited from prosecuting the instant case through the media.

26. These issues above, in the main form the various orders sought in the applications set out above. Such will be addressed together or separately.

27. The LRA is the foundational law for unionisation and formation of employer's federations or association. With regard to its preamble, trade unions are required to ensure;

*...to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes.*

28. The preamble also calls upon trade unions **to provide for the registration, regulation, management and democratisation** as values that go into ensuring the promotion of sound labour relations and promotion of conducive social justice and economic development.

29. Toward meeting the above, I find the 3<sup>rd</sup> Respondent has its constitution and there are elected officials to run its affair. In this regard, the position of the 1<sup>st</sup> Respondent is both articulated in the law and under the union constitution. Section 2 of the LRA defines such office as;

*“authorised representative” means –*

*(a) the general secretary of a trade union.*

...

*“general-secretary” means the national secretary of a registered trade union.*

30. The law further give the office of the general secretary of trade union key tasks to be undertaken within the law and in tandem with the union constitution but where there is a conflict, the law must take priority or precedence. As the authorised officer, the general secretary such as the 1<sup>st</sup> Respondent is legally mandated to undertake such role to ensure the affair of the union are addressed. Any constrains on such office can only be permitted under very exceptional circumstances where there is a clear breach of the law or the union constitution.

31. The general secretary is also allowed to deal for and on behalf of the trade union. once the trade union has been formed and has its head office, section 25 of the LRA allow for the formation of branches and on good basis, the office of the general secretary may cause the dissolution of such branch and follow such with notification of the office of the Registrar of Trade union. the law at section 25(3) and (5) requires that;

*(3) The authorised representative specified under subsection (2) shall give notice to the Registrar in writing of the dissolution of any branch of a trade union, employer's organisation or federation.*

...

*(5) No person shall act or purport to act as an official of a branch of a trade union, employer's organization or federation if that branch is not registered or has had its registration cancelled.*

32. The averments that the 1<sup>st</sup> Respondent has caused the dissolution and removal of branch officials can thus be dealt but where there is a conflict with the law, such are matters that require the call of evidence and cannot be addressed at this junction conclusively. Such shall be left to the main hearing.

33. The membership of the Claimant to the 3<sup>rd</sup> Respondent union has been challenged. Such is premised on averments that as a non-member of the union he cannot seek for the orders herein and that on this basis the 1<sup>st</sup> Respondent cannot be suspended from office as this would be contrary to the law and the same is

unconstitutional. That the Claimant is not a member of the union as such membership is pegged on monthly contributions of union dues in terms of sections 48 and 52 of the LRA.

34. On the above submissions, I have obtained the returns with regard to the 3<sup>rd</sup> Respondent and find that the claimant, JOHN BIIY is the National Chairman of the 3<sup>rd</sup> Respondent union. Such position is regulated under the union constitution and I take it the due process for election to such office was adhered to for the 2<sup>nd</sup> Respondent to take such not and confirm. Unless position has since changed from the filing of this claim, the Claimant should continue to be accorded his position, the benefits and facilities of his position as the National Chairman of the 3<sup>rd</sup> respondent. Unless there are orders preceding this ruling that change the claimant's position, he is entitled to his monthly allowance and due benefits for holding his current position with the 3<sup>rd</sup> respondent.

35. the other question raised by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents is that the Claimant obtained orders herein without full disclosure of material facts. Such is a serious matter and where brought to the attention of the court, the court must deal instantly and as appropriate. The submissions is that the Claimant had filed a similar matter with the court and appeared before Wasilwa Judge but was directed to serve for both parties to be given a hearing.

37. However, details of such suit between the Claimant and the Respondents have not been attached herein. Annexure "SP2" to paragraph 13 of Seth Panyako affidavit of 30<sup>th</sup> January, 2017 is not a copy of the court order but that of the 3<sup>rd</sup> Respondent constitution. I will not delve into this any further.

38. On the question of the 1<sup>st</sup> Respondent dealing with union properties, assets in an improper manner, section 37 of the LRA vests all union assets with its trustees. Such are the persons to take charge and be seized of all matters with regard to any properties, movable or immovable for the use and benefits of the union. Where the 1<sup>st</sup> Respondent has taken, misused, misappropriated or in any manner dealt with such assets to the detriment of the 3<sup>rd</sup> respondent, the trustees are the correct officers/persons to take account and deal. The claimant, seized with any information with regard to the misuse, mismanagement or in any manner the dealing of the 1<sup>st</sup> Respondent with union assets has recourse to the trustees and where the trustees fail to act deal as appropriate. Where such matter is not addressed adequately, the court can then be moved. Such will give the parties a fair chance to utilise the various offices and mechanisms under the union constitution as there are structures inbuilt for this purpose and the best available evidence exists within the union structures unless the Claimant can demonstrate that such systems, structures and officers and officers are broken down to a point that his complaint(s) cannot be genuinely or fairly addressed.

39. I find the Claimant has also appropriately invoked his right under section 47 of the LRA which provides that;

**47.(1) The National Labour Court may –**

**(a) order any person who has in his possession or control any property of a trade union, employers' organization or federation in violation of its rules or who has unlawfully expended or withheld its moneys, to deliver that property or pay that money to its trustees; and**

**(b) suspend any official who contravenes paragraph (a).**

40. The court has the requisite jurisdiction to address any unlawful handling of union monies, properties and requires such be addressed as vested in the trustees. The office of the 2<sup>nd</sup> Respondent is also crucial in proceedings such as these as under section 46 of the LRA the registrar of Trade Unions has the mandate to call the union treasurer, the executive or management to render detailed account of the union funds and failure to adhere one commits an offence. The law provides that;

**46.(1) The Registrar may, at any time, call upon the treasurer, the executive or management board by whatever name called, or any other official of a trade union or employers' organization**

**to render detailed accounts of its funds or the funds of any branch for any period, in the manner and containing such information as the Registrar may require.**

**(2) A person who fails to comply with a request made by the Registrar under subsection (1) commits an offence**

41. This is therefore not a matter of the EACC, the DPP, the Police or the Director or Criminal Investigations. The matter falls within the jurisdiction of this court. Where the offices of the EACC, DPP, police or any other department of government if required, such can be directed by the court. The respondent's cannot fail to do their duties when called upon under the requirement that the Claimant ought to moved the EACC, DPP or any other office where this court exists to address employment and labour relations cases and connected purposes.

42. Also, Section 37 of the LRA requires that;

**37.(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, employer's organisation or federation and its members.**

43. The Minister is allowed to vary, with the consent of the trade union, the handling and dealing with any of its property as otherwise, all trade union assets/property are to be held by its trustees. In this regard, section 39 of the LRA requires that trade union trustees to ensure that all assets, monetary, moveable or immovable is and are used for the payment of salaries, allowances and expenses to its officials; the payment of expenses for the administration of the trade union; for the purpose of securing or protecting its rights or the rights of any member in any matter concerning employment or the application of any employment law; the conduct of trade disputes on its behalf or on behalf of any member thereof; the compensation of members for loss arising out of trade disputes; the payment of allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of those members; the payment of subscriptions and fees to any registered federation to which it is affiliated; and any condition determined by the Minister.

44. Have the trustees of the 3<sup>rd</sup> Respondent failed to abide by the law in carrying out their mandate?

45. First such trustees are not parties herein and secondly, by the affidavit of the 3<sup>rd</sup> Respondent trustees herein, their confirmation under oath is apparent. Where there is evidence to the contrary, the matters set out under oath by the trustees will be interrogated and where there is a finding that there is no truth, a serious sanction lie. At this point, the affidavit in confirmation of the status of union accounts, assets and properties of 3<sup>rd</sup> Respondent shall suffice.

46. At this juncture, I take it all 3<sup>rd</sup> Respondent assets are in good hands. The trustees are overseeing the same. Such is their statutory role. The affidavit of the trustees breaks even the orders that the court should have given in the 1<sup>st</sup> Respondent handling of 3<sup>rd</sup> Respondent Assets. This affidavit becomes herein a crucial record.

47. Caution must however be made, the office of the 1<sup>st</sup> Respondent and that of union trustees under the provisions of section 37 of the LRA should at all-time remain independent. Such separation of powers though merging for the benefit of the whole, the union is important. Such is to ensure the offices check on each other and where there is a conflict, each is able to deal in an open and fair manner. In the true sense of it, the trustees should be herein attending as interested parties as an invitation to ensure that both the Claimant and the officers of the union such as the 1<sup>st</sup> Respondent have oversight; have an internal mechanism to result to; and where there are serious allegations such as the ones made by the claimant, whether true or not, concern should be with the union trustees to deal or address. As noted above, with the confirmations made by the trustees in support of the respondents' case, unless there is evidence to the contrary, I will not delve into matters that can well go into the hearing of the main claim.

48. Therefore, the allegations made against the 1<sup>st</sup> Respondent, on the findings above and the confirmation of the union trustees, the orders sought cannot issue at this instance.

49. However, the court cannot ignore the apparent lack of good faith between the office of the Claimant and that of the 1<sup>st</sup> Respondent. The court is not invited here to take sides rather to preserve the assets of the 3<sup>rd</sup> Respondent and to ensure the integrity of its systems and that the union constitution is respected, protected and promoted in its words and spirit. The challenge to the membership of the Claimant in 3<sup>rd</sup> Respondent is just one indicator. The notices to show cause after the Claimant asked to convene NEC meeting is another. Industrial peace will not be achieved unless the court gives interim orders in the first instance to enable all parties including the interested parties to make appearances and each be heard on their merits.

50. Without the court going into the internal affairs of the union to cripple its operations, where there is a good case, orders shall issue at the interlocutory stage. This is the only forum the trade unions, its officials and or members can apply and find recourse. Not anywhere else as to do so would result into anarchy. The Claimant should therefore not be victimised for moving the court as he has. Before interrogation of all matters herein it is fair and just to grant interim orders.

51. Before conclusion, the Claimant has brought out the question and role of LAPFUND. That the 1<sup>st</sup> Respondent has caused the entering into an MOU between 3<sup>rd</sup> Respondent and LAPFUND. That such is contrary to section 132 of the County Government Act. The LAPFUND has indicated their interest to be enjoined herein as an interested party. They need to set out their case first before any order affecting whatever interest they may have can be argued or challenged. Similarly the entity LAPTRUST (Umbrella) Retirement Fund Board of Trustees has expressed interest to be enjoined as an interested party. Both have to set out what stake, interest of evidence exists for their case before the court can address appropriately.

52. On the pending disciplinary notices to the Claimant, the 3<sup>rd</sup> Respondent constitution recognises the various structures of the union with the National Governing Council being at the apex. The office now held by the Claimant is key to convening the National Governing Council and chapter 6 of the constitution allow for *special National Governing Council meetings*. Such meetings can be convened by the secretary general on the directions of the NEC of which the office of the Claimant is key.

53. As set out under the LRA preamble, the purpose of unionisation is to ensure the promotion of sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and the democratisation of trade union. Such mandate will be impossible to achieve if the office held by the 1<sup>st</sup> Respondent is not supportive of the entire running of the 3<sup>rd</sup> Respondent and where a member, the Claimant or any other official or officer of the 3<sup>rd</sup> Respondent seek to be addressed matters of concern even where such matters touch on the office of the secretary general, such effort should not be frustrated.

54. As noted above, the holding by the Respondents that the Claimant is not a member of 3<sup>rd</sup> Respondent is a matter that has no basis in view of his election to the top position of the National Chairperson and thus head of National Governing Council and the NEC. To hold otherwise would be to challenge the entire elections of the 3<sup>rd</sup> Respondent and the integrity of the entire union in terms of its structures and systems putting in place the various officers and offices including that of the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> Respondent trustees. To fail to acknowledge what position each party herein holds, even as the court waits to hear the main claim on its merits would disrupt all the operations of the 3<sup>rd</sup> Respondent.

55. It is therefore imperative to stop all disciplinary proceedings, actions, notices and decisions made against the Claimant, pending the hearing and determination of the main claim. This however does not stop the operations of the 3<sup>rd</sup> Respondent as being carried out by the 1<sup>st</sup> Respondent which shall continue in accordance with the 3<sup>rd</sup> Respondent constitution, the systems and structures set in place and to ensure

the union trustees take charge of their mandate effectively.

56. With the above findings, where the Claimant wishes to convene a meeting, the union constitution should apply and the 1<sup>st</sup> Respondent should abide. Such meetings, for expediency should be with sufficient notices to all parties, served on the person required to attend and not to their advocate. Equally, all notices that require to be attended to by any member, official, officer or trustees of the 3<sup>rd</sup> Respondent over matters herein [in this suit], should be served directly on the person or once advocate is appointed to such advocate. Filed Court document herein can be exchanged and served in terms of the Notice(s) of appearance made by each party.

57. Lastly, on prosecuting the matter through the media, all parties herein are reminded of the cardinal rule of *sub judice*. Sanctions lie where there is violation. The media and other social network are at liberty to apply to the Court Registrar to be availed with any order(s) herein or any party of the proceedings to facilitate quoting verbatim to avoid misreporting and misinterpretation of orders issued herein.

**Accordingly, the follow orders issue;**

- (a) Pending hearing and determination of the main claim the Claimant shall continue to receive his monthly allowances and any due benefit or until lawfully exit from office;**
- (b) All disciplinary notices issued to the Claimant and culminating to this suit are hereby stayed pending hearing and determination of the main suit;**
- (c) The orders of 27<sup>th</sup> January, 2017 are hereby set aside;**
- (d) Parties shall comply with Rule 14 of the Employment and Labour Relations Court (Procedure) Rules, 2016; then proceed to take a mention date at the registry for the court to deal as under Rule 15.**
- (e) Costs in the cause.**

Dated and delivered in open Court at Nairobi this 6<sup>th</sup> day of April, 2017

**M. MBARU**

**JUDGE**

In the presence of:

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