



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 2212 OF 2014**

**MATHIAS NYOKA NGALA .....1<sup>ST</sup> CLAIMANT**  
**WYCLIFFE KAKAI KUTEA.....2<sup>ND</sup> CLAIMANT**  
**DOMINIC NYAMAENO..... 3<sup>RD</sup> CLAIMANT**  
**PAUL WAFULA WANYAMA..... 4<sup>TH</sup> CLAIMANT**

(Suing through the Chairman, Secretary and Treasurer of KK Security Services at Nairobi County Shop Stewards on behalf of the entire Workers’ Union)

**VERSUS**

**KENYA NATIONAL PRIVATE SECURITY**

**WORKERS’ UNION ..... 1<sup>ST</sup> RESPONDENT**  
**KK SECURITY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The ruling herein relate to two applications, one filed by the Claimants and dated 16<sup>th</sup> December 2014 and one filed by the 1<sup>st</sup> Respondent on 24<sup>th</sup> December 2014. The Claimants are seeking that their contributions to the 1<sup>st</sup> Respondent as done by the 2<sup>nd</sup> Respondent be suspended pending determination of the matter herein. The Claimants obtained interim orders and the 1<sup>st</sup> Respondent filed their application seeking to strike out the interim orders as they are detrimental to the Respondent business.

2. On the application by the claimants, the orders sought are outlined as;

1. ...
2. *The monthly contributions to the 1<sup>st</sup> Respondent be suspended pending the hearing and determination of this application;*
3. *The Court be pleased to issue an order against the 1<sup>st</sup> respondent’s Branch Secretary, Nairobi County and/or any other official restraining them from issuing threats to suspend, suspending and/or in any other way intimidating the Shop Stewards of KK Security pending the hearing the determination of this application;*
4. *The Court be pleased to issue an order stopping elections and/or appointment of any Shop Steward of the 2<sup>nd</sup> Respondent, KK Security pending the hearing and determination of this application;*

5. *The Shop Steward of KK Security be supplied with copies of the 1<sup>st</sup> Respondent's constitution pending the hearing and determination of this application;*
6. *The monthly contributions to the 1<sup>st</sup> Respondent be suspended pending the hearing and determination of the Claim;*
7. *The Court be pleased to issue an order against the 1<sup>st</sup> Respondent's branch Secretary, Nairobi County and/or any other official restraining them from issuing threats to suspend, suspending and/or in any other way intimidating the Shop Stewards of KK Security pending the hearing and determination of this claim;*
8. *The Court be pleased to issue an order stopping elections and/or appointment of any Shop Steward of KK Security pending the hearing and determination of this Claim;*
9. *The Shop Stewards of KK Security be supplied with copies of the 1<sup>st</sup> respondent's constitution pending the hearing and determination of this Claim;*
10. *The 1<sup>st</sup> Respondent be compelled to render accounts pending the hearing and determination of this claim*
11. *Cost of this application be provided for.*

3. This application is supported by the annexed affidavit of Mathias Nyoka Ngala the 1<sup>st</sup> Claimant and on the grounds that the Claimants are the Nairobi county Shop Stewards of KK Security and their efforts to secure a copy of the constitution from the Respondent have been hopeless and futile as the 1<sup>st</sup> Respondent has refused to give such a copy. The Claimants have been making their monthly contributions to the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> Respondent and despite this fact the 1<sup>st</sup> Respondent has refused to render accounts of all monies received on their behalf as well as state how the same has been used. The 1<sup>st</sup> Respondent has also refused to hold discussions and or conduct meetings with the Shop Stewards of KK Security to address the issue of allowances especially transport allowances. The 1<sup>st</sup> Respondent has run affairs of the Shop Stewards through the media and the branch Secretary has been threatening some Shop Stewards stating that they will be suspended without any justifiable cause. The Shop Stewards of KK Security also wish that a portion of the Union members' monthly contributions remains at the Shop Stewards level to cater for the transport allowance.

4. In the **affidavit of Mathias Nyoka Ngala**, he states that the Claimants are the Nairobi county Shop Stewards at KK Security being Chairman, vice chairman, Secretary and Treasurer and have filed the suit in a representative capacity for other KK Security workers and members of the 1<sup>st</sup> respondent. The Claimants remit their Union dues to the 1<sup>st</sup> Respondent that is deducted monthly by the 2<sup>nd</sup> respondent. the 1<sup>st</sup> Respondent has failed and or refused to render accounts of all monies received on behalf of the Shop Stewards at KK Security as well as failed to state how the same has been used to their benefit. The Claimants are unable to get a copy of the 1<sup>st</sup> Respondent constitution; the 1<sup>st</sup> Respondent has refused to have a meeting with them and been running their affairs through the media and have now commenced threats that the Claimants be removed from office.

5. Mr Ngala also avers that as Claimants they wish that a portion of 30% of the Union members' monthly contributions remain at the Shop Stewards level to cater for the transport allowance as the 1<sup>st</sup> Respondent has refused to hold discussions and conduct meetings to address the issue. The application herein is meant to protect the rights and interests of the claimants.

6. The Claimants also filed a **Replying Affidavit** once the 1<sup>st</sup> Respondent replied to the application noting that the application herein is made in a representative capacity for and on behalf of all KK Security Shop Stewards as they are the elected Shop Stewards at KK security. The Claimants held a meeting where it was agreed that 30% of Union dues to remain at the Shop Steward level to cater for allowances. The 1<sup>st</sup> Respondent has always refused to give the Shop Stewards a copy of the constitution. The 2<sup>nd</sup> Respondent is not interfering with this matter at all and the application dated 24<sup>th</sup> December 2014 is only intended to delay justice in this case. The Claimants are aware that the 1<sup>st</sup> Respondent is in the process of registering another constitution purporting to amend the current one which is irregular. The claimant's suspect the 1<sup>st</sup> Respondent is operating on an overdraft caused by misuse of funds contributed by the

members hence the need to inspect the books of account as well as to be supplied with a copy of bank statements.

7. A **Supplementary Affidavit** was filed on 11<sup>th</sup> February 2015 and sworn by the 1<sup>st</sup> Claimant and stated that the 1<sup>st</sup> Respondent has refused to give them a copy of the Union constitution and is aware that there are two different constitutions and only the copy with the Registrar of Trade Unions can be relied upon. When the Claimants asked for a copy of the constitution they were suspended by the 1<sup>st</sup> Respondent and thus can only get such a copy through the court. The 1<sup>st</sup> Respondent has refused and or failed to call for an Annual General Meeting and have been holding board room elections to the detriment of the claimants. The 1<sup>st</sup> Respondent has other Security firms as members and thus not true that they are unable to conduct business as alleged. any remittance to COTU is the union's choice and not for the employer. There is no audit report due to mismanagement.

8. In reply, the 1<sup>st</sup> Respondent on 21<sup>st</sup> January 2015 filed their **Replying Affidavit sworn by Joash Soita Andawa** being the national treasurer of the 1<sup>st</sup> Respondent and the Nairobi county branch Secretary noting that the application before Court is an abuse of the Court process for the reasons that, membership of the Union from KK Security is over 9520 members countrywide; there are 18 Shop Stewards spread around the county and only 4 Shop Stewards are complaining. That the only complaint that exists are 3 being;

- i. Shops Stewards want to be issued with a copy of the Union constitution;
- ii. Demand to be paid 30% of the Union contribution from KK Security for their own use; and
- iii. Accounts be rendered.

9. These complaint cannot form the basis of freezing Union contributions from the employer as these complaints can be addressed by noting that the Union constitution is a public document that can be obtained from the Registrar of Trade Unions; to get a copy from the 1<sup>st</sup> Respondent a member has to apply and pay 200/- which the Claimants have failed to do. To demand payment of 30% of Union contribution is unlawful and unconstitutional; as the Union has a constitution that regulate how funds are to be utilised, the Labour Relations Act and the Regulations given by the Registrar of Trade Union and the applicable Collective Bargaining Agreement (CBA) outline how such funds are to be utilised and accounted. Such utilisation is to pay management of the Union offices; payment of staff salaries; finance Union activities and payment of necessary allowances. In this case, Shop Stewards only get travel and subsistence allowances when doing Union activities as they are not employee of the Union and are at the Shop floor taking members grievances and are not entitled to 30% of remitted dues as claimed.

10. Mr Andawa also avers that there is a CBA between the Union and the American Embassy project wing and there is an ongoing suit between the two Respondents herein on their refusal to enter into a full CBA for the commercial wing of their employees. The 2<sup>nd</sup> Respondent is thus desirous of scuttling the 1<sup>st</sup> Respondent operations by stopping remittances of the Union dues as it is a conflict of interest for the Claimants to be represented by the same firm of advocates who appear for the employer in the case between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> respondent. the amount not remitted from the over 9520 members is substantial at about 1 million and to stop the same is to wreck the union's activities which have been budgeted for in payment for rent, salaries, travel and allowances. In any event, the amounts stopped from remittances include a sum of 100/- of which, 50/- is due to the 1<sup>st</sup> Respondent and 50/- is payable to COTU and hence to stop these remittances is to also undermine the activities of COTU.

1. Mr Andawa also depones that there has never been a request to render accounts, members can petition the Union for such accounts and such accounts are submitted to the Registrar of Trade Unions annually and the Claimants can obtain a copy from their delegate. The matters now being raised affect Nairobi county office only and should not be allowed to cripple activities of the national office.

12. Mr Andawa also states that as the branch Secretary through the branch executive he is mandated to carry out administrative management of the branch which includes suspension and dismissal of Shop

Stewards where it is found necessary by executive resolution. The Claimants have already been suspended and pending hearing. The orders given should be lifted to save Union activities and concerns raised can still be addressed without freezing Union finances.

13. On 18<sup>th</sup> February 2015 the 1<sup>st</sup> Respondent filed a **Supplementary Affidavit sworn by Isaac GM Andabwa** the National Secretary General of the 1<sup>st</sup> respondent. On **12<sup>th</sup> February 2013** through orders of this Court he did apply for a certified copy of the constitution from the Registrar of Trade Unions and on 16<sup>th</sup> February 2015 he got the copy and any previously submitted constitution to the Court is not valid as he is the custodian of Union documents. Confusion arose in 2013 when the Union wanted to make amendments to the constitution and hence a draft is still held by some persons. The draft was sent to the Registrar of Trade Unions for authentication before the same could be presented before the Annual Delegates Conference for ratification. The feedback from the Registrar of Trade Union has not yet been received. The draft was received but this is not certification. No request for a copy of the constitution has been made by the Claimants and accounts are tabled at the Annual Delegates Conference and a copy of the audited accounts is filed with the Registrar of Trade Unions and on payment, a member can get a copy.

### **Determination**

Questions that emerge;

**Whether the Court should issue orders suspending the Union monthly contributions**

**Whether the 1<sup>st</sup> Respondent should be restrained from issuing threats to suspend or intimidate the Shop Stewards at KK security;**

**Whether the Court should stop the election and/or appointment of new Shop Stewards at KK security;**

**Whether the Claimants should be supplied with copies of the 1<sup>st</sup> Respondent constitution;**

**Whether the 1<sup>st</sup> Respondent should be directed to render accounts; and**

**Whether the Court should vacate the interim orders herein.**

14. Gone are the days when Trade Union officials sat back, received Union dues remitted by employers and did nothing to their members. When accountability lines are not open, applications such as this one will continue to bog the Court registry. It is a high time Trade Union and the elected officials realised that they serve a public and membership that is dynamic and has high expectations and will not hesitate to move the Court as herein seeking accountability and service where these are lacking. Trade Unions in their very nature are formed as a collective body to ensure the welfare, rights and needs of their members are protected at all material times. There are responsibilities, duties and obligations the Union officials cannot run away from as to do so is to cause the wrath of these members to agitate for change through whatever means possible that include inviting the Court to stop or call for new elections, freeze accounts or stop remittance of Union dues. The bottom-line is lack of accountability for resources remitted to the Union for the welfare and benefits of the very members who are the stakeholders.

15. In this case, for the 1<sup>st</sup> Respondent to state that their operations and business is almost being brought to a halt by the orders herein and that the Claimants by seeking to have copies of the constitution should get such copies from the Registrar of Trade Unions upon payment of the requisite fees is inviting trouble at their very door. The Union officials cannot and should not and shall never treat its members in a manner such as this one. Where a member genuinely seeks to have information from their Union such as the 1<sup>st</sup> respondent, the least such a member should have is such information as requested. Where such information is not available at the Union office, and the Union has appropriate information with regard to its access, then sharing such information would be a responsible thing to do instead of closing the door to

such an enquiry. Even before such information is requested for in writing, prudence demands that once a member is recruited to the union, certain basic and minimum documents such as a copy of the Union constitution should be given as of right. Otherwise such a member will continue remitting their dues, these dues are utilised for various purposes and when such a member wishes to seek or make an enquiry, instead of getting appropriate feedback, they are told to contact the Registrar of Trade Unions. This is preposterous to say the least! Trade Union member's link with the Registrar of Trade Unions is their officials duly elected to play this role. To tell members to go and buy a copy of the Union constitution from the Registrar of Trade Unions office should be unheard of.

16. Time has come for Union officials to be more accountable. In scenario like in this case where the 1<sup>st</sup> Respondent states that majority of their members come from the 2<sup>nd</sup> respondent, then by extension, and through legitimate expectation, the salaries paid to Union staff; monies paid for Union activities and payment of necessary allowances should as a matter of course have had great impact on the entity that brings the membership such as the 2<sup>nd</sup> respondent. To ignore this fact is to hide from reality. Where there is impact, then such salaries paid to Union staff should have been to have these staff serve the Claimants interests and where these monies are paid for any Union activities, then as a consequence such activities would entail direct benefit of activities for members with the largest membership from the 2<sup>nd</sup> Respondent as well as whatever allowances are paid, then as a matter of course, such allowances should have been paid serving the entity with the largest membership. This does not in any way imply that even where an entity has one (1) member, two (2) or three (3) that they do not require service, but logic, reason and due regard dictates that whatever the 1<sup>st</sup> Respondent does with funds remitted from the 2<sup>nd</sup> respondent, such remittances are from deductions of the Claimants and other employees and they have a right to demand accountability or service impact. The salaries, activities and allowances are not an end in themselves, where monies are expended for such, and then the outcome impact is to be felt by the member beneficiaries. It cannot be the other way round that members remit their dues and have no benefit simply because there are rents paid, salaries to be paid, activities financed and allowances paid to persons that have nothing to do with the claimants. This scale of economics cannot work in any civilised society, organisation of Trade union. Accountability must come to bear.

17. A story is told in the book of *Exodus* where a man called Moses went up the mountain to get the Ten Commandments, which he did but before going up the mountains, the people had to be prepared to receive the Ten Commandments. Part of such preparations was consecration so as to be cleansed and be ready to accept the Ten Commandments. For three days, the people were prepared and Moses then left for the mountains. These Ten Commandments were not meant for Moses alone but for the People. Had God wanted the commandments for Moses alone, He had a way of dealing with Him directly, but these Ten Commandments were for the people and so Moses had to take time and teach the people about these Ten Commandments and even elaborate on them hence the entire book of *Exodus*.

Had Moses not gone to get the Ten Commandments, the people would still be worshipping other gods or they would simply have their own codes of conduct. Equally in this case, the constitution of the union, if not brought to the people/members, they will start their own devices. Certainly this is not the intention of the 1<sup>st</sup> respondent.

18. That said Trade Unions are now regulated by law and their own constitutions. In this case the Labour Relations Act make provisions on how Union funds are to be received, utilised, accounted, and audited. Equally the Union constitution that is registered as of 15<sup>th</sup> February 2011 unless changed, amended or reviewed, it remains the registered Union constitution. However, since there are intentions to amend the same, such efforts must be brought to the attention of members with updates through the various channels of communication either through delegates or a mechanism through which the Union receives monthly Union dues, through employers. This being an issue hotly contested in this case, that has caused the stoppage of remittance of Union dues, and then the 1<sup>st</sup> Respondents cannot seat back easy and fail to ensure that its members get copies of such constitutions where demand arises. It would be a travesty of justice for the Court to ignore such a demand and direct the Claimants to the Registrar of Trade Unions to access such information and document. This is a duty and responsibility of the 1<sup>st</sup> respondent. As it has emerged, there are various drafts of the constitution that are in circulation, and the responsibility of the 1<sup>st</sup>

Respondent is to address this as a matter of urgency. I find merit in the prayer and will direct the 1<sup>st</sup> Respondent to issue the Claimants with registered copies of its constitution.

19. Section 39 of the Labour Relations Act regulates the activities for which Union funds can be utilised for as follows;

*39. Subject to its rules and the provisions of this Act, the funds of a Trade union, employers' organization or federation may be used only for the following purposes –*

*(a) The payment of salaries, allowances and expenses to its officials;*

*(b) The payment of expenses for the administration of the Trade union, employer's organization or federation including auditing of its accounts;*

*(c) the prosecution or defence of any legal proceedings to which the Trade union, employers organization or federation or any member thereof is a party, when the prosecution or defence is undertaken 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;*

*(d) The conduct of Trade disputes on its behalf or on behalf of any member thereof;*

*(e) The compensation of members for loss arising out of Trade disputes;*

*(f) the payment of allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of those members;*

*(g) The payment of subscriptions and fees to any registered federation to which it is affiliated; and*

*(h) subject to any condition determined by the Minister, any other object which the Minister may, on application of any Trade Union, employers' organization or federation, declare by notice in the Gazette to be an object for which its funds may be expended.*

20. Thus section 39 creates a wide parameter within which a Trade Union can utilise the funds received for salaries, allowances and expenses of its members; administrative costs; prosecution and defence in legal proceedings; Trade disputes against its members; allowances to members on compassionate basis; subscriptions to federations of affiliate organisations; and any other purposes as gazetted by the Minister. There is therefore a legal mandate that a Union must fulfil but also allowed under its constitution to make provision for other expenses that must comply with section 39(h);

*(h) subject to any condition determined by the Minister, any other object which the Minister may, on application of any Trade Union, employers' organization or federation, declare by notice in the Gazette to be an object for which its funds may be expended.*

21. In this case, under the 1<sup>st</sup> Respondent registered constitution Rule No. 14 (a) on Funds states;

*All funds of the Union shall be centralised in one Union Bank Account to be determined by the National Executive Council and maintained by the National Office of the Union provided that each branch of the Union with more than one thousand (1000) members shall maintain its own bank account with the approval of the National Executive Council.*

22. The above section must be read together with Rule No. 14 (c) and (d) where the 1<sup>st</sup> Respondent constitution outline the nature of expenses that can be incurred and how the Treasurer of each branch can open an account with direction from the National Chairman.

23. Save for these provisions, I find no other way as to how Union funds are to be handled, utilised and

accounted. All dues are to go to the Union Bank Account gazetted by the Minister and determined by the National Executive Council and maintained by the National Office of the Union. Once the national office has these funds, a branch with over 1000 members with written instructions from the National Chairman, General Secretary and National Treasurer can open an account to receive entrance fees and incur expenses as approved by the national office.

24. In this case therefore, the law and the constitution of the 1<sup>st</sup> Respondent only permit Union dues to be handled in a particular way without deviation and that is through the Union account from which, either through written consent and approval, branches can open accounts for specific purposes but not the retention of such funds at the Shop floor for Shop Stewards use as allowances. From the application of the claimants, apart from averments that they have been denied audience by the 1<sup>st</sup> Respondent so as to discuss the retention of 30% at the Shop steward's level for use as transport allowances, I find no explanation as to what kind of *transport* the Claimants seek to be facilitated as theirs is a position specific at the attendance of Shop floor grievance handling and any other duties allocated by the 1<sup>st</sup> respondent. There is no mention that when and where such duties are allocated, the Claimant has not been paid. A blanket provision of allowances for no useful purposes cannot be made especially where there are clear provisions of the law in this regard. All Union dues are remitted to the Union account gazetted by the Minister and from this source the Trade Union through its structures can allocate the same. where there is a problem in activities financing, Shop Stewards payment of allowances upon allocation of work/activities, then that has to be remunerated as appropriate and I do not find any evidence herein by the Claimants that the 1<sup>st</sup> Respondent has failed to make such payments for work done.

25. Suffice it to say, Union officials are given mandate by the entity to serve the interests of all members of the Union without exception. Once funds are remitted to the Union the same must be used for the overall benefit of the union. To suggest that part of such dues be retained at the Shop floor for the use of Shop Stewards would be to create serious conflicts of interests as the mandate of Shop Stewards is specific as against that of national officials or branch officials. Each tier of leadership must however be accountable from the top to the Shop floor as these are the workers/members who labour daily to raise the Union dues. However respect must be given to the set structures that are recognised by law. The Union dues withheld by the 2<sup>nd</sup> Respondent since December 2014 to date should therefore be remitted to the 1<sup>st</sup> Respondent forthwith.

26. The Claimants are also seeking restraining orders against the 1<sup>st</sup> Respondent who have threatened them with suspension and intimidation as Shop stewards. From the affidavits and submissions from both parties it did not come out clearly as to whether the threats have taken effect or not. The 1<sup>st</sup> Respondent stated that the right to discipline members rests with them but did not elaborate what action has been taken against the claimants. The principle objective laid out under section 46(h) of the Employment Act can be supplanted here and correctly applied, as where an employee raises a complaint that is well founded and responsible, such an employee should not be victimised. Equally where a Trade Union member or Shop Steward raises concerns with the management of the Union which concern/complaint or any other apprehension is well founded, such a Shop Steward or member should not be victimised. Thus where there is threat of suspension, intimidation or any other negative action so as to affect the positions of the Claimants due to their initiation of this suit against the Respondents especially the 1<sup>st</sup> respondent, such suspension, intimidation or negative action taken due to the initiation of this suit or where the reason/s for such negative action is this suit, then the 1<sup>st</sup> Respondent is barred from taking such action until the suit is heard and determined.

27. With the above issue thus addressed, to appoint new Shop Stewards in place and instead of the Claimants at KK Security would be taking a negative action against them. Such action is restrained as to remove the Claimants from their positions at KK Security would negate the purpose of their suit which the Court finds has been initiated responsibly and on good foundation.

28. The Claimants are also seeking that the 1<sup>st</sup> Respondent to render accounts and not make annual returns as suggested by the 1<sup>st</sup> Respondent in their submissions. This is a matter extensively addressed by

the Labour Relations Act at section 42. Section 42 must be read together with section 41. Where there is any allegation of misappropriation of Union funds, a member of the Union is at liberty to move the Court seeking to for appropriate orders that includes restraining the Union officials from any further use of any funds and render accounts. Thus under section 42 the modalities for such measures are outlined thus;

*42. (1) In this section, “official” means the treasurer of a Trade union, employers’ organization or federation and every other official responsible for the accounts of a Trade union, employers’ organization or federation for collecting, disbursing, keeping in custody or controlling its funds or moneys.*

*(2) Every official shall render an accurate account of all moneys received or paid by The official –*

*a. **To the Trade union, employers ‘organization or federation and its members –***

*(i) Upon resigning or vacating office;*

*(ii) At least once in every year at such time as may be Specified By the rules of the Trade union, employer’s organisation or federation; and*

*(iii) At any other time required by a resolution of the members of the Trade union, employers’ organization or federation or by its rules.*

*b. To the Registrar, when requested by the Registrar.*

*(3) An account rendered under this section shall specify –*

***(a) All amounts received or paid by the official since assuming Office Or, if the official has previously rendered an account, since the date of the last account;***

***(b)The balance remaining in the possession of the official at the time of Rendering the account; and***

***(c) All bonds, securities or other property of the Trade union, employers’ organisation or federation entrusted to the custody of, or under the control of, the official.***

*(4) An account rendered under this section shall be in the Form R set out in the Third Schedule.*

*(5) The account rendered under this section shall be verified by Statutory Declaration, and shall be audited by the holder of apracticing certificate Issued pursuant to section 21 of the Accountants Act.*

*(6) After the account has been audited, the official shall, if resigning vacating office or if required by the trustees to do so, forthwith hand over to the trustees of the Trade union, employer’s organization or federation any balance in the official’s possession and all bonds securities, effects, books, papers and property of the Trade union, employer’s organization or federation in the official’s possession or custody or otherwise under the official’s control.*

*(7) Any official of a Trade union, employer’s organization or federation or any person who –*

*a. neglects or fails to comply with any of the provisions of this section or;*

***(b) wilfully makes, orders, causes or procures to be madeany false entry in or omission from an account rendered in terms of this section, commits an offence.***

[EMPHASIS ADDED].

29. For purposes of this case and by application of section 42 of the Labour Relations Act, a Union is required [shall] to render accounts to its members at least once a years or at any other time required under a resolution. First there must be a mandatory taking of accounts annually and secondly at any other time as passed through a resolution. Such an account is to include the following;

- a. *all amounts received or paid by the official since assuming office or, if the official has previously rendered an account, since the date of the last account;*
- b. *the balance remaining in the possession of the official at the time of rendering the account; and*
- c. *all bonds, securities or other property of the Trade union, employers' organisation or federation entrusted to the custody of, or under the control of, the official.*

30. These are mandatory provisions. When did the 1<sup>st</sup> Respondent last render accounts? Have there been such accounts for the last year? I find no such evidence and as noted above, the accounts to be rendered under section 42 are fundamentally different from annual returns required under section 43 of the Labour Relations Act. So the 1<sup>st</sup> Respondent cannot be found to state that if the Claimants want to know the status of the Union accounts they should ask their delegate or apply and pay the Registrar of Trade Union for such returns. The duty here is on the 1<sup>st</sup> Respondent to render accounts to its members as or right. Otherwise the remittance of Union dues by such members becomes fruitless if in return they cannot get an account of all funds received, balance from the previous year and all bonds, securities and other properties of the union. this is due to the members on an annual basis and where demanded, this is a violation of a clear provision of the law.

31. In this regard therefore, the Claimant are justified is seeking the 1<sup>st</sup> Respondent to render accounts with regard to Union dues remitted. With the lifting of the interim orders herein, the 1<sup>st</sup> Respondent shall render accounts for the last Union financial year within the next 30 days. Where such accounts are not rendered, the Claimants shall be at liberty to move the Court as appropriate noting section 41(1) of the Labour Relations Act.

**On the interim orders granted herein on 17<sup>th</sup> December 2014, the Court as at that time had only heard from the claimants. Having heard both parties and the analysis above, the orders granted on 17<sup>th</sup> December 2014 are set aside the Court ORDERS as follows;**

- a. **Interim orders herein are lifted;**
- b. **The Union dues withheld by the 2<sup>nd</sup> Respondent since December 2014 to date shall be remitted to the 1<sup>st</sup> Respondent forthwith.**
- c. **The claimants shall be issued with copies of the 1<sup>st</sup> Respondent Union constitution within 7 days at the expense of the 1<sup>st</sup> Respondent;**
- d. **The 1<sup>st</sup> Respondent is hereby restrained from suspending, threatening with suspension or in any other manner interfering with the positions held by the Claimants while the suit herein is pending; unless a different matter outside and separate from proceedings herein arise;**
- e. **The 1<sup>st</sup> Respondent shall render accounts to the Claimants for the last Union financial year within the next 30 days failure to which the Claimants shall be at liberty to invoke the provisions of section 41(1) of the Labour Relations Act.**

Delivered in open court at Nairobi this 10<sup>th</sup> day of March 2015.

**M. MBARU**

**JUDGE**

in the presence of:

Court Assistant: Lillian Njenga

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