



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1533 of 2012**

Sharing of union funds between national and branch offices

**Kenya Electrical Trades & Allied Workers Union**

**Claimant**

**and**

**Peter Mutemi  
Ernest Nadome  
David Songok**

**1<sup>st</sup> Respondent  
2<sup>nd</sup> Respondent  
3<sup>rd</sup> Respondent**

**and**

**Franklin Njeru  
Monica Achieng**

**1<sup>st</sup> Interested Party  
2<sup>nd</sup> Interested Party**

**RULING**

1 Before Court is a Motion dated 27 August 2012 and filed in Court on 31 August 2012. It is predicated on section 47 of the Labour Relations Act and rule 16 of the Industrial Court (Procedure) rules 2010 and all other enabling provisions of law. It is brought by some 2 persons who refer to themselves as Interested parties.

2 The Motion which came under certificate of urgency was placed before Lady Justice Mbaru on 31 August 2012. She certified the application urgent and ordered that it be served for inter partes hearing.

3 I heard the Motion on 1 September 2012.

4 The Motion sought 2 substantive orders to wit:-

(i) The Honourable Court do issue an interim order compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from further holding branch administrative funds.

(ii) The Honourable Court restrains the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from further interfering in any manner and style with the activities of Central Rift branch of the applicant/claimant union.

5 A keen perusal of the Motion establishes that a determination of the Motion would finalise all the core issues and prayers sought in the Memorandum of Claim. I have therefore in this determination considered all the pleadings and submissions filed by the parties because in their submissions the parties covered all the grounds raised in the Memorandum of Claim and Memorandum of Response.

## **Interested parties' submissions**

6 The Interested parties asserted that it had the mandate of the Claimant Union to bring the suit. It was their case that the Claimant Union is a duly registered trade union which can be sued and able to sue and that the Respondents were the principal officers of the union. The Interested parties submitted that they are principal branch officers of the Claimant union's Central Rift branch. It was added that the 1<sup>st</sup> Interested party is a trustee of the Union.

7 The Interested parties urged that on 26 April 2012 they wrote a letter to the 2<sup>nd</sup> Respondent asking him to remit branch operation and administration funds to the Central Rift Branch. It was their argument that all the 9 branches of the Union are entitled to receive such types of funds from the Unions' head office. In fact, the interested parties claimed that the Central Rift branch alone remitted to the union about Kshs 2,200,000/- from its Kenya Power membership.

8 It was the contention of the Interested parties that the withholding of funds was contrary to section 39(a) of the Labour Relations Act and articles 12.3, and 12.5 of the Unions constitution and the unions branch operations had been adversely affected.

## **Respondents' submissions**

9 According to the Respondents' it is the unions constitution which is primary reference on how its funds are utilized rather than section 39(a) of the Labour Relations Act and that the Respondents' had abided with the unions constitution.

10 The Respondents also submitted that the powers of Court under section 41(1) of the Labour Relations Act were limited to cases of unlawful or unauthorized expenditure of union funds and that in the present case the Interested parties did not make any such allegation. The Respondents' contended the issue was of non-disbursement of funds to the branches due to non-availability of funds. The Respondents case was also to the effect that an application under section 41(1) of the Labour Relations Act could only be made by five or more persons or the Registrar of Trade unions.

11 The Respondents'' further had objections to the fact that the Interested parties were not authorized representatives of the union to come under the umbrella of sections 2 and 73(3) of the Labour Relations Act to commence these proceedings and therefore the suit was fatally defective.

12 Further, the Respondents urged the Court to reject the claim because it was premature. The Claim was said to be premature because the Interested parties could have made use of section 44 of the Labour Relations Act and article 13 of the union's constitution to inspect the unions account or used internal union mechanisms to solve the issues in dispute. The Interested parties, it was submitted had refused to attend meetings called by the Union.

13 On the main issue in dispute, the Respondents submitted that the National Executive Board had suspended the disbursement of funds to the branches because the National office was overburdened with financial obligations.

14 Lastly it was submitted the Claim was not brought in good faith because the Interested parties had proposed the formation of a splinter union.

## **Issues for determination**

15 There are many issues which arise for determination. Some of them are marginal or technical such as whether the Interested parties had the capacity to commence the proceedings, the bona fides of the Interested parties and powers of Court under section 41 of the Labour Relations Act. I have decided not to address such issues based on the provisions of section 20 of the Industrial Court Act, Article 159(2) (d) of the Constitution and because it was not denied that the Interested parties were branch officials of the Union agitating on behalf of the branch with the National union office.

16 To my mind the core issue is the disbursement of funds by a Union National office to its branches and whether the issue is justiciable.

### **Analysis**

17 The primary governance instruments on how union funds should be utilized are both statutory and union-constitution specific.

18 Section 39 of the Labour Relations Act provides:

***Subject to its rules and the provisions of this Act, the funds of a trade union, employers' organisation 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 organisation or federation including auditing of its accounts; (emphasis mine)***

***(c) the prosecution or defence of any legal proceedings to which the trade union, employers organisation 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' organisation or federation, declare by notice in the Gazette to be an object for which its funds may be expended.***

19 There can be no gainsaying that the Interested parties' application has a statutory basis in section 39(a) and (b) of the Labour Relations Act.

20 Article 12 of the constitution of the Kenya Electrical Trades and Allied Workers Union on its part has laid out the utilization of the funds' of the union. The relevant portion thereof at Article 12.3 provides:

### **Branch Operation funds**

*The National Treasurer subject to availability of funds shall remit to each Branch Treasurer every month equal operational funds as may be decided by the National Executive Board or Top Executive Board. All cheques for withdrawals of money from such branches shall be signed by Branch Chairman, Branch Secretary and Branch Treasurer whose signature shall be mandatory.*

21 To my mind, the first operative conditionality to the disbursement of funds to the branches is the **availability of funds**. However, the records relating to the availability of funds through documents such as audited annual returns which are required to be made to the Registrar of Trade by the Union were not produced and therefore this Court cannot make a determination as whether funds were available or not. It was incumbent upon the parties to establish this fact by producing copies of audited annual returns made to the Registrar of Trade Unions but nothing turns on this because of what I will discuss shortly.

22 The second operative conditionality on disbursement of funds is a **decision of the National Executive Board or Top Executive Board**. In the instant scenario the Respondents exhibited a letter marked 'EN 5' informing all branches that honorariums, **branch operations** and all outstanding claims directly attributable to union dues be suspended effective 1 December 2010. The decision to suspend the disbursement of the funds was extended and the branches informed through a letter dated 25 July 2011 and exhibited as 'EN 4'. The minutes from which this extension of the suspension was resolved was exhibited as 'EN 3'. The suspension was again extended and the branches informed through a letter dated 27 April 2012 and exhibited as 'EN 1'.

23 The reason why I consider nothing turns on **the availability of funds** in the instant case is because the Respondents' did not controvert the submission of the Interested party that the Central Rift Branch of the Union remits about Kshs 2,200,000/- from its Kenya Power based membership alone to the Union National office. So it remains a fact that the part (Central Rift Branch) has been making contributions to the whole (Union).

24 The membership of the Union in the Central Rift Branch have a legitimate expectation that the union through its branch leadership will at all times be ready to address their interests and rights with their employers, for instance Kenya Power, adequately and effectively. Without adequate and effective representation these union members who contribute to the union stand to suffer a detriment. If the branch suffers, the national will inevitably suffer. Whenever a part of the body suffers, the whole body suffers. They will not be getting any benefit for their monthly contributions. This would be a raw deal.

25 In my considered opinion therefore, it is not conscionable or equitable for a union national office to receive contributions from branch membership and appropriate those funds for the interest of the whole without an iota of consideration of the rights and interests of the branch/or part. Such action is unconscionable and inequitable even if based on a union's constitution. Some portion of the contribution from the branch must of necessity be remitted to the branch and not held back at the head office even if for legitimate expenses such as legal costs as has been demonstrated by the Respondents here.

26 Otherwise, desperation will set in within the branch membership and proposals to form or join splinter unions will naturally sprout. The sprouting of numerous unions purporting to represent the interests of workers in the same sector of industry would be antithetical to the objective of the establishment of the Industrial Court to further, secure and maintain good employment and labour relations in Kenya as provided for in section 4 of the Industrial Court Act.

27 Considering what I have outlined above I do find that the issue brought forward by the Interested parties is justiciable and that the Court must not remain aloof in intra-union disputes concerning how unions are run and funds utilised.

28 Before coming to the orders I propose to make I wish to make one observation which relate not only to the present Cause but on what I have observed in other Causes which have come up before me. This regards the quality and style of pleadings. It is true in certain instances, unrepresented parties with absolutely no legal knowledge or experience will prepare their own pleadings which at many times are incoherent. But where like here the pleadings have been prepared by seasoned unionists of vast experience they should be faithful to certain basic rules.

29 In the Motion filed together with the Claim, the main prayers were:

**(2) THAT pending hearing and determination of this application the Honorable court be pleased to issue an interim Order of compelling the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from further withholding branch administrative funds.**

**(3) THAT this Honorable court be pleased to restrain the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from further interfering in any manner and style with activities of Central Rift branch of the Applicant/claimant union,**

while in the Memorandum of Claim the main prayers were

a) ***THAT the Honorable court be pleased to order the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondents in their capacities as National Treasurer, National General Secretary and National Chairman to release monies meant for Central Rift Branch Operations and any other funds owing to the said branch or its officials dating back to December 2009.***

b) ***THAT the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondents by themselves agents or otherwise be restrained from further withholding and/or interfering in any manner and style with activities of Central Rift Branch of the Applicant Union.***

30 There is need to maintain consistency between the prayers sought at the interlocutory stage and the final prayers sought in the Memorandum of Claim. I understand that authorized representatives of unions are not lawyers and do not purport to be lawyers but some of these inconsistencies will prejudice the other parties and convolute the issues upon which the Court needs to direct and address its mind to ensure that the ends of justice are met. Prayer a) of the Memorandum of Claim does not feature anywhere in the Motion while prayer 2 of the Motion does not feature in the Memorandum of Claim. However, as I stated before these are some of the matters I treat as marginal or technical purely for the purposes of making my determination on this Cause. Indeed I appreciate that the rules of this Court have been kept simple and to the minimum and need to be so kept and that the Court should not base its decisions on technicalities but where the shortcomings go the substance of the Claim, such claims may have to be struck out.

### ***Orders***

31 Considering the foregoing I do order that the Respondents do remit to the Central Rift Branch of the Kenya Electrical Trades & Allied Workers Union a third of all the monies received every month at the National office as contributions from the Central Rift Branch effective 31 August 2012 when the Memorandum of Claim was filed until such a time as the Unions financial status improves for purposes of branch operations.

32 There be liberty to apply to all the parties.

33 There will be no order as to costs.

***Dated and delivered in open Court at Nairobi on this 26<sup>th</sup> day October 2012***

***Justice Radido Stephen***

**Judge of the Industrial Court**

### **Appearances**

*Monicah Achieng  
Branch Secretary, Central Rift Branch*

*Kenya Electrical Trades & Allied Workers Union*

*For Interested Parties*

*Cyprian Onyony instructed by*

*Onyony & Co Advocates*

*For Respondents*