



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1325 of 2011

GEOFFREY IRUNGU

JOSEPH MIRING’U

JOSEPH MUCHORI KIMANI

STEPHEN NDUNG’U NGA’NG’A

LAWRENCE KIRUTHI MWAURA CLAIMANTS/APPLICANTS

(Suing for and on behalf of Kiambu

Branch KUPPET)

VERSUS

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS

(Through Secretary General) 1ST RESPONDENT

REGISTRAR OF TRADE UNIONS 2ND RESPONDENT

AND

PETER MWAURA KAMAU

JOSEPH KAMAU KIMANI

JAMES MUHIA..... INTERESTED PARTIES

AND

EQUITY BANK LIMITEDGARNISHEE

RULING

The application before court is the one dated 2nd August, 2012. The application was brought by the applicants claimants through the firm of Gakoi-Maina and Company Advocates. The application is

supported by the affidavit of Peter Mwaura Kimani and Stephen Nganga dated the same day and grounds on the face of the application.

The applicants seek the following orders:

1. ***That this application be certified urgent and be heard exparte during the court current court vacation.***
2. ***That the 1st Respondent's Bank account held with the garnishee at Equity Bank Corporate Branch, Fourway Towers being account No.0010297275826 be and is hereby attached until full payment of the money owing to the claimants/applicants.***
3. ***That the garnishee be and is hereby ordered to release Kshs.4,770,596 (four million, seven hundred and seventy seven, five hundred and ninety six shillings) forthwith to the claimant applicants through the law firm of Gakoi Maina & Company advocates.***
4. ***Any other and further relief as the court may deem fit and just to grant.***
5. ***That the Applicant be awarded costs of this Application.***

The grounds the Applicants rely on are as follows:

- (a) ***The 1st respondent owes the claimants the sum of Kshs.4,770,596/= (four million seven hundred and seventy seven, five hundred and ninety six shillings).***
- (b) ***The 1st respondent and/or its treasurer has unduly withheld money owing to the claimant/applicants herein.***
- (c) ***The claimants/applicants are unable to run the basic operations of the Kiambu County Branch of KUPPET.***
- (d) ***The 1st respondent holds a bank account with the garnishee herein.***
- (e) ***The 1st respondent has been receiving and continues to receive Ksh.400 (four hundred shillings) from each of the members of Kiambu County Branch of KUPPET, which membership stands at 2566 members as of March 2012.***
- (f) ***The withholding of the remittances by the National Union to the Kiambu County Branch of KUPPET is in fragrant violation of the orders of this honourable court and it is calculated to disenfranchise and cripple the operations of the claimant/applicants.***
- (g) ***It is in the interests of justice to enforce the orders of this court by granting the applications as prayed.***
- (h) ***Neither the 1st respondent nor the garnishee will suffer any prejudice.***

In the first instance, when the application was heard *exparte* on 3rd August, 2012, this court gave orders freezing the 1st Respondent's Bank Account with Equity Bank Corporate Branch, Fourway Towers, Account No.0010297275826 until the hearing of the application *interpartes*. The Applicant was also asked to serve the Respondents and the interested party and the garnishee forthwith. The Application was then set for *interpartes* hearing on 10th August, 2012.

On the 10th August, 2012 the court proceeded to hear the application *interpartes*.

In the affidavit of Peter Mwaura Kamau and Stephen Nganga, the two deponed that they are the Executive Secretary of Kiambu County Branch of KUPPET and an interested party herein. They averred that on 25th January, 2012, the parties in this cause filed consent through their representatives and advocates on record to the effect that:

“2. THAT on the 25th January, 2012 the parties in Industrial Cause No. 1325 of 2011, through their representative and advocates recorded consent in court, and through the consent the various parties agreed inter alia:

(a) The Registrar of Trade Union would register the names of officials forwarded by the consent of the parties.

(b) The National Headquarters of KUPPET and the Registrar of Trade Unions will not interfere with the leadership, finances and operations of Kiambu County Branch until the registered officials complete the remainder of the term or until the next general elections.

(c) The newly registered officials do open a new bank account and the National Union to remit faithfully and without delay all the money owing to the Kiambu Branch of KUPPET, including the arrears owed from July – December 2011.

(d) Remittances of branch funds and the salary of the Kiambu County Branch Executive Secretary do resume immediately as from January 2012.

(e) All the pending cases relating to the Kiambu County KUPPET be withdrawn forthwith each party bearing its own costs, that is Industrial Cause Nos.2032, 2085, 1222 of 2011 and HCC Misc. Application No.168 of 2011.

(f) With the execution of this consent the dispute be considered settled.

The said consent was attached to this application and marked as PMK 1 and was also adopted as a part of the court record on 26th January, 2012 and award given accordingly dated 26th January, 2012.

The Registrar Trade Unions was ordered to comply with the consent and register the names of the officials. An extract from the Register was produced as exh PMK 3A – 3B. The deponent further stated that the Kiambu Branch complied with the court’s order by opening a new account being Equity Bank, Kenya Union of Post Primary Education Teachers – Kiambu, Account No.0640298759362. However the Applicant contends that the National Treasurer of KUPPET has fragrantly violeted the orders of this court by failing, declining and neglecting to fulfil its obligations by not remitting funds and salary to the Kiambu Branch Account of KUPPET.

The deponent further avers that the National Treasurer of KUPPET is required by virtue of Article 12 (ii) (d) of the Union’s Constitution to remit 65% of the total dues collected from the members of the branch including Kiambu KUPPET branch. A copy of the said Constitution is also annexed and marked as PMK 5.

The deponent further avers that the Kiambu KUPPET Branch has a total current Membership of 2566 members who contribute 400/= monthly and that by the end of July, 2012, the National office owed Kiambu branch the sum of 4,770,596. The applicant further avers that they are aware that the KUPPET head office operates a Bank Account with Equity Bank being EQUITY BANK, CORPORATE BRANCH, FOURWAY TOWERS ACCOUNT NO. 0010297275826. That the KUPPET head office has disregarded the branch operations leading the branch to fail to meet its obligations. Copies of demand notices addressed to the Applicants’ Landlord and Office Secretary were attached and marked PMK 6A and 6B.

Demand for payment of the moneys owing from the Applicants has not been met and the Applicants content that the KUPPET National Headquarters has always withheld remittances to the branch as

demonstrated by the ruling on Cause No. 167/201 delivered on 23rd September 2011 by Justice Rika annexed and marked as PMK 8.

The Applicants further submitted that the 2nd Applicant Stephen Nganga came to office of KUPPET Kiambu by virtue of the consent order and so was the Chairman Geoffrey Irungu (1st Claimant) and that this consent order has never been a suspended nor has there been a delegates Conference discussing issues of their suspension. That this is the reason why the Interested Party is now an Applicant as the proceedings were initiated before the consent which the Applicant is now seeking to enforce.

The Applicants submitted that the issue of discharge of orders has been pending despite an award of court and a ruling by Justice Rika dated 23rd September, 2011 in cause No. 167/10.

In relation to the replying affidavit of 1st Respondent, the Applicants content that Annexure 8 is consent on how parties agreed to implement the consent award dated 6th January, 2012, and modalities of payment in monthly instalments of 400,000/= to Equity Bank Account No. 0640298759362 in Kiambu. That none of these dues have ever been remitted. They consent that some members of the Union branch are acting in cohort of national office and illegally receiving money for their personal uses as per annexures AMR 1, 2, 3. They aver that AMR 3 is instruction to branch to pay various branch officials around the country and page 3 of this annexure, we have Kiambu branch and the money is being directed to **Equity Thika Account No. 034019306571 – Ksh.521,708/=**. That this is a parallel account which is a joint account and the money never gets to the branch. They invited court to look at Section 50 of the Labour Relations Act which refers to payments to a designated account.

After the Applicants served this application to the Respondents and the Interested Parties, replies were done.

The 1st Respondent herein KUPPET through its National Secretary filed their replying affidavit. The affidavit was filed on 24th September 2012 and was sworn by Akelo M.J. Miori the National General Secretary of KUPPET. He stated in his affidavit that the KUPPET Headquarters does not owe the alleged sum of Ksh.4,770,596 to the claimants.

Further he avers that the KUPPET Headquarters received the Notice of Motion Application and an order dated 3rd August 2012, on 7th August 2012, around 3 p.m. after the Union had already issued various cheques for payments to various staff and entities within Kenya such as KRA and NHIF. They denied owing Ksh.4,770,596/= to the purported claimants/Applicants Peter Mwaura Kamau and Stephen N. Nganga of KUPPET (Kiambu) branch since the KUPPET made the necessary payments to Kiambu branch for the month of January, February, March, April and May 2012 as per exhibits AMRI and the deponent deponed that since the interim order obtained from this court dated 3rd August, 2012 the 1st Respondent is being exposed to numerous fines and will soon result in court cases against the 1st Respondent since the 1st Respondent had issued out various cheques for payments of salaries to its various employees in the 47 County branches all over the country totaling Ksh.9,359,001.44 as per the annexure AMR 3. They deponed that a cheque of Ksh.224,638/= had already been issued to KRA for income tax payable on/before 9th August 2012 failure to which penalties/fines shall immediately be imposed upon the 1st Respondent in the sum of Ksh.11,231.90 (being 5% of Ksh.224,635) as per exhibit AMR 4 and AMR 5 being photostat copies of the cheques payments and the Schedule for the months of July, 2012 and previous payment for the month of June 2012 respectively. The 1st Respondent also exhibited AMR 6 and AMR 7 being copies of cheques dated 6th August, 2012, payable to NHIF in the sum of Ksh.12,800/= payable on or before 9th August, 2012 and if it bounces, a fine of 64,000/= is payable. The 1st Respondent deponed that they stand to suffer irreparable loss and damage and asked the court to set aside or vacate the said orders.

They averred that on or about February 2012, a meeting was held between the 1st Respondent (KUPPET Headquarters) and Kiambu KUPPET branch officials and an agreement was reached on how arrears owed

were to be paid. The agreement was signed by Peter Mwaura Kamau and the Respondents aver they honoured this agreement as per AMR 8 and AMR 9 copies of payments so far made.

They contend that the prayers sought by Peter Maura Kamau and Stephen N. Nganga are in bad faith as they are intended to paralyze the Union's operations and further expose the 1st Respondent to heavy fines and penalties including court cases. That this application is an abuse of the court process as a similar application had been filed by Peter Mwaura Kamau on 2nd May, 2012 seeking similar orders in this Cause 1325/2011 and another of the same nature in JR No. Civil Application No.218/2012, dated 31st May, 2012 at the Nairobi High Court set for mention on 4th October, 2012. That Mwaura also filed Cause No. 90/2012 on similar facts and grounds praying for same orders as this application AMR 10, 11 and 12 are copies of the said applications.

The 1st Respondent contend that the money claimed as per this application is not owed since payments have been made as confirmed in the affidavits of Moses Mirungu Thogo, James Muchori Kimani and Lawrence Kiruthi Mwaura through their affidavits sworn on 5th June 2012, in similar application in Industrial Court Cause No.1325/2011 filed by Peter Mwaura on 2nd May, 2012 seeking similar orders. A copy of the said replying affidavit is marked AMR 13. The 1st Respondent through their Counsel also submitted before this court and asked court to dismiss this application in its entirety. They aver that Peter Mwaura Kamau was suspended by Kiambu branch and it was not possible for the central office to deal with him at an individual level. They say that page 6 to 12 of the schedule of payment agreed upon was not followed as by an application dated 20th March, 2012, the court order was challenged and when the matter went before court the Judge directed that the status quo be maintained. While the application was pending Peter Mwaura directed an advocate to withdraw it but James Mwea Njuguna appeared in person and said Mwaura had no authority to withdraw the application. That as at 14th February 2012, KUPPET had obeyed the consent dated 26th January 2012, and held a meeting as at AMR8 and agreed to pay the branch up to May, 2012. That by May 2012, the branch had been paid until 11th June 2012, when the court said that the numerous applications be disposed of and the status quo be maintained (AMR8).

They deny they are running a parallel account. They submit that under Section 50 of Labour Relations Act, money is to be remitted to a designated account. They invited court to look at exh AMR4 and 5 in replying affidavit of 1st Respondent showing that 1st Respondent has issued various cheques worth 224,638/= dated 6th August, 2012 and the schedule of payment is annexed. They submit that they stand to suffer loss and damage should this order not be set aside.

Mr. Kingori of Ashitiva and Company Advocates also appeared in court during the hearing of this application and indicated that he was never served with the application but nonetheless was an advocate of some claimants and wished to make his submissions. He stated that his clients had been receiving money from the head office. That his clients who are claimants on the face of this case are still officials of KUPPET Kiambu branch and it is only the 1st claimant Geoffrey Irungu and Stephen Ndungu who have been suspended and Peter Mwaura who is an Interested Party who assumed office of General Secretary and they have no authority to act for the branch. He stated that the claimants, his clients have no pending claim against the Respondents and there are several matters by Mr. Peter Mwaura Kamau claiming similar prayers. He stated that all payments have been made remitted to the branch and none should be claiming any remittances to the branch. He says such claim is misconceived and cannot be sustained in law and so the prayers sought should not be granted and the application should be dismissed.

In his reply, Mr. Mwangi for the Applicants stated that the Applicants are officials of the branch and that is why Mr. Kingori was never served as claimant is Kiambu branch. He stated that there has never been any suspension of any officials. He still reiterated that there are parallel accounts and Kiambu is on the schedule of payments.

Concerning the many applications in court, he submitted that the application dated 2nd May, 2012 was withdrawn on 26th June 2012 and notice of withdrawal is on the court file. He says the application in JR

proceedings seeks to address future conduct and that cause No. 980/12 was filed by Peter Mwaura Kamau in his individual capacity. He stated that Mr. Mwaura has a family and has no source of income and he is in the said case seeking different amounts. He says as per PMK7 at 36, tabulation of what amounts are owing was made. Remittances have been agreed upon. He says that other persons being paid in cash are not permanent employees of the branch but Kamau was paid as he is an employee of the branch.

He avers further that if the orders sought are granted, the 1st Respondent will not be paralyzed. He says AMR 1, 2 and 3 shows that national officials have been receiving moneys. He says their intention is never to paralyze the national office and asks court to grant orders sought including an order reserving 6.9 million in the 1st Respondent's Account and other payments to be made.

The court sought to try and ensure that the 1st Respondent is not paralyzed by its order and asked 1st Respondent to confirm the amount in their account pending further orders. A statement submitted to this court from Equity Bank on 13th August 2012 showed that the amount in the 1st Respondent's Account stood at Ksh.79,372.25. The court therefore ordered that since this amount was unable to sustain the various cheques allegedly drawn amounting to 9 million as submitted by the 1st Respondent, the account will stand frozen until further orders of the court. A ruling was scheduled to be made on 4th September 2012. However this was never to be as various other applications were filed in court one dated 24th August, 2012 which culminated in the court order by my brother Justice Ongaya ordering that the firm of Messrs Gakoi Mwangi and Company Advocates were not properly on record. Another order dated 30th August, 2012 followed in which I ruled that the firm of Gakoi Mwangi and Company Advocates had established how they were instructed and came on record for the claimants and so were properly on record. Another application that had been filed on 24th August, 2012 by Gakoi Mwangi & Company Advocates was withdrawn on 15th October, 2012.

This now paved the way for this court to proceed and write this ruling that has been awaited since September 2012. The parties agreed to file and exchange their written submissions. The claimant filed their submissions on 31st October, 2012 and the Respondent their unsigned and undated submission on 2nd November, 2012. I have considered all the submissions made by all the parties herein through various memoranda and oral submissions. I will start with analyzing the history of this case in order to understand the chronology of events that have led to this application:-

On 5th August, 2011, the claimants filed their memorandum of claim dated 4th August, 2011 through the firm of Gathii Irungu & Company Advocates. The issue was failure by the 1st Respondent (KUPPET) to sign and present Form Q and failure by the 2nd Respondent (Registrar Trade Unions) to register the changes of officers of Kiambu branch of KUPPET held on 26th March, 2011. Accompanying the memorandum of claim was a Notice of Motion dated the same day filed under Certificate of Urgency seeking a raft of orders. The application was heard *ex parte* and orders given by the Hon. Judge restraining the Interested party or their agents from operating the Family Bank, Branch Account no. 125186 and Equity Bank, Account No. 0640297108754 both branches situated in Kiambu County Branch of KUPPET until the application/suit is heard and determined. This application was scheduled to be heard *inter partes* on 22nd August, 2011. On this day the 2nd Respondent was present in court but 1st Respondent was absent. Mr. Nyabena appeared for the Interested Party. However the application was not heard but the Interim Orders were extended till 19th September, 2011. The Respondents were ordered to file and serve their responses before 29th August, 2011.

On 19th September, 2011, when the application came up for hearing, the Respondents both not present and so were the Interested Parties. Mr. Nyabena for the Interested Parties sought to raise preliminary objection. However, one Kariuki sought to be enjoined in the suit and this prayer was granted. The application was again adjourned and interim orders extended to 27th September, 2011. The court first heard and disposed of a preliminary objection that had been filed by the Interested Party. The preliminary objection was to the effect that the Applicants/claimants are not officials of Kiambu County Branch of KUPPET and therefore lacked *locus standi* to maintain a suit on behalf of the branch. The other matters

raised was to the effect that the claimants/Applicants had raised matters currently pending before the High Court in Misc. Application 168 of 2011. The court dismissed the preliminary objection as having no merit on 21st December 2011.

On 26th January, 2012, the parties in this application came before court and recorded a settlement in the terms already recorded elsewhere in this ruling.

Two months later on 28th March, 2012 another group of Interested Parties 2nd to 8th came before court by filing an application under Certificate of Urgency. The urgency of the matter, they contended was based on the above consent orders. Their contention was that the consent was obtained through fraud and misrepresentation to the court of the material fact. The court heard this application and gave *ex parte* orders in the following terms:-

1. ***THAT the Application is certified as urgent and service is dispensed with in the first instance.***
2. ***THAT an interlocutory injunction do hereby issue against the claimants and the 1st Interested Party from continuing to hold office of Kiambu County Branch of KUPPET, or purporting to act, or conducting themselves in a manner like officials attending meetings, forums, interfering with the Branch Account No. 0640298759362 at Equity Bank Ltd at Kiambu Branch in any other way interfering with the affairs of Kiambu County Branch of KUPPET pending the hearing and determination of the Application.***
3. ***THAT this application be served upon the claimants and the 1st and 2nd Respondents forthwith.***
4. ***THAT the Claimants and the 1st and 2nd Respondents are hereby to file their Reply of Affidavit on or before 24th April, 2012.***
5. ***THAT this matter is scheduled for hearing interpartes on 26th April, 2012 at 12.00 noon.***

DATED and DELIVERED at NAIROBI this 11th day of April 2012.

***SIGNED
JUDGE***

This application was scheduled to be heard *interpartes* on several days of 24th April, 2012, 8th May, 2012, 11th June, 2012, 26th June, 2012, 5th July, 2012 and 18th July, 2012 but this was never to be.

Another application was again filed on 2nd May, 2012 and was also scheduled to be heard on the same day of 16th May, 2012 but it was not heard. On 16th May, 2012 the court ordered that both applications shall be heard simultaneously on 11th June 2012. The upshot is that this applications has never been heard *intepartes* to date. The orders were last extended on 8th May, 2012. Whereas this is the subsisting position, another application, now the one dated 2nd August, 2012 was filed. It is in respect of this application that this ruling is generated.

Having given a brief history of this case as above, the issues this court has to determine are as follows:

1. Who are the officials of KUPPET Kiambu County Branch.
2. What is the Account No. of this KUPPET Kiambu County branch.
3. Is KUPPET Headquarters remitting funds to this Account.

4. Are the funds are being handled by the rightful officials.
5. What has KUPPET Headquarters not remitted to the branch if any.

I will first address the first question Who are the officials of KUPPET Kiambu branch. As indicated in this ruling, there was a consent order entered into by the parties herein where the following were endorsed as officials of Kiambu branch of KUPPET:-

1. Geoffrey Irungu Memia Chairman
2. Moses Miring'u Thogo Vice Chairman
3. Peter Mwaura Kamau Secretary
4. James Muchori Kimani Assistant Secretary
5. Stephen Ngungu Ng'ang'a Treasurer
6. Lilian Njeri Ngatho Vice Treasurer
7. Lawrence Kiruthi Mwaura Secretary secondary
8. Rose Nyambura Kiiru Secretary Tertiary
9. Samuel Kamonjo Kihuria Secondary Gender
10. Raphael Ngugi Mericho Organizing Secretary

An attempt to reverse this position was made via the application of 28th March, 2012. When this application was filed, Interim orders were granted reversing the gains made by the consent orders. The orders were given *ex parte* on 11th April 2012 and extended again on the May, 2012. However this application was never concluded nor heard *interpartesto* date.

Rule 16 (8) (b) of the Industrial Court (Procedure) Rules 2010 provides as follows:

“an ex parte order shall be granted once for a period fourteen days and shall not be extended”.

The order that had been granted seemingly reversing the consent order having been extended on 8th May, 2012 has since lapsed. The import of this is that there is no order on record reversing what the parties had consented to. The consent order has neither been vacated nor reviewed and the position then is that the officials agreed upon as per that consent are the rightful officials of KUPPET Kiambu Country branch. A group of officials represented by Mr. Kingori had contended that the applicants herein had been suspended as officials of the branch. They produced Minutes of a meeting held on 26th March, 2012 that gave impetus to this alleged suspension. It is imperative to state herein that the said officials became officials by virtue of a consent order which forms part of this court's proceedings and was endorsed as a court order. The reasonable thing for the branch to do if they felt that the officials were not working as expected was to approach the court that endorsed their consent and have the court reverse/review their consent. This was never done and the manner in which the officials proceeded smarks of mischief and the end result is that the officials of Kiambu County of KUPPET are those endorsed by court as per the consent of the parties.

Now in terms of question No. 2, what is the Account No. of KUPPET Kiambu County branch. Still as per this consent order, the account in which funds were to be remitted was to be opened by the newly registered officials and the Secretary, Chairman, Treasurer were to be signatories. In compliance to this order, an account with Equity Bank Account No.0640298759362 was opened in the name of Kenya

Union Post Primary Teachers Kiambu. There is evidence on Applicant's exh PMK7 a letter notifying the Headquarters of the Account opened and PMK 4 which shows that the funds have been remitted and withdrawn from this account on several occasions. The signatories to this account are however not known.

As concerns the third question, as this application was pending in court, this court had occasion to ask the 1st Respondents herein to submit their bank statement which was finally remitted by the garnishee herein Equity Bank dated 18th August 2012. The statement shows operations on this account from 9th November 2011 to 2nd August, 2012. This statement shows some remittances on 6th March, 2012 and 7th March, 2012 which are cash withdrawals from Kiambu Branch cheque of Ksh.60,000/= and 1,100,000/= respectively. Other than these, there are no remittances to the Kiambu branch of KUPPET. The Respondents exh AMP1 and AMP2 are copies of payment schedules purportedly made to Kiambu branch officials for the month of March, 2012 and April 2012. It is payment to Assistant Branch Treasurer with instructions to execute the budget agreed by all members of the branch governing council. Though such payment may have been made, this contravenes provisions of Section 50 of the Labour Relations Act, which states as follows:

Any amount deducted in accordance with the provisions of this part shall be paid into a designated trade union or employer's organization account within ten days of the deductions being made...

The words of this Section are couched in mandatory terms indicating that such moneys must of necessity be paid in a designated account and it is only the Minister who may revoke or suspend a notice issued in accordance with this part on certain conditions.

Section 50(6) of the Labour Relation Act adds that,

"No employer shall make deductions from the wages on of an employee for the purposes of making a payment to any trade union except in accordance with the provisions of this part".

If KUPPET Headquarters has been receiving payments from the teachers' employer and not following the laid down procedure then they are in breach and this is indeed punishable. This in fact answers my 4th question as to whether the funds are being handled by the rightful officials. From my analysis above, some funds have been remitted but to individuals and not to branch account as provided in law. Some of the individuals who received the funds are officials of the branch but others are not. The July 2012 schedule shows no payments to KUPPET Kiambu branch but in an account in Equity Thika Branch No. 0340199306571 which is not the designated account.

I now go to the last question. What has KUPPET Headquarters not remitted to the branch? I have indicated that some moneys have been paid out by KUPPET Headquarters to certain individuals who are officials of the branch. However a detailed audit has to be done in order to establish what has not been paid out. It is for this reason that I find that indeed the KUPPET Headquarters has acted without due regard to procedure and flouted laid down rules. However since some officials of the branch have been beneficiaries of this amounts, I will avoid opening a Pandora's as box at this point and instead find that indeed Kiambu branch has benefitted from some remittances from KUPPET Headquarters what has not been remitted can only be informed by an audit.

I now make the following orders:

1. That the officials of Kiambu County branch of KUPPET as per the consent order do open an account as agreed upon in the consent order of 26th January, 2012.
2. An audit be done by the Registrar Trade Unions as to funds remitted to the Kiambu branch by KUPPET Headquarters and a report be submitted to this court within two weeks.
3. The prayer to garnishee the account of 1st Respondent is rejected and the frozen account is now

freed.

4. The parties to appear in court in two weeks to report on the audit by the Registrar Trade Unions and the new account now opened. If the parties cannot agree on Leadership, then fresh elections will have to be held within six (6) months.
5. Each party will bear its own costs.

Signed, dated and delivered in court at Nairobi this 13th November, 2012.

**HELLEN WASILWA
JUDGE**