

REPUBLIC OF KENYA
IN EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET

ELRC NO. E033 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

BENSON DOUGLAS LUVAYI 1ST CLAIMANT

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS 2ND CLAIMANT

VERSUS

BONFACE MUTIE KIVUVI RESPONDENT

AS CONSOLIDATED WITH

NAIROBI APPEAL NO. E206 OF 2026

BONFACE MUTIE KAVUVI APPELLANT

VERSUS

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERS 1ST INTERESTED PARTY

ANDREW KINYUA M'MUKIRI 2ND INTERESTED PARTY

JUDGMENT

1. This judgment relates to two suits which were consolidated in view of the fact that they arise out of the same facts.
2. The first suit is filed by **Benson Douglas Luvayi**, an official of Kenya Union of Commercial Food and Allied Workers holding the position of Assistant National Organising Secretary, who is the 1st Claimant.
3. **Kenya Union of Commercial Food and Allied Workers**, the 2nd Claimant, is a trade union registered under the Labour Relations Act.
4. The Respondent, **BONFACE MUTIE KAVUVI** is the General Secretary of the 2nd Claimant. According to the Claimants, **BONFACE MUTIE KAVUVI** had at the time material to this suit been duly suspended from the position of General Secretary by National Executive Council (NEC) of the 2nd Claimant.
5. It is contended by the Claimants that pursuant to Rule No. 32(b) of the Union's Constitution, the National Executive Council (NEC) held a meeting on 29th May, 2025 when the Respondent, the General Secretary of the Claimant was the subject of disciplinary proceedings to which he was duly invited and accorded reasonable opportunity to explain

matters relating to governance of the union and illegal amendments of the Union's Constitution.

6. It is further contended by the Claimants that the Respondent failed to attend the meeting and consequently a decision was reached at the meeting to suspend the Respondent from the position of General Secretary. Further, that the Claimant's National Executive Council (NEC) exercised its mandate and appointed Andrew Kinyua M'Mukiri, as the Acting General Secretary of Kenya Union of Commercial Food and Allied Workers with immediate effect.
7. The Claimants further contend that by a letter dated 30th May, 2025, the Registrar of Trade unions effected the new changes suspending the Respondent as the General Secretary of the 2nd Claimant and confirming Andrew Kinyua M'Mukiri, as the Acting General Secretary of the 2nd Claimant.
8. The Claimants aver that the Respondent unlawfully, unjustly and unfairly wrote to ABSA, KCB and other banks holding accounts of the 2nd Claimant, stopping change of signatories.
9. The 1st Claimant avers that the action of the Respondent to stop operations of bank accounts has caused and will continue to cause the Claimant and its members grave

prejudice, loss and damage and the Claimants need reliefs from this Honourable Court to access funds in the accounts and perform various activities and meet various obligations which they listed as follows:

- a) Payment of monthly instalment for medical cover with Jubilee Insurance Co. Limited for the 2nd Claimant's staff and officials.
- b) Payment of Statutory deductions such as SHA, NSSF, PAYEE, Taxes and so on.
- c) Payment of monthly Pension/Provident Fund for the 2nd Claimant's Staff and officials.
- d) Payment of rent for the 2nd Claimant's offices in its 30 Branches.
- e) To cater for lawful daily running expenses of the 2nd Claimant's mandate and activities such as motor cycles, fuel, communication, correspondence and other office expenses.
- f) To pay court filing fees, legal fees and other expenses for pursuing legal matters for the 2nd Claimant and its members.
- g) To cater for any other lawful expenses including salaries and wages with full accountability thereof.

10. The 1st Claimant avers that the Respondent, BONFACE MUTIE KAVUVI, his agents, servants and employees have continued to interfere with lawful activities of Kenya Union of Commercial Food and Allied Workers.
11. The 1st Claimant avers that the Respondent, BONFACE MUTIE KAVUVI has failed, refused, neglected to surrender and or hand over all properties in his possession including but not limited to Motor Vehicle Reg. No. KDL 399G, Toyota Prado, letter heads, tenant's building materials and other properties belonging to the 2nd Claimant, Kenya Union of Commercial Food and Allied Workers.
12. The 1st Claimant avers that this Honourable Court ought to grant a Mandatory Injunction compelling the Respondent, BONFACE MUTIE KAVUVI to forthwith pay KRA penalties and statutory obligations levied as a result of actions, recklessness and omission of the Respondent, upon the 2nd Claimant, Kenya Union of Commercial Food and Allied Workers.
13. That members of the said union have a right under Article 41 of the Constitution of Kenya which provides that every employee has a right to fair labour practices and to fair

remuneration and a right to form, join or participate in the activities and programs of a trade union.

14. Further, that members, officials or delegates of a Trade Union enjoy various rights and are obligated to execute their legal mandate and responsibilities in accordance with the Constitution, Labour Relations Act, 2007, ILO, Labour laws and the Union's Constitution.
15. The Claimants aver that the Respondent has violated the 2nd Claimant's Constitution, Labour laws, Article 41 of the Constitution that protects unions and workers, and Article 10(2) which provides for binding national values and principles of governance, the rule of law, democracy, human dignity, equity, social justice, good governance, transparency and accountability.
16. In the Statement of Claim dated 17th June, 2025, the Claimants seek the following reliefs: -
 - a. A declaration that the National Executive Council Meeting of Kenya Union of Commercial Food and Allied Workers fairly and justly suspended the Respondent as its General Secretary and he is not authorized to transact for the Claimant hereof.

- b. An ORDER directing ABSA, KCB and other banks holding accounts of Kenya Union of Commercial Food and Allied Workers to remove the name of the Respondent, BONFACE MUTIE KAVUVI as a signatory and instead insert the name of ANDREW KINYUA M'MUKIRI, the Acting General Secretary of Kenya Union of Commercial Food and Allied Workers.
- c. An injunction to prevent the Respondent, BONFACE MUTIE KAVUVI, his agents, servants and employees from interfering with lawful activities of Kenya Union of Commercial Food And Allied Workers.
- d. A Mandatory Injunction compelling the Respondent, BONFACE MUTIE KAVUVI, to forthwith surrender and or hand over all properties in his possession including but not limited to Motor Vehicle Reg. No. KDL 399G, Toyota Prado, letter heads, tenant's building materials and other properties belonging to the Claimant, Kenya Union of Commercial Food and Allied Workers.
- e. A Mandatory Injunction compelling the Respondent, BONFACE MUTIE KAVUVI to forthwith pay KRA penalties and statutory obligations levied as a results of actions, recklessness and omission of the Respondent, upon the

Claimant, Kenya Union of Commercial Food and Allied Workers.

f. Any other Order that this Honourable Court may deem fit and expedient to grant.

g. Costs of this Claim to be paid by the Respondent.

17. The Respondent filed a Memorandum of Response and Counter Claim dated 24th June, 2025 in which he denies that he was removed from office of General Secretary of the 2nd Claimant. He avers that the National Executive Council (NEC) does not have powers to remove the General Secretary from office as such powers are vested in the Delegates Conference or Special Delegates Conference as provided in rules 8, 9 and 10 of the Constitution of the union. He further avers that the documents filed by the Claimants do not suggest that the Respondent was removed from office as General Secretary of the union.

18. The Respondent further avers that there was no meeting of the NEC allegedly held on 29th May 2025 for reasons that NEC meeting can only be convened by the General Secretary under rule 11(c) which states in pertinent as follows:-

The National Executive Council shall meet at least once in a year and shall be convened by the General Secretary by giving seven days (7) notice to members of the Council.

19. He further pleads that a NEC meeting can only proceed if it has the necessary quorum of 2/3 (two thirds) of the members entitled to attend and vote thereat as required by rule 11(i) of the constitution which states: -

The quorum of the National Executive Council meeting shall be two thirds of the members entitled to attend and vote thereat

(iii) The composition of the NEC is as provided for under rule 11(b) of the constitution which states as hereunder: -

The National Executive Council shall consist of the National Chairman, 1st National Vice Chairman, 2nd National Vice Chairman, General Secretary, 1st and 2nd Deputy General Secretaries, National Organizing Secretary, Four Assistant General Secretaries, Assistant National Organizing Secretary Treasurer General, Assistant Treasurer General, Four Trustees and five (5) committee members elected by the National Delegates or Special **Delegates Conference.**

20. It is the Respondent's averment that the purported meeting allegedly held on 29th May 2029 would not have been a NEC meeting of the union since 18 members of the NEC had written letters and emails stating that they would not attend an unconstitutional, illegal and unlawful meeting of the union.
21. The Respondent avers that he was not invited to attend the meeting of 29th May, 2025 and if invited would not have failed to attend. He avers that the meeting was illegal and void ab initio for being convened in violation of the union constitution.
22. The Respondent further avers that his purported suspension was not fair and just as the same violated the mandatory rules of the union constitution and the principles of natural justice.
23. With reference to the decision of the Registrar of Trade Unions to register the changes to the register of officials of the union, the Respondent avers that the same was contradictory, inconsistent, and was probably done due to mistake, misrepresentation and or undue influence for reasons that:

- a) That a declaration that the purported National Executive Council of the Kenya Union of Commercial Food and Allied Workers allegedly held on 29th May 2025 at Tulia Gardens or any other place was not properly convened and constituted and therefore any resolutions made are null and void abinitio.
- b) The purported suspension of the Respondent/Claimant as the General Secretary of Kenya Union of Commercial Food and Allied Union be and hereby lifted.
- c) The 3rd Respondent's decision dated 30th January 2025 or 30th May 2025 making changes in the union's leadership be and is hereby set aside.
- d) The 1st and 2nd Respondents and other officials be permanently restrained from purporting to convene meetings for and on behalf of the Kenya Union of Commercial Food and Allied Workers.
- e) The 1st and 2nd Respondents in the counterclaim be ordered to return the Claimant's goods and personal items upon breaking into the Claimant's offices.

- f) The Honourable Court do issue such orders and given such directions as it may consider fit and just to meet the ends of justice.
 - g) The Respondents in the counterclaim be orders to pay costs of the suit
24. The Respondent avers that the letters he wrote to the KCB and ABSA Banks were intended to notify the banks of his unfair, illegal, unlawful and unconstitutional purported suspension and to stop transactions of the union's accounts.
25. The Respondent denies that he refused to sign any of the expenses enumerated in paragraph 9 of the Statement of Claim. He avers that he was out of the Country in Geneva, Switzerland representing the Central Organization of Trade Unions and the 2nd Claimant. He avers that he had made adequate arrangements for smooth running of financial transactions.
26. The Respondent further denies interfering with the lawful activities of the union. He denies that he failed, refused and/or neglected to surrender any properties of the 2nd Claimant.

27. The Respondent avers that the 1st Claimant, the Acting General Secretary and their agents unlawfully, illegally and violently broke into his office while he was out of the country attending a meeting on behalf of COTU and the union.
28. In the Counter Claim the Respondent reiterates the contents of his Response to Statement of Claim and prays for the following orders:
- a. That a declaration that the purported National Executive Council of the Kenya Union of Commercial Food and Allied Workers allegedly held on 29th May 2025 at Tulia Gardens or any other place was not properly convened and constituted and therefore any resolutions made are null and void abinitio.
 - b. The purported suspension of the Respondent/Claimant as the General Secretary of Kenya Union of Commercial Food and Allied Union be and hereby lifted.
 - c. The 3rd Respondent's decision dated 30th January 2025 or 30th May 2025 making changes in the union's leadership be and is hereby set aside.
 - d. The 1st and 2nd Respondents in the counter claim and other officials be permanently restrained from purporting to convene meetings for and on behalf of

the Kenya Union of Commercial Food and Allied Workers.

e. The 1st and 2nd Respondents in the counterclaim be ordered to return the Claimant's goods and personal items upon breaking into the Claimant's offices.

f. The Honourable Court do issue such orders and given such directions as it may consider fit and just to meet the ends of justice.

g. The Respondents in the counterclaim be orders to pay costs of the suit

29. The second suit is an appeal filed by **Bonface Mutie Kavuvi** against the decision of **the Registrar of Trade Unions**, the Respondent. The Appellant names **Andrew Kinyua M'Mukiri** as 1st Interested Party and **Kenya Union of Commercial Food and Allied Workers** as the 2nd Interested Party. The appeal is against the decision of the Registrar of Trade Unions suspending the Appellant as General Secretary of the 2nd Interested Party and appointing the 1st Interested Party as acting General Secretary. The grounds of appeal are as set out below:

- a) THAT the acting Registrar of trade unions hereinafter the Registrar erred in fact and law in altering the register of the 2nd Interested Party's register without according the Appellant a hearing contrary to the principles of natural justice
- b) THAT the decision of the Acting Registrar of Trade Unions is defective null and void abinitio as it dated 30th January 2025 and purportedly registering appointments made on 30th May 2025 whereas the purported convenors alleged to have met on 29th May 2025 and therefore an absurdity of monstrous proportions and irreconcilable
- c) THAT the decision of the Acting Registrar of Trade Unions has inflated the number of officials and committee members of the union to 31 members whereas the constitution's rule number 11(b) provides for 23 members and hence illegal, null and void.
- d) THAT the Registrar erred in law and fact by going against her own decision as contained in her letter dated 10th February 2025 addressed to the 1st

Interested Party which letter in pertinent part correctly advised that Regarding your alleged violations of the Union's constitution and mismanagement of its activities we draw your attention to Rule 35 of the Kenya Union of Commercial Food and Allied Workers Constitution. This rule provides the procedure for addressing disciplinary matters involving officials and committee members, accordingly we encourage you [interested party to exhaust the internal disciplinary mechanism within the union before seeking external intervention.” Consideration process of arbitral committee was ongoing and had not been concluded.

- e) THAT the Registrar erred in law and fact by altering the changes in the trade unions register without complying with fair administrative action contrary to Article 47 of the Constitution.
- f) That the Registrar erred in law and fact by disregarding the well-established ratio decided in the judgement of the court of appeal **Civil Appeal**

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to the effect that the Registrar is mandatorily required to hear a party who is likely to be affected by his decision before making any changes in the Register of Trade Unions officials.

- g) THAT the Registrar erred in law and fact by failing to make an enquiry on the purported suspension of the Appellant as the General Secretary of the 2nd Interested Party as required by the provisions of Section 35(3) and (4) of the Labour Relations Act, 2007.
- h) THAT the Registrar erred in law and fact by purporting to act on changes which were in violation and contrary of the Union's Constitution particularly rule 11(c) and 32 and 35 thereof.
- i) THAT the Registrar erred in law and fact by turning a blind eye to the fact that there was no National Executive Council meeting held on 29th May 2025 at Marble Arch Hotel, Tulia Gardens or any other place or date and the purported suspension of the

Appellant and appointment of the interested party did not arise.

- j) THAT the Registrar erred in law and fact by going against her own decision communicated by a letter dated 10th April 2025 addressed to the advocate for the 1st interested party in which the acting Registrar had correctly directed in pertinent part as follows: "TAKE NOTICE that a meeting of the National Executive Council can only be convened at the invite of the Secretary General and therefore as an advocate you do not have power to call for the meeting. We refer you to the Union Constitution rules that states; the union National Executive Council shall meet at least once in a year and shall be convened by the General Secretary by giving a seven (7) days' notice to the members of the council'. In light of the foregoing please be advised that the same cannot be held, any deliberation made in that meeting cannot hold. We note that in your letter dated 19th March 2025 you had requested the

General secretary to convene a NEC meeting within 14 days of the letter failure to which your clients [interested party] would automatically be the conveners of the meeting. Kindly let us know which Article/rule of the Constitution of the Union was relied upon in arriving to that decision. The current Union's Constitution does not place the responsibility to call for an N.E.C meeting on everyone else beside the secretary General. Initially this office was led to believe that the meeting was sanctioned by the General Secretary, your letter of invitation has clarified that this was not the case."

- k) THAT the Registrar erred in law and fact by disregarding the numerous objection letters and emails from union members of the National Executive Board confirming that they will not attend a purported NEC meeting allegedly convened on 29th May 2025 as same is not according to the union's constitution.

- l) THAT the Registrar erred in law and fact by considering matters which she should not consent and by refusing to consider matters which she should and as a result arrived at an erroneous decision.
- m) THAT the Registrar erred in law and fact by failing to appreciate that suspension of an officer under rule 33 of the Union's Constitution requires a two-thirds (16 members) majority.
- n) THAT the Registrar erred in law and fact by failing to appreciate that before an official of the union is disciplined there must be an arbitration Committee Under rule 35 which was not done as the process was still ongoing.

30. The Appellant prays for orders that:

- i. The appeal be awarded.
- ii. The acting Registrar's decision suspending the Appellant as a General Secretary of the Union be and is hereby set aside.

- iii. The purported appointment of the 1st interested party as the acting General Secretary of the 2nd Interested Party be and is hereby set aside.
- iv. Any decision or resolution by the 1st Interested Party purporting to act as the General Secretary be and is hereby declared null and void.
- v. Any decisions or resolutions made at the meeting held on 29th May 2025 and subsequent thereto be and are hereby declared as null and void.
- vi. Costs of the Appeal be awarded to the Appellant.

Respondent's Reply to the Appeal

- 31. In response to the Appeal the Respondent (Registrar of Trade Unions) filed a replying affidavit sworn by ANN KANAKE, the Acting Registrar of Trade Unions in which she deposes that the mandate of the Respondent is registration and regulation of trade unions, employers' organizations and federations.
- 32. The affiant deposes that the changes of officials of any trade union are guided by section 35 of the Labour Relations Act and the respective union constitution. That in the instant

case the Acting General Secretary of the 2nd Respondent Mr. Andrew Kinyua M'Mukiri submitted the Notice of Change of Names or Titles of Officials (Form Q) dated 29th May, 2025 in which it was recorded that the then General Secretary Boniface Mutie Kavuvi was suspended and Andrew Kinyua M'Mukiri was appointed as Acting General Secretary of the Union.

33. She deposes that Rule 11(g) of the Union Constitution provides *“All Officials elected by the National Delegates Conference shall hold office for a period of five (5) years unless one dies, resigns or is suspended by the National Executive Council and removed by the National Delegates or Special Delegate Conference ...”*

34. THAT further rule 11(h) of the Union Constitution on the other hand provides that:

“In the event of death, resignation or suspension of a member of the National Executive Council, the causal vacancy arising shall be filled by the National Executive Council by appointing a person from, among themselves or from the elected Branch Officials.”

35. THAT in addition, rule 32(b)(i) of the Union constitution provides, *“any National Official or Committee Member of the*

Union who has breached any of the terms of this Constitution or who has acted against the interest of the Union in whatever manner, may be discussed at the National Executive Council Meeting and if a decision is reached by two thirds (2/3) majority of all members entitled to attend and vote at the National Executive Council Meeting to suspend ,such decision shall be binding, if the decision is to suspend then such official shall be suspended from office.”

36. She deposes that section 35(5) of the Labour Relations Act provides that before registering any change of officials or correcting any register the Registrar may require the production of any relevant evidence of change. That further under rule 11(i) of the Union Constitution the quorum of the National Executive Council (NEC) meeting is 2/3 of the members entitled to vote which according to rule 11(b) of the Union Constitution translates to 15 members.
37. The Affiant deposes that from the records held in the Registrar’s office a valid meeting was held on 29th May, 2025 by 12 members of NEC who approved the suspension and removal of the General Secretary. She deposes that 2 members who were entitled to vote were indisposed, one member who is a Trustee was deceased and the Chairman is

terminally ill. That the number of members entitled to vote was therefore 18 members.

38. It is deposed that the appointed official was registered and an extract issued to reflect the changes in the register in accordance with section 35(5) of the Labour Relations Act.
39. The Acting Registrar deposes that the typographical error referred to by the Appellant being 30th January 2025 was corrected by issuing a corrected letter dated 30th May 2025.
40. The Acting Registrar deposes that the letter she wrote dated 10th February 2025 referred to by the Appellant was advisory and not ordering the Union to take any particular action.
41. The Acting Registrar deposes that there is no requirement under the law for the Registrar to engage any member or official of the union when effecting changes on a valid Form Q provided that the application is made in compliance with the law and union constitution.
42. The Acting Registrar deposes that the meetings of 5th April, 12th April and 10th May did not take place. Further, that it is unlikely that the Appellant would call a meeting where he is likely to be the accused. That in the circumstances the 1st Secretary of the Union acted rightfully in calling the meeting

of 29th May, 2025, as provided for under rule 19 of the Union Constitution.

43. The affiant deposes that the averment by the Appellant that he was not supplied with documents relied upon to suspend him is not true as the Appellant had a copy of the minutes of the meeting held on 29th May, 2025. The Affiant further deposes that following the Appellants complaints regarding the procedure followed to remove him from office the Registrar wrote a letter to the Acting General Secretary.
44. The affiant deposes that even though the Appellant was aware that he should approach this court for redress if aggrieved by the decision of the Registrar the Appellant, in a bid to delay the matter, he politicized the matter and sought to rescind the decision through means that are not provided for in the Labour Relations Act.
45. She urged the court to dismiss the appeal as the office of the Registrar complied with the union constitution and the Labour Relations Act in carrying out the registration of the officials of the union.

Reply to the Appeal by Interested Parties

46. The Interested Parties filed a replying affidavit of Andrew Kinyua M'Mukiri, the 1st Interested Party sworn on 18th July, 2025 in which he deposes that the Appellant who is the General Secretary of the 2nd Interested Party was suspended from office by the NEC of the 2nd Interested Party and the change was registered on 30th May, 2025 by the Respondent.
47. He deposes that at the NEC meeting of 29th May, 2025 only 6 members were absent. That 15 members attended while the quorum was 12 members who constituted two-thirds of the members eligible to vote at the NEC meeting.
48. He deposes that the Appellant was duly served with notice of the said meeting dated 21st May, 2025 and was expected to attend the meeting to defend himself. That the Appellant was in the country on 29th and 30th May, 2025. That the Appellant however failed to attend the meeting.
49. That the NEC suspended the Appellant and appointed the deponent as acting General Secretary with immediate effect.
50. Mr. M'Mukiri deposes that on 27th May, 2025 the Appellant wrote to the Manager of Marble Arch Hotel Nairobi, where the meeting was to be held on 29th May, 2025 requesting the Hotel not to allow the NEC meeting to be held there. That the NEC members converged at the Marble Arch Hotel on

29th May, 2025 but the Appellant mobilised goons to disrupt the meeting.

51. That as there was quorum the NEC members decided to meet at Tulia Gardens after seamless communication. That the meeting started by the convenors reading the notice of the meeting and the members present wrote down their names, position and signed the attendance sheet.
52. It is the averment of Mr. M'Mukiri that the Appellant coerced, intimidated, blackmailed and exerted pressure upon some NEC members to write letters disassociating themselves with the said meeting. That the said members have since sworn affidavits recanting their letters.
53. Mr. M'Mukiri deposes that the meeting was called pursuant to the notice dated 21st May, 2025 by the convenors after the Appellant rejected several requests to convene the meeting. That this was because the meeting was to discuss his conduct. That prior to the said meeting there were multiple requests to the Appellant to convene meetings dated 19th March, 2025; 2nd April, 2025; 3rd April, 2025; and 21st April, 2025. That the Appellant wrote to the convenors through his advocate declining to convene the meetings.

54. Regarding ELRC No. E547 of 2025 which was withdrawn by the 2nd Interested Party by letter dated 16th June, 2025, Mr. M”Mukiri deposes that the parties were different and the prayers were also different from the instant suit.

Disposal of suit

55. Several applications were filed by the parties in the two suits. In order to fast-track the disposal of the suits, on 11th July, 2025, the court directed, with consent of all parties, that all the applications on record be consolidated and heard together with the suits on 17th July, 2025. The suits were disposed of by way of written submissions which the parties highlighted.

Submissions of the Appellant

56. It is submitted for the Appellant that he was elected to office on 20th February, 2021 for a term of 5 years expiring on 20th February, 2026 or such period when the union holds its national elections. It is submitted that according to the union constitution the Appellant is eligible for re-election to the position of General Secretary.

57. It is submitted that the Union’s 1st Deputy General Secretary purported to convene a meeting of the National Executive

Council (NEC) on 5th April and 12th April, 2025. That the Registrar, by letter dated 10th April, 2025 advised and directed that such meeting would be unlawful since only the General Secretary can convene such meeting.

58. It is submitted that the 1st Deputy General Secretary was undeterred and issued another notice for NEC meeting on 29th May, 2025 to be held at Marble Arch Hotel, Nairobi. It is submitted that this was contrary to rule 18 of the union constitution and the Registrars directive.
59. It is submitted that following the illegal notice about 18 members of NEC wrote to the convenor expressing objections and unwillingness to attend the meeting.
60. It is the submission of the Appellant that the meeting of 29th May 2025 was not properly convened as per the constitution of the union. That Rule 11(a) of the Union Constitution provides that the NEC shall be the governing and administrative organ in the union between conferences. That rule 11(b) spells out the mandatory composition of NEC which is 23 members.
61. It is submitted that rule 11(c) provides that NEC shall meet at least once a year and shall be convened by the General Secretary giving seven (7) days' notice.

62. It is submitted that the notice of the meeting of 29th May was called by an unauthorised person, that the notice indicated that the meeting would be held at Marble Arch Hotel, Nairobi but the minutes show that the meeting was held at Tulia Gardens, Kiambu yet there is no notice changing the venue of the meeting.
63. It is further submitted that the agenda of the meeting did not include taking disciplinary action against the General Secretary but only referred to conduct of the General Secretary. That there was further no articulation of charges against the General Secretary and therefore fell short of a disciplinary meeting.
64. It is submitted that rule 32(b)(iii) of the union constitution which the Claimant invoked in calling the NEC meeting provides that no National Official or committee member shall be suspended unless he/she is invited at a meeting of the National Executive Council to answer to charges or accusations and explain reasons for his/her failures or actions. It is further submitted that the Appellant was never given an opportunity to be heard.
65. The Appellant submits that rule 35 further provides in mandatory terms for an Arbitration Committee to which

discipline issues are referred. It is submitted that the Appellant had in compliance with rule 35 convened an arbitration committee which the Claimant termed illegal.

66. It is further the submission of the Appellant that the meeting convened on 29th May, 2025 lacked quorum. That rule 32(b) (iii) envisages a mandatory quorum of 2/3. That out of the 23 NEC members only 12 were present at the meeting. That entries No. 10 and 11 refer to the same person making the attendance 12 and not 13 as reflected in the minutes. It is stated that the attendance list introduced in the replying affidavit of the Claimant consisting of 15 people in attendance is clearly an afterthought. It is further submitted that quorum should be rounded upwards to 16 and not downward to 15 as attempted by the Claimants.
67. It is the submission of the Appellant that he was not heard at all by NEC as provided in rule 32(b)(iii) and rule 35 of the union constitution. It is submitted that no notice was issued to the Appellant with specific charges.
68. The Appellant has submitted that the Registrar of Trade Unions did not comply with the rules of natural justice and fair administrative action as required by section 35(3) and (4) of the Labour Relations Act, and Article 47 and 50 of the

Constitution. It is submitted that under section 35(4) and (5) the Registrar is bound to make inquiries. For emphasis the Appellant relies on the decision in **CACA NO. 166 OF 1993: CENTRAL ORGANIZATION OF TRADE UNIONS V BENJAMIN NZIOKA & OTHERS AND CACA NO. 167 OF 1993: CENTRAL ORGANIZATION OF TRADE UNIONS V JOHNSON OGENDO & ANOTHER.**

69. It is further submitted that the letter from the Registrar referred to change of officials made on 30th May, 2025 yet the meeting at which the change was made was held on the 29th May, 2025.
70. The Appellant further submitted that fairness includes but is not limited to providing notice, an opportunity to be heard and access to relevant information. It is submitted that the letter from the Registrar does not contain reasons for the decision, relying on the decisions in **Petition No. 68 of 2022: Saire and another v Cabinet Secretary for Lands and Planning and another [2024] KEELRC and Judicial Review No. E002 of 2021: James Willy Kagori v Chairman Extra Ordinary Meeting of Michimikuru Factory Limited and 2 others Maurice Kobia Dickson (Interested Party) [2022].**

71. Finally it is submitted the Registrar's decision was contrary to her own decision as communicated in her letter dated 10th April, 2025 and 10th April, 2025. That having made a decision that the matter of discipline be referred to arbitration Committee, her decision to the contrary is liable to quashing.
72. On the preliminary objection made by the Claimants that the appeal was filed out of time the Appellant submits that the facts are in dispute and the issue cannot be the subject of a preliminary objection. That the argument has not been substantiated.
73. It is further submitted that the 2nd Claimant filed suit in Nairobi Cause No. E547 of 2025 and after failing to get orders proceeded to file the instant suit.
74. It is the submission of the Appellant that cause E033 was filed by the 1st Claimant who does not have authority, on behalf of the 2nd Claimant as provided in rule 23 of the Union constitution.
75. The Appellant prays that the court:
 - i. Allow the Appeal.

- ii. The decision of the Registrar and the extract of officials whether backdated to 30th January 2025 or backdated to 30th May 2025 should be set aside.
- iii. The purported suspension of the Appellant as the General Secretary of Kenya Union of Commercial Food and Allied Workers be and is hereby set aside.
- iv. The purported appointment of the 1st Interested party as the Acting General Secretary of KUCFAW be and is hereby set aside.
- v. The interim orders issued herein replacing the Appellant as a signatory of the union accounts be vacated.
- vi. That the resolutions allegedly passed by the purported National Executive Council Meeting purportedly held on 29th May 2025 is null and void abinitio.
- vii. That the Claimant's suit be and is hereby dismissed/struck out with costs.
- viii. The Appellant's counterclaim be allowed with costs

The Claimants submissions

76. The Claimant submitted that pursuant to rule 32(b) of the union constitution the NEC held a meeting on 29th May, 2025 during which the Appellant was suspended. That the Appellant was invited and accorded a reasonable opportunity to explain the matters of governance and illegal amendments of the union constitution.
77. It is submitted that union officials can be suspended from office for reasons such as misconduct, violation of the union constitution, failure to uphold their duties, negligence, dishonesty, incompetence and failure to obey union decisions. It is further submitted that the NEC has power to suspend or dismiss officers, subject to approval from the Annual Delegates Conference.
78. It is submitted that the Appeal is premature and lacks merit.
79. It is submitted that by letter dated 30th May, 2025 the Registrar of Trade, Unions, the Respondent herein, legally effected changes suspending the Appellant and confirming Andrew Kinyua M”Mukiri as Acting General Secretary.
80. It is submitted that in the meeting at which the Appellant was suspended, a total of 15 members attended while the

quorum was 12. That only 6 members were absent. That the said meeting met the threshold as per union constitution.

81. It is submitted that the Appellant was duly served with notice on 21st May, 2025 but failed to attend.
82. It is submitted that the Appellant declined to convene meetings in spite of several requests. That the Appellant could not convene the meeting as it was to deliberate on his conduct. That under the rule of natural justice the Appellant could not be expected to be prosecutor and judge in his own cause.

The Respondent's Submissions

83. The Respondent in its submissions framed the issues for determination to be whether the Registrar of Trade Unions acted within her statutory mandate and powers under the Labour Relations Act in registering the change of officials; whether the 2nd Interested Party complied with its constitution and Labour Relations Act in effecting the change of officials; and, lastly, whether the Registrar's decision was in breach of principles of Fair Administrative Act.
84. On the first issue the Respondent submitted that section 35 of the Labour Relations Act obligates a union to submit

notice of change of officials to the Registrar in Form Q within 14 days. That section 35(3) empowers the Registrar to require the production of any relevant evidence of the change before registering such a change. That section 35(5) states that no change of officials shall have effect until registered by the Registrar.

85. It is submitted that the Acting General Secretary, the 1st Interested Party herein, submitted Form Q dated 29th May, 2025 notifying the Registrar of the suspension of the Appellant and the appointment of the 1st Interested Party as Acting General Secretary. That the form was in compliance with section 35(2) of the Act.

86. The Respondent referred the court to the decision in **Jophinus Musundi & 6 others v Registrar of Trade Unions [2017] KEELRC 1187 (KLR)** where the court held that

“In the present case, the interested party presented the notice of change of officials in Form Q. The Registrar was satisfied as to the validity of the appointment and the propriety of the of the proposed correction and was not at the time aware of any dispute. The court is satisfied that that the Respondent acted in accordance

with the law and did not act in excess of the enabling provisions or in contempt of a court order that had been lawfully served on her or come to her knowledge.”

87. It is submitted that in addition to the Act the internal governance of trade unions is primarily regulated by its own constitution and the Registrar’s duty is limited to ensuring that internal changes comply with the union’s constitution. It is submitted that the Registrar diligently referred to Rule 11(g), 11(h) and 32(b)(i) of the 2nd Interested Party’s constitution.
88. It is submitted that the Registrar discharged her administrative duties in accordance with section 35 of the Labour Relations Act.
89. On the second issue it is submitted that the Registrar’s role is not to adjudicate the merits of the suspension itself, but to ascertain whether the union followed its own constitutional provisions and the Act in notifying the changes.
90. It is submitted that the officials of the 2nd Interested Party submitted minutes of a valid meeting held on 29th May, 2025 at which 12 members of NEC approved the suspension of the Appellant as Secretary General. That while Rule 11(i) of the union’s constitution states the quorum for NEC to be two-

thirds of members, translating to 15, the Registrar provided explanation for attendance of 12 members in her replying affidavit, explaining that two members entitled to vote were indisposed, one trustee was deceased, and the Chairman was terminally ill, effectively reducing the number of members entitled to attend and vote, thereby validating a quorum of 12 members. That the Registrar was satisfied with the evidence regarding quorum.

91. It is submitted that the Registrar's role is regulatory, not supervisory to the extent of micromanaging internal union dynamics. Further, that the allegations of intended meetings were inconsequential as the meetings did not take place.
92. It is further submitted that the Appellant as General Secretary would be unlikely to call a meeting where he is the subject of accusation, and therefore the First Secretary acted rightfully in calling the meeting of 29th May, 2025 as provided under Rule 19 of the union constitution.
93. On the final issue whether the decision of the Registrar was in breach of the principles of fair administrative action, it is submitted that the Appellant's allegation that there was lack of consultation before the decision was made is not valid as the Registrar is not required under any law to engage any

member or official of the union when effecting changes on valid Form Q, provided the application is made in compliance with the law and the union constitution. That the Registrar's role is not to act as adjudicator or mediator in internal matters of unions.

94. It is submitted that in observing her mandate under section 35 the Registrar wrote to the Acting General Secretary following the Appellant's complaint, a demonstration of her commitment to fairness, even though the primary recourse of the Appellant was to the Court.
95. In conclusion the Respondent submits that the Appellants grievance, if any, lies in the internal decision of the 2nd Interested Party to suspend him, a matter which should be pursued through the appropriate internal union dispute resolution mechanisms, or directly before the court, rather than challenging the Registrar's regulatory function.

Analysis and Determination

96. Having considered the pleadings and submissions, the issues for determination are the following:
 - a. Whether the meeting of 29th May, 2025 was properly convened;

- b. Whether there was quorum at the meeting;
- c. Whether the Respondent acted in accordance with the law in registering the change of officers of the union;
- d. Whether the Appellant is entitled to the prayers sought in the Appeal;
- e. Whether the Claimants are entitled to the prayers sought in the claim.

Whether the meeting of 29th May, 2025 was called properly convened

97. The First Schedule to the Labour Relations Act provides for matters for which provision must be made in the constitution of a trade union or employers' organisation. Among them is the appointment or election and removal of an executive, and of trustees, secretaries, treasurers and other officers of the trade union or employers' organisation.
98. The Constitution of the 2nd Claimant Kenya Union of Commercial, Food and Allied Workers provides at rule 11 as follows:
- a) *The National Executive Council shall be the governing and administrative Organ of the Union in the period between Conferences. It shall be*

responsible for laying down the Union's administrative policy.

- b) The National Executive Council shall consist of the National Chairman, 1st National Vice Chairman, 2nd National Vice Chairman, General Secretary, 1st and 2nd Deputy General Secretaries, National Organizing Secretary, Four Assistant General Secretaries, Assistant National Organizing Secretary, Treasurer General, Assistant Treasurer General, Four Trustees and five (5) committee members elected by the National Delegates or Special Delegates Conference.*
- c) The National Executive Council shall meet at least once in a year and shall be convened by the General Secretary by giving seven days (7) notice to members of the Council.*
- d) The National Executive Council shall examine, amend as necessary and approve financial estimates and expenditure of the Union as presented by the Treasurer General.*

- e) *All decisions of the National Executive Council shall be binding on the Union and on each of its officials, employees and members provided that if any such decision directly affects the right or privileges of any official, employee, member or any group of members, such official, employee, member or group of members aggrieved by such decision may within 30 days from the date of the meeting of the National Executive Council appeal to the National Delegates or Special Delegates Conference against such decision. Such appeal shall be submitted to the General Secretary for consideration at the immediate next meeting of the National Delegates or Special Delegates Conference convened within the terms of this constitution.*
- f) *Executive Council shall interpret the rules when and where necessary and determine any point in which the rules are silent.*
- g) *All Officials elected by the National Delegates Conference shall hold office for a period of five (5)*

years unless one dies, resigns or is suspended by the National Executive Council and removed from National Delegates or special Delegates conference.

h) In the event of death, resignation or suspension of a member of the National Executive Council, the casual vacancy arising shall be filled by the National Executive Council by appointing a person from among themselves or from among the elected Branch Officials.

i) The quorum of the National Executive Council meeting shall be two thirds of the members entitled to attend and vote.

99. Rule 17 provides for filling of vacancies as follows.

Filling casual vacancies

a) Any casual vacancy arising among any of the National Officials and Committee members caused by non-payment of Union dues, death, resignation or suspension may be filled by the National Executive Council in accordance with Rule 11h provided that any person so

appointed by the National Executive Council shall only hold office for the remainder of the term during which his/her predecessor would have held such office had he/she not ceased to be a National Official or Committee Member of this Union

b) Where a vacancy arises as a result of death, non-payment of Union dues, resignation or suspension among the Branch committee such a vacancy shall be filled by the Branch Committee Council proposing a suitable replacement drawn from among Branch Committees from fully paid up members of the Branch in consultation with the General Secretary.

100. Rule 18 provides for acting capacity in the position of General Secretary in the event of suspension, resignation or death as follows:

In case of suspension, resignation or death of the General Secretary, the National Executive Council shall appoint one among them to act in that position pending the convening of a National Delegates or Special Delegates Conference to fill the vacancy in accordance with this Constitution.

101. Rule 32(b) provides for discipline of national officials or Committee member as follows:

(b)(i) Any National Official or Committee Member of the Union who has breached any of the terms of this Constitution or who has acted against the Constitution or who has acted against the interest of the Union in whatever manner, may be dismissed at the National Executive Council Meeting and if a decision is reached by two third majority of all members entitled to attend and vote at the National Executive Council Meeting to suspend such decision shall be binding, if the decision is to suspend then such official shall be suspended from office.

(ii) The suspended official shall have the right to appeal to the National Delegates of such a National Delegates or & Special Delegates Conference shall be within the Special Delegates Conference which may rescind the suspension and order reinstatement or remove the suspended official altogether. The convening terms of this constitution. The National Executive Council may, however, review the suspension with a view to reinstating the affected official. The suspension shall

not exceed six months but may be extended by the National Executive Council and any suspended official shall have the right to appeal at the next National Delegates or Special Delegates Conference, provided that the National Executive Council may extend the suspension period. He/she shall be entitled to half of Council may extend his/her emoluments.

(iii). No National Official or committee member shall be suspended unless he/she is invited at a Meeting of the National Executive Council to answer charges or accusations and explain reasons for his/her failures or actions.

102. Rule 35 provides for Arbitration committee as follows:

The General Secretary may in consultation with the Secretariat appoint an arbitration Committee to deal with emerging disciplinary matters on the part of Officials or Committee members. The Arbitration Committee shall consist of not more than two (2) fully paid up members. Disciplinary matters shall be referred to this Committee before being tabled at the National Executive Council. The General Secretary within reasonable time.

103. It is evident from the letter dated 5th May, 2025 addressed to Central Organisation of Trade Unions (COTU)-Kenya that Andrew Kinyua, 1st Deputy General Secretary of the union and Peter Ngugi, Assistant General Secretary and member of the secretariat had complained of governance issues against the Appellant, the duly elected General Secretary of the union, from January, 2025 and had sought the intervention of the Registrar of Trade Unions through a letter dated 23rd January 2025 without success.
104. The issues they raised against the General Secretary included governance concerns and illegal amendment of union constitution.
105. It is further evident that by letters dated 19th March, 2025; 2nd April, 2025; 3rd April, 2025; and 21st April, 2025, the two, Andrew Kinyua, 1st Deputy General Secretary of the union and Peter Ngugi, Assistant General Secretary and member of the secretariat, had requested the Appellant to convene meetings to discuss the two issues.
106. It is evident that because of calling for the meetings the Appellant as General Secretary commenced disciplinary process against the two by setting up an arbitration Committee under Rule 35 of the union constitution to

investigate the two. The letter communicating the appointment of the arbitration committee addressed to Andrew Kinyua is reproduced below:

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS**

ADM/1/2025/03

30th April, 2025

Mr. Andrew K. M'MKIIRI

1st Deputy General Secretary

Dear Sir,

RE: APPOINTMENT OF ARBITRATION COMMITTEE

Pursuant to Rule 35 of our Constitution & Rules and arising from the authority granted to me therein and following Consultation with our Secretariat. We have today appointed an Arbitration Committee of four persons namely, Dickens Atela - 2nd Deputy General Secretary, Wario Mainda - 2nd Vice Chairman, Nelson Koech and Anne Kamanthe.

The Committees' mandate shall be to make enquiries, examine and look into the emerging disciplinary matters as highlighted herein below and submit its

report and recommendations to the undersigned upon conclusion of the exercise. The emerging disciplinary issues are that:-

- (i) Acting in breach of our Constitution & Rules, you instructed a lawyer to convene unconditional meeting of the National Executive Council on 5th and 12th April 2025, aimed at destabilizing the union and causing unnecessary wrangles, and*
- (ii) Convened and took part in a meeting on 25th April, 2025 at Mwea to incite some officials against the General Secretary, camouflaging the invitation as a normal visit to Mr. Stanley Karani's home. After the said meeting you participate in arranging and/or vising some officials to obtain their signatures by peddling false hood while knowing too well that the said officials did not attend the meeting.*

The Committee's first sitting shall be on 14th May, 2025 from 10.00am at our Headquarter Boardroom when they will be expected to appoint their chairperson and Secretary from among

themselves, come up with their schedule of meetings, decide on the dates & time when you will be required to appear before them and communicate the said dates to you in writing. When the committee may require my appearance or the appearance of any other official with information which may help them, they will be at liberty to do so.

The Committee shall be required to finalize their sittings within (30) thirty days from 14th May, 2025 at the end of which they will be required to submit their report as already stated herein above for further necessary action in accordance with the Constitution of the union.

We expect that you will cooperate with the committee fully to make their work easier.

Yours faithfully

Signed

Boniface M. Kavuvi

General Secretary

1st Deputy General Secretary

107. When they failed to get assistance from both the Registrar of Trade Unions and COTU, Andrew Kinyua and Peter Ngugi decided to convene the meeting of the NEC under rule 32(b) which provides for discipline of national officials. In view of the fact that rule 32(b) of the constitution of the union does not specify who should convene a NEC meeting when the General Secretary's conduct is the subject of discussion and in view that the General Secretary was requested severally to convene the meeting and failed to do so, I find no reason to reach a conclusion that the convening of the meeting held on 29th May, 2025 unlawful or in violation of the Union constitution.
108. The meeting of 29th May was called by a notice issued on 21st May, 2025. The notice of the meeting is reproduced below:

21st May, 2025

To All National Executive Committee Members

Kenya Union of Commercial, Food and Allied Workers

Dear Brothers

*RE: NATIONAL EXECUTIVE COMMITTEE MEETING -29TH
MAY 2025*

Pursuant to Rule No. 32 b of the union's constitution, resolutions passed and or supported for the Mwea meeting of 25th April 2025 and several correspondences exchanged between the undersigned and the office of the General Secretary, Registrar of Trade Union among others requesting for a NEC meeting in vain:

This is NOW to invite all NEC members to a meeting to be held at Marble Arc Hotel -Nairobi on Thursday 29th May 2025 starting from 9.00a.m. to 2.00pm.

Agenda

- i. Prayers*
- ii. Reading of previous minutes*
- iii. Matters arising*
- iv. The resolutions of the National Delegates Conference held on 20th February, 2021 Vis-à-vis illegal amendments of the Union-Constitution 2021 contrary to section 8 (a) of the Labour Relations Act 2007, vis-a-vis conduct of the General Secretary.*

- v. *Governance*
- vi. *Urgent filling of two (2) positions of the trustees following the retirement of Rosemary Kavo from London distillers and passing on of Eric Kimeu Muli in February 2025 in compliance with the provisions of section 36(a) and (b) of the Labour Relations act 2007.*
- vii. *Defamation letter from Nyambena advocates.*
- viii. *Special Delegates Conference*
- ix. *You are requested to observe punctuality and be in the official union attire.*
- x. *By a copy of this letter, the General Secretary is invited to attend this important meeting.*

Signed

Andrew Kinyua M'Mukiri

Peter Ngugi

***1st Deputy General Secretary
Secretary***

Assistant General

Cc.

- *General secretary -KUCFAW*
- *Registrar of Trade Unions*
- *Cotu (K)*
- *Cabinet Secretary Minister of Labour*
- *Nairobi City County Police Commander, NDS.*
- *Officer Commanding Station-*

Central Police station -Nairobi

- *All Branch Secretaries*

109. It is clear from the notice that it was sent to the Appellant among others. The notice also states that the convenors, Andrew Kinyua M'Mukiri and Peter Ngugi convened the meeting following the failure of the General Secretary and the Registrar of Trade Unions to address their issue and after consultation with other members of NEC.
110. The Appellant further raised the issue of venue. As stated by the Claimants, the venue of the meeting as per notice was Marble Arch Hotel Nairobi. However, the Appellant wrote to the Hotel a letter dated 27th May, 2027 distancing the union from the meeting and terming the meeting illegal as a result of which the Hotel declined to admit the NEC members to the venue on the date of the meeting. It is also alleged that the Appellant sent goons to disrupt the meeting. It was explained by the Claimants that the cancellation of the venue having not been communicated to the members, and since the members were at the venue, they decided to relocate the meeting to Tulia Gardens.

111. From the forgoing I find that the meeting of 29th May, 2025 was properly convened to discuss the issues in the agenda which included the conduct of the General Secretary.
112. It is also evident that the General Secretary received the notice as is evident from the documents on record especially his letter dated 27th May, 2025 addressed to the Marble Arch Hotel where the meeting was to be held.

Whether there was quorum at the meeting

113. The quorum for NEC meetings is 2/3 of members eligible to vote at such meeting as provided in rule 11 of the Constitution of the union.
114. From the minutes of the meeting 12 members out of the 23 members of NEC attended the meeting. According to the Registrar there was quorum for the meeting because out of the 23 members of NEC entitled to vote, the national chairman was incapacitated and the board had relieved him of his duties as per records held by the Registrar, two were deceased, one was ineligible to vote having left employment and having not been a paid up member, one member lost his position by virtue of retrenchment and not being a fully paid up member. This left only 18 members eligible to vote as per

rule 11(i) of the union constitution which provides “*The quorum of the national Executive Council shall be **two thirds of the members entitled to attend and vote thereat.***” As of the date of the meeting only 18 members were entitled to attend and vote. 12 members therefore constituted a 2/3 quorum for the meeting.

Whether the Respondent acted in accordance with the law in registering the change of officer of the union;

115. The role of the Registrar in respect of registration of change of officials of a trade union is provided for in section 35 of the Labour Relations Act as follows:

35.(1) A trade union, employers’ organisation or federation shall exhibit prominently—

(a) in its registered office, a notice giving the names of all officials and their titles;

(b) in every branch office the notice specified in paragraph (a) and in addition, a notice giving the names and titles of the officials of the branch.

(2) Notice of any changes of officials or of the title of any officials shall be submitted to the Registrar in Form

Q set out in the Second Schedule, within fourteen days after the change, together with prescribed fee, and the Registrar shall register the change, subject to subsection (4) and subsection (5).

(3) Before registering any change of officials or correcting any register, the Registrar may require the production of any relevant evidence of the change.

(4) If, after inquiry, the Registrar is not satisfied as to the validity of any appointment or the propriety of any proposed correction, the Registrar may refuse to register the change of officials or to correct the register.

(5) No change of officials shall have effect until it is registered by the Registrar.

(6) No person who is not registered by the Registrar in accordance with this section shall act or purport to act as an official of a trade union, employers' organisation, or federation or of any branch.

116. According to the section the Registrar's role is stated as follows: *"Before registering any change of officials or*

correcting any register, the Registrar may require the production of any relevant evidence of the change”.

117. In the instant case the Registrar who is the Respondent in the Appeal has stated that the acting General Secretary submitted Form Q dated 29th May, 2025 notifying the Registrar of the suspension of the Appellant as General Secretary of the Union and the form was compliant with section 35(2).
118. According to the Appellant, he should have been consulted before the registration. He contends that the failure to consult him before registering the changes as contained in Form Q violated his constitutional rights to fair hearing and fair administrative action and was therefore unconstitutional.
119. Courts have consistently emphasized the doctrine of constitutional avoidance and insisted that if a dispute can be resolved on non-constitutional grounds or through other mechanisms, the Court should refrain from reaching constitutional issues. In **Royal Media Services Ltd v Attorney General (2018)**, for example, the Court of Appeal reiterated that *“where it is possible to decide a case without reaching a constitutional issue, that should be done”*.

120. The Act provides that the Registrar may refuse to register changes only if *“not satisfied as to the validity of any appointment or the propriety of any proposed correction”*.
121. In the instant case the Act is explicit on the role of the Registrar upon receipt of Form Q. There is no requirement on the Registrar to engage the persons in respect of whom the changes are made before registering changes. Any disputes over the changes are provided for in the union constitution which provides at rule 32(b)(ii) that any person dissatisfied with the decision of NEC shall have the right to appeal to the National Delegates Conference or Special Delegates Conference.
122. Such person also has the right to appeal to this court which has the authority to review both the union and the Registrar’s decisions.
123. The Registrar has explained that its actions are administrative and not quasi-judicial. That the office considered the provisions of the Act and the union constitution before registering the changes. The Labour Relations Act also provides for appeal to this court against the decisions of the Registrar at section 34(4).

124. I find that the Registrar had no obligation to hear the Appellant before registering the change of officials as per form Q and that the Registration of the change of officials was in compliance with the law.

Whether the Appellant is entitled to the prayers sought in the Appeal

125. The Appellant prayed that the appeal be allowed, that the registration by the Registrar of his suspension and his replacement by the Acting General Secretary be set aside and the decisions and resolutions made at the meeting held on 29th may, 2025 be declared null and void. Having found that the meeting of 29th may 2025 was called according to the constitution of the union and that there was quorum, having further found that the registration of the changes as per Form Q were in accordance with the law, the Appellant is not entitled to the orders sought in the appeal.

Whether the Claimants are entitled to the prayers sought in the claim

126. The Claimant sought a raft of orders in the Claim. The prayers have been resolved by the decision in the appeal. Those not mentioned in the decision have not been proved

and are dismissed. No further orders are therefore necessary in so far as the prayers in the Claim are concerned.

127. There was mention by both parties of a suit filed by the Claimants in Nairobi which was withdrawn being Nairobi Cause No. E547 OF 2025. None of the parties provided copies of the pleadings in the said suit to this court and this court therefore has no basis to make any remarks in respect thereof other than to note that the suit was withdrawn as stated by the parties.
128. There shall be no order as to costs.

**DATED, DELIVERED AND SIGNED
THIS 9TH DAY OF OCTOBER, 2025.**

**M. ONYANGO
JUDGE**