

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

PETITION NO. E005 OF 2025

**IN THE MATTER OF ARTICLES 2, 3,10,19,20,22,23,27,36
AND 41 OF THE CONSTITUTION, 2010**

AND

**IN THE MATTER OF SECTIONS 4,14 AND 27 OF THE LABOUR
RELATIONS ACT**

AND

**IN THE MATTER OF ARTICLES 7,8,9,10,11 AND 18 OF THE
UNION OF KENYA CIVIL SERVANTS' CONSTITUTION**

BETWEEN

MBWANA TITI

MOHAMED.....PETITIONER

VERSUS

UNION OF KENYA CIVIL SERVANTS.....

RESPONDENT

AND

**REGISTRAR OF TRADE UNIONS.....INTERESTED
PARTY**

JUDGMENT

Introduction

1. The Respondent is a trade union duly registered as such pursuant to section 12 of the Labour Relations Act. The Petitioner, Mr. Mbwana Titi states that he is a member of the Respondent.
2. The Interested Party is the Registrar of Trade Unions as established under the Labour Relations Act.

The Petitioner's case

3. The Petitioner filed the instant Petition on 13th March 2025 challenging the validity of Article 11(2) of the Respondent's Constitution. He claims that the amendment setting a term limit for national officials was made without compliance with the required procedures and violates members' constitutional rights.
4. The Petitioner's case is that Article 11(2) of the Respondent's Constitution was irregularly and unlawfully inserted without

following the laid-down procedure for amending the union's constitution.

5. The Petitioner further contends that the provision violates members' freedom of association under Articles 36 and 41 of the Constitution of Kenya by curtailing their right to freely elect leaders of their choice.
6. Additionally, the Petitioner asserts that the provision is discriminatory within the meaning of Article 27 of the Constitution, because it limits the right of re-election only to national officials, while other cadres of officials such as county, branch, and chapter officials are not similarly restricted.
7. The Petitioner therefore seeks for orders that: -
 - a) A declaration be and is hereby made that Article 17(2) of the Respondent's constitution is unconstitutional, null and void and of no legal effect for breaching Articles 10, 27,36 and 41 of the Constitution of Kenya as well as section 4 and 27 of the Labour Relations Act.
 - b) An order be and is hereby issued directing the Interested Party herein to delete article 11(2) of the Respondent's constitution for breaching Articles 10,

27,36 and 41 of the Constitution of Kenya as well as section 4 and 27 of the Labour Relations Act.

c) The Respondent be and is hereby directed to pay the Petitioner the costs of this Petition.

The Respondent's case

8. The Respondent opposed the Petition vide Grounds of Opposition dated 24th June 2025.
9. In its opposition to the Petition, the Respondent contended that the union is a members-only organization, and members are free to determine how it is governed, including setting term limits for leaders.
10. The Respondent has argued that membership in the union is voluntary and if the Petitioner is dissatisfied with the members' decision, he is free to withdraw his membership and leave.
11. The Respondent's case is that the decision to amend the Constitution and set term limits was a democratic exercise by members in their general meeting, undertaken in line with their rights under the Labour Relations Act.
12. According to the Respondent, the Petition is an afterthought, as the Petitioner has always been aware of the amendment.

13. The Respondent asserts that it is not the province of this Court to rewrite the Respondent's constitution on behalf of its members and that as such, the court lacks jurisdiction to interfere with the internal decisions of the Respondent.
14. The Petition was disposed of by way of written submissions pursuant to the directions of the Court issued on 24th June 2025.

The Petitioner's submissions

15. In his written submissions dated 16th July 2025, the Petitioner identified the issues for determination to be:-
 - i. Whether this Court has jurisdiction to hear this Petition
 - ii. Whether the Petitioner is entitled to file this Petition
 - iii. Whether the Union's Constitution was amended in accordance with the law
 - iv. Whether this Petition is an afterthought
16. On the first issue, the Petitioner has submitted that the Constitution of Kenya, provides remedies for infringement or threatened infringement of any of its provisions.
17. He contends that Article 162(1) of the Constitution establishes the Superior Courts which includes this court and that the

jurisdiction of this court is provided in Article 162 (2) of the Constitution which stipulates that Parliament shall establish this court for the purposes of hearing and determining disputes relating to employment and labour relations.

18. On this basis, the Petitioner has submitted that trade union disputes fall within the ambit of labour relations contemplated under Article 162(2) for which this court was created.
19. The Petitioner contends that he is a member of the Respondent as evidenced by his pay slip annexed to the Petition. He asserts that he filed the instant Petition to challenge the decision of the Respondent's management to change the constitution without involving its members which action, according to the Petitioner infringes the rights of the Respondent's members.
20. The Petitioner has maintained that this court has the requisite jurisdiction to hear and determine the instant Petition. Reliance was placed on the Court of Appeal decision in **Public Service Commission & 4 others v Cheruiyot & 20 others (Civil Appeal 119 & 139 of 2017 (Consolidated) (2022)KECA 15 (KLR)**
21. On the issue of *locus standi*, the Petitioner avers that he is a member of the Respondent and has instituted this Petition in

that capacity, having diligently paid the requisite membership fees.

22. With regard to the issue whether the Union's Constitution was amended in accordance with the law, the Petitioner submits that article 30 of the Respondent's constitution provides that an amendment can only be approved by the National Delegates Conference through secret ballot and that such a proposal will only be taken if at least two thirds of the delegates present and entitled to vote approve the proposal.
23. That further, a proposal to amend the constitution must be filed with the Secretary General at least three weeks before the date of the conference.
24. The Petitioner contends that while the Respondent has asserted in its Grounds of Opposition that the impugned amendment was undertaken in accordance with the union's constitution, no evidence has been presented to substantiate that claim.
25. It is the Petitioner's position that no record has been availed to demonstrate when the National Delegates Conference was convened at which the alleged amendment was deliberated and approved. Further, the Petitioner argues that it has not

been disclosed who initiated the proposal to amend, the number of delegates present, or whether a vote was taken, including how many, if any, voted in support of the amendment.

26. The Petitioner further submits that the insertion of article 11(2) into the union constitution was undertaken in contravention of the provisions of the union's constitution and of the Constitution of Kenya, 2010.
27. While relying on Article 10 of the Constitution of Kenya, the Petitioner submits that the Respondent has not demonstrated that its membership was involved in the amendment of its constitution. It is therefore the Petitioner's submission that the impugned amendment lacked the participation of the membership and was thus contrary to the dictates of Article 10 of the Constitution.
28. In addition, the Petitioner has asserted that the amendment in question unfairly targets a small category of the Respondent's leadership, thereby amounting to discrimination. On this basis, the Petitioner contends that this amendment offends Article 10 of the Constitution, which expressly lists non-discrimination as a national value.

29. It is the Petitioner's submission that as a member of the Respondent's Union, he and all other members are entitled to participate in its activities and that amending the Union's Constitution without involving the membership amounts to an infringement of the Petitioner's right to participate in the affairs of the union. In support of this position, the Petitioner cited the decision in ***Solomon P. Mukenion & another v John Mwok & 3 others [2022] KEHC 2335 (KLR)***.
30. The Petitioner has further relied on section 4 of the Labour Relations Act which he argues is in tandem with Article 36 of the Constitution. He avers that the Respondent violated his rights under section 4 of the Labour Relations Act by altering the union constitution without adhering to the prescribed procedure. That by introducing a limitation on members' eligibility to stand for election through the impugned Article 11(2), the Respondent unfairly restricted both the Petitioner's rights and those of other members of the union.
31. Lastly, the Petitioner submits that the Respondent's decision to alter its Constitution without following the due process contravenes Article 41 of the Constitution.
32. The court was thus urged to allow the Petition as prayed.

The Respondent's submissions

33. In its submissions dated 5th August 2025, the Respondent framed the issues for determination as: -
- i. Whether this Court has jurisdiction to hear and determine the Petition
 - ii. Whether the Petition is merited
34. On the first issue, the Respondent submits that the Petitioner has improperly invoked the jurisdiction of this Court by filing the instant petition citing alleged breaches of certain Articles of the Constitution of Kenya, 2010. It is the Respondent's position that the Petitioner has, in particular, relied on Articles 22 and 23 of the Constitution without demonstrating how the same are applicable to the present dispute.
35. The Respondent argues that Article 23 of the Constitution vests jurisdiction in the High Court to hear and determine applications for redress of a denial, violation, infringement, or threat to a right or fundamental freedom in the Bill of Rights, and not in the Employment and Labour Relations Court.

36. It is the Respondent's submission that the jurisdiction of this court is limited to matters of employment and labour relations and that the said jurisdiction does not extend to constitutional matters which disputes, are a reserve of the High Court.
37. The Respondent submits that, since jurisdiction is a creature of the Constitution and legislation, this Court cannot assume authority over matters specifically reserved for other superior courts. In support of this position, the Respondent relied on the case of ***Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others*** [2012] eKLR.
38. On the second issue, the Respondent submits that it is a duly registered trade union under the Labour Relations Act. It is argued that section 14 of the Act prescribes the procedure and requirements for the registration of a trade union, one of which is the adoption of a constitution. According to the Respondent, a trade union, once registered, retains the right to determine its internal governance through its constitution, including the power to amend it whenever necessary.
39. The Respondent further submits that article 30 of its constitution expressly makes provision for the amendment of its constitution. It is therefore the Respondent's position that, in

effecting the amendment, it acted within its constitutional mandate and operational prerogative.

40. The Respondent further submits that it is a voluntary membership organization, and no individual can be compelled to remain a member against their will. It is argued that the constitutional right to freedom of association not only protects the right to join such organizations but also includes the right to withdraw from membership at any time.
41. The Respondent therefore submits that if the Petitioner is dissatisfied with the manner in which the union conducts its affairs, he is at liberty to resign from the organization. It contends that the Petitioner's claim that the amendment infringes his right to fair labour practices is unsustainable, given that membership in a trade union is purely voluntary
42. The Respondent has thus urged the court to find the Petition to be unmeritorious and to dismiss it with costs.

ANALYSIS AND DETERMINATION

43. Having considered the pleadings and the rival submissions, the issues that arise for determination are: -

- i. Whether this Court has jurisdiction to hear and determine the Petition.
- ii. Whether the amendment to the Respondent's constitution introducing Article 11(2) was undertaken in accordance with the law.
- iii. Whether the impugned amendment infringes the Petitioner's constitutional and statutory rights.
- iv. What reliefs, if any, should issue.

Whether this Court has jurisdiction to hear and determine the Petition.

44. The Respondent has argued that Articles 22 and 23 of the Constitution vest jurisdiction to enforce the Bill of Rights exclusively in the High Court, and that this Court lacks jurisdiction to entertain the present Petition.
45. Article 162(2) of the Constitution, empowers Parliament to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations.

46. Article 162(2)(a) of the Constitution establishes the Employment and Labour Relations Court to determine disputes relating to employment and labour relations. Article 165(5) expressly bars the High Court from hearing matters reserved for courts of equal status. It provides

(5) The High Court shall not have jurisdiction in respect of matters—

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162(2)

47. Additionally, section 12 of the Employment and Labour Relations Court Act confers jurisdiction on this Court to determine disputes relating to trade unions and rights arising under Articles 36 and 41 of the Constitution.

48. In the case of ***Public Service Commission & 4 others v Cheruiyot & 20 others (Civil Appeal 119 & 139 of 2017 (Consolidated) [2022] KECA 15 (KLR)***, the Court of Appeal affirmed that the Employment and Labour Relations Court has

concurrent jurisdiction with the High Court to determine disputes involving alleged violations of constitutional rights where such violations arise in the context of employment and labour relations.

49. Accordingly, this Court is properly seized of jurisdiction to hear the Petition as the issues raised relate to trade union governance and members' labour rights.

Whether the amendment to the Respondent's constitution introducing Article 11(2) was undertaken in accordance with the law.

50. The Petitioner has argued that article 30 of the Respondent's constitution prescribes the procedure for amendments, requiring approval at the National Delegates Conference by a two-thirds majority through secret ballot. The Petitioner contends that no evidence has been tendered by the Respondent to show that these requirements were complied with.

51. The Respondent on its part averred that the amendment was duly carried out but did not adduce evidence of the vote as required by its constitution. The Court takes the view that

where compliance with a procedural safeguard is contested, the burden rests on the party alleging compliance to produce evidence of the same.

52. In the absence of such evidence, the Court finds that the Respondent has not demonstrated compliance with its own constitutional procedures in amending its constitution.

Whether the impugned amendment infringes the Petitioner's constitutional and statutory rights.

53. Article 36 guarantees every person the right to freedom of association, including the right to participate in the activities of an association. Article 41(2)(c) further guarantees workers the right to participate in the activities and programs of a trade union.
54. The Respondent has argued that since membership is voluntary, the Petitioner is free to leave if dissatisfied.
55. While I agree with the Respondent that union membership is voluntary, resignation cannot be the only remedy available to members aggrieved by the actions of their association. The right to freedom of association not only entails the right to join

or leave an association, but also the right to participate in its governance in a democratic manner.

56. The Respondent's argument implies permitting trade unions to shield themselves from scrutiny by dissatisfied members. Such an approach is inconsistent with Articles 36, 41 and 10 of the Constitution, which safeguard democracy, participation, non-discrimination, and transparency. The Labour Relations Act and the Union's constitution embody democracy and good governance. The argument by the Respondent that dissatisfied members can resign is not supported by the Respondent's constitution and the law.
57. It is therefore the court's considered view that by amending its constitution without involving members, the Respondent infringed the Petitioner's rights under Articles 36, 41, and 27 of the Constitution, as well as section 4 of the Labour Relations Act.
58. In view of the foregoing findings, the Court is satisfied that the Petition is merited, the Respondent having failed to demonstrate that the amendment of its constitution was undertaken in accordance with the law and in compliance with the requirements of the union's constitution.

59. Consequently, the Petition succeeds, and the following orders do hereby issue: -

- i. A declaration is hereby issued that Article 11(2) of the Respondent's Constitution is unconstitutional, null and void and of no legal effect for being in violation of Articles 10, 27, 36 and 41 of the Constitution of Kenya, 2010 as well as sections 4 of the Labour Relations Act.
- ii. An order is hereby issued directing the Interested Party, the Registrar of Trade Unions, to delete Article 11(2) of the Respondent's constitution forthwith.
- iii. The Respondent shall bear the costs of this Petition.

**DATED, DELIVERED AND SIGNED
THIS 3RD DAY OF OCTOBER, 2025.**

**M. ONYANGO
JUDGE**