



**Musyoka v Kenya Union of Post – Primary Teachers Machakos Branch
& 10 others; Registrar of Trade Unions (Interested Party) (Petition
E008 of 2024) [2025] KEELRC 2949 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2949 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
PETITION E008 OF 2024**

B ONGAYA, J

OCTOBER 30, 2025

**IN THE MATTER OF ARTICLES 2, 19, 20, 22 (1) & (2),
23,159(2) (A) AND 258 OF THE CONSTITUTION OF KENYA,**

2010

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES
36, 41, 47 AND 50(1) OF THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

IN THE MATTER OF THE FAIR ADMINISTRATION ACTIONS ACT 4 OF 2015

**IN THE MATTER OF THE KENYA UNION OF POST –
PRIMARY EDUCATION TEACHERS MACHAKOS BRANCH**

IN THE MATTER OF THE KENYA UNION OF POST – PRIMARY EDUCATION TEACHERS

BETWEEN

YVONNE MUTINDA MUSYOKA PETITIONER

AND

**KENYA UNION OF POST – PRIMARY TEACHERS MACHAKOS
BRANCH 1ST RESPONDENT**

**KENYA UNION OF POST- PRIMARY EDUCATION TEACHERS 2ND
RESPONDENT**

SECRETARY GENERAL, UNION OF POST 3RD RESPONDENT

**EXECUTIVE SECRETARY, KENYA UNION OF POST PRIMARY EDUCATION
TEACHERS, MACHAKOS BRANCH 4TH RESPONDENT**



HON. JEREMIAH OMBOKO MILEMBA, NATIONAL CHAIRMAN, KUPPET	5 TH RESPONDENT
JULIUS KIMURGOR KORIR	6 TH RESPONDENT
MOSES NTHURIMA	7 TH RESPONDENT
WICKS NJENGA MWETHE	8 TH RESPONDENT
PAUL MAINGI	9 TH RESPONDENT
SAMMY CHELANGA	10 TH RESPONDENT
FELIX MWITI	11 TH RESPONDENT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

JUDGMENT

1. The petitioner is Yvonne Mutinda Musyoka. Her case is based upon the amended petition dated 06.12.2024 filed through Otao & Associates but she subsequently opted to act in person. She has prayed for orders as follows:
 - a. A declaration that the failure by the Secretary General of the 2nd respondent to investigate the allegations against the petitioner and table a report before the NEB violated the petitioner’s fundamental rights to expeditious and effective administrative action, access to justice and fair hearing and the same violated Articles 10, 25, 47 and 50 of *the Constitution* and section 4 of the *Fair Administrative Action Act*, 2015.
 - b. A declaration that the process culminating in the issuance of the impugned letters dated 11.11.2024 and 14.11.2024 respectively was illegal, marred with irregularities, unprocedural and the same is null and void for contravening *the Constitution* and the *Fair Administrative Action Act*, 2015.
 - c. A declaration that the impugned proceedings held by the respondents in relation to the petitioner were undertaken in an arbitrary and capricious manner besides being in violation of the principles of natural justice and fair hearing.
 - d. A declaration that the expulsion of the petitioner does not meet the criteria under Article 24 of *the Constitution* of Kenya 2010 as it amounts to unreasonable and unjustified limitation of her right to fair labour practices protected under Article 41 of *the Constitution* of Kenya 2010 for the reason that it derogates from the core and essential content of the right protected.
 - e. A declaration that the provision for expulsion of a member of the union contained under Article 21.2.0 of the 2nd respondent’s union constitution is unconstitutional and the same is null and void.
 - f. A declaration that the continued subjecting of the petitioner by the respondent to the graphic events of her assault by the Secretary General on 16.12.2023 amounts to violation of her right to freedom from to torture, inhuman and degrading treatment.



- g. An order of certiorari to issue to bring to the Court for quashing of the Show cause letter dated 30.12.2024.
 - h. An order of certiorari to issue to bring to the Court for quashing the decision made by the respondents through the letters dated 26.11.2024 and 28.11.2024 respectively.
 - i. The order reinstating the petitioner to union membership.
 - j. The order reinstating the petitioner to the position of Vice-Chairperson KUPPET Machakos Branch with her full benefits including her monthly allowance and operation funds until she has served her full term in the office or is not re-elected.
 - k. An order of injunction restraining the respondents or any member of the 1st and 2nd respondents by themselves, agents, representatives, or any other person whatsoever from preventing, obstructing or interfering with the work and term of the petitioner as Vice-Chairperson KUPPET Machakos Branch and execution of the lawful duties of the Vice-Chairperson until she has served her full term in the office or is not re-elected.
 - l. An order for damages for breach of constitutional rights and freedoms.
 - m. Costs of the petition.
2. The petitioner's case was pleaded as follows:
- a. The petitioner is at all material times a teacher working in Machakos County and a member of KUPPET union which is a trade union duly registered under the [Labour Relations Act](#) Cap 233, laws of Kenya. The 1st to 5th respondents are identified as duly stated. The 6th to 10th respondents are members of the impugned disciplinary committee which sat on 26.11.2024 and determined that the petitioner be expelled from the union as communicated in the letter of 26.11.2024 by the 7th respondent.
 - b. At the material times the petitioner was serving as the elected Vice-Chairperson, KUPPET, Machakos Branch. Her term was to end sometime in 2026 when union elections are due to be held and she is eligible for re-election. She is also the Chairperson of the KUPPET Machakos Branch Burial Benevolent Fund. She has discharged her duties in those positions with due diligence. The impugned letters of 11.11.2024 and 14.11.2024 are a continuing ploy to deny her an opportunity to participate in Union elections fixed for January 2026 and in view of her demands for accountability in the union including at branch level.
 - c. The disciplinary process limited, unfairly so, her right to join and participate in union activities per Article 41 of [the Constitution](#) of Kenya 2010 thereby violating her right of equality before the law and freedom from discrimination per Article 27, her right to information per Article 35, her right to security per Article 28, the right to fair administrative action per Article 47, and the right to fair hearing per Article 50(1) of [the Constitution](#).
 - d. By letter dated 14.11.2024 signed by the 3rd respondent the petitioner was invited to attend a disciplinary before the Standing Disciplinary Committee on 26.11.2024 at KUPPET head office. The letter stated that the mediation proceedings between the petitioner and her branch as directed by the Court had collapsed hence the fixing of the disciplinary hearing. The allegations were two, first, that on 16.12.2023 at 3.00pm or thereabouts the petitioner snatched the microphone from the 5th respondent causing a stampede and temporary interference with progress of the conference, and, second, on 16.12.2023 at Moi International Sports Centre Ksarani, the petitioner jumped at one Mr. Akelo Misori, KUPPET Secretary General, held him



by the collar of his shirt with intent to cause bodily harm. The petitioner wrote to the Secretary General asking to be supplied evidence and documents to support the allegations against her. Her case is that she received no response to her request.

- e. Her further case is that a disciplinary committee was in place from 2021 but a new conflicted committee was formed to handle her case. By email of 20.11.2024 she raised her concerns with the General Secretary. Nevertheless, the Committee carried out the disciplinary hearing on 26.11.2024. on 21.11.2024 the petitioner had written to the Secretary General stating that she was scheduled for a medical procedure on 28.11.2024 so that she requested adjournment of the disciplinary hearing fixed for 26.11.2024. The Secretary General replied granting her request. Nevertheless, the petitioner attended on 26.11.2024 and objected to the proceedings because evidence of her accusers had not been provided. The committee called one witness, Felix Mwiti, who was unknown to the petitioner and his statement had not been provided to the petitioner. The petitioner testified and called 6 witnesses. She provided a written statement and video recording to exculpate herself. Her witnesses were cross-examined and their statements provided. One committee member stated that it was the claimant who had been attacked on the material date. The petitioner states that the disciplinary hearing of 26.11.2024 was cosmetic with a predetermined decision. Her expulsion by letters of 26.11.2024 and 25.11.2025 was illegal, unconstitutional null and void. The petitioner stated that she was not culpable as levelled and if she were, which she denied, the punishment imposed was excessive and harsh as lesser punishments were provided in the union constitution. In any event the union constitution cannot limit the petitioner's right to form, join and participate in the union activities as envisaged in Article 41 of *the Constitution* of Kenya, 2010.
- f. It is her case that she was subjected to violence, torture and inhuman and degrading treatment contrary to Article 28 of *the Constitution* of Kenya in the manner she was assaulted by the Secretary General as per video and her oral evidence before the disciplinary hearing on 26.11.2025.
- g. The petitioner further states as follows; the Annual Delegates Conference (ADC) was held for the 2nd respondent on 16.12.2023 at the Kasarani Indoor Arena. The petitioner and other members opposed a motion introduced by the 5th respondent to amend the union constitution. The motion was opaque, unilateral, unprocedural, and without due process. The 5th respondent as the National Chairperson had ignored low shouts from delegates about the agenda being proposed and seconded. The amendments had not been presented to members of the union in Branches and only read at the National Advisory Council and members were divided for want of full participation. The union had procured services of a videographer to record the NDC proceedings. The agenda was unprocedural because only union organs or committees can propose an agenda for the NDC and not individual members or officials as the agenda was proposed by the Siaya Branch Chairperson and seconded by Meru Branch Chairperson contrary to Article 20.3.0 of the union constitution. The show cause letter of 20.12.2023 shocked the petitioner alleging she had attacked the 5th respondent at the NDC. The records referred to in the letter to show cause were never served upon the petitioner despite her request to be served. She replied to the letter to show cause and stated that it was the union Secretary General Akelo Misoro who had assaulted her and delegates affiliated to him. She had been treated at hospital and reported the case to the police. She provided her witness statements and objected to the Machakos Branch handling her case because it was in exclusive authority of the National Executive Board (NEB) and per Article 21.1.0 of the union constitution. Her preliminary objection was dated 09.01.2024. it is her case that the show cause letter, the proceedings therefrom, and the resulting letters of 11.11.2024 and 14.11.2024 are null and



void. She was the only one who provided the evidence to rebut the allegations in the show cause letter of 20.12.2023 and no person allegedly assaulted provided the evidence to establish the allegations levelled against the petitioner. The evidence showed that it was the petitioner who had been assaulted and contrary to the evidence, the 1st respondent by letter dated 17.01.2024 and then their letter of 11.11.2024 to expel the petitioner from union membership violated her right to fair administrative action per Articles 47 (1) and 50 (1) of *the Constitution* of Kenya, 2010 because the reasons were not lawful, reasonable and were arrived at unprocedurally. No reasons were given per Article 47 (2). The show cause letter of 20.12.2023 mentioned records held by the 1st respondent but which were never shared with the petitioner.

- h. The disciplinary process started with the letter to show cause dated 20.12.2023 leading to decisions of 11.11.2024 and 14.11.2024. the petitioner challenged the decision dated 17.01.2024 in court. A meeting was held on 29.05.2024 and the union resolved all disputes in Court with union members be withdrawn. Thus the petitioner withdrew her suit in issue, accordingly. Nevertheless, the respondents continued with their proceedings per letters of 11.11.2024 and 14.11.2024 despite the matter being settled between the parties.
- i. The petitioner urges that she was aggrieved by the assault by the 3rd respondent on 16.12.2023 at the NDC plenary meeting. On 23.01.2024 she wrote about it to the Registrar of Trade Unions and the Deputy Secretary General but no response has been received and the national union officials have failed to act per Article 21.3 of the union constitution.
- j. The letters of 14.11.2024 and 11.11.2024 issued upon service of pleadings in Meru ELRC Cause No. E008 of 2024 in which the petitioner and other 12 union members have questioned the union national officials' manner of handling union affairs. The petitioner has also filed another case in Machakos questioning disposal of union branch assets.
- k. Further at union elections held in 2021 the union NEB established disciplinary committees at the secretariat and approved by the NGC. The disciplinary committee comprised Njeri Kariuki, Sammy Opondo, Getruth Arisi, Julius Kipkorir, and Moses Nthurima and the committee's tenure has not ended. It is the only Committee to undertake the union internal disciplinary proceedings. However, in September 2024 the NEB met and appointed Wicks Mwethi Njenga, National Treasurer; Sammy Chelanga, National Secretary Tertiary; Paul J Maingi National Organising Secretary; Moses Nthurima Deputy Secretary General; and, Julius K. Korir the union Vice Chairman to be members of the disciplinary committee. The new members are conflicted as Wicks Mwethi has openly stated the petitioner be removed from the union so she does not contest in the coming union elections; Sammy Chelanga has sworn an affidavit to support petitioner's case at the sham disciplinary hearing; Moses Nthurima is one of the respondents in the pending Meru cause; Paul Maingi actively campaigned against the petitioner when she contested for position of National Trustee fearing his position of National Organising Secretary would be compromised on account of regional balancing. Further Njenga Mwethi and Moses Nthurima initiated the disciplinary proceedings against the petitioner through Musembi Katuku, the 4th respondent. The mentioned persons are conflicted and cannot sit in a committee to interrogate the letter of 14.11.2024.
- l. The petitioner is a member of the Branch Governing Council (BGC). Members of the BGC are conflicted from handling her disciplinary case because she has complained to the Registrar of Trade Unions about their handling of union branch assets and she has filed a suit in that respect.



- m. Accordingly it is her case that only the National Executive Board through the union's Standing Disciplinary Committee can undertake the disciplinary proceedings against her, if any. It was unfair to force her to appear before the BGC which was conflicted. By her letter of 26.12.2023 she raised the objections and her fears confirmed with the turn of events per the expulsion decision. Katuku Musembi removed her from the two administrative WhatsApp groups so she could not access information. To contribute to the BGC. It was shortly after she received the two impugned letters. She filed Machakos ELRC JRE0001 of 2024 to challenge the decisions but the same was resolved in-house through a meeting held on 29.05.2024 and the case withdrawn accordingly.
 - n. The dispute about conduct at a meeting of the union is governed by Article 20.1.0(h) of union constitution which provides that any member who shall show disrespect to the chairperson or out of order shall be reprimanded by the chairperson. Further, continued defiance shall be punishable by suspension or exclusion from the meeting by the chairperson. The issues did not fall under Article 21.0 of the union constitution. The alleged misconduct arose at the ADC of 16.12.2023 presided over by KUPPET Chairperson being the 5th respondent, Article 20.1.0(h) applied and not further disciplinary proceedings under Article 21.0. The 5th respondent never appeared in the sham BGC proceedings in that consideration.
 - o. The letters by the 3rd and 4th respondents dated 11.11.2024 and 14.11.2024 issued without following due process per union constitution.
3. The respondents filed the replying affidavit of Akelo M.T. Misori, the 3rd respondent, sworn on 17.12.2024 and filed through Triple A Advocates. The respondents stated and urged as follows:
- a. The petition is frivolous, vexatious and an abuse of the Court process.
 - b. The respondents raised a preliminary objection as follows. The Petition is premature and the Petitioner has not exhausted all available avenues for legal remedy as provided for under Article 21.0 of the Union Constitution which provides that "No Member/Official shall be suspended or removed from office unless he/she has been given an opportunity of being heard by relevant organ of the Union. Such member/official shall have the right of appeal in writing within 14 days of any action. The appeal lies with the National Governing Council and shall be addressed to the Secretary General indicating the grounds of appeal and reasons therein. Further, the petition has failed to meet the threshold for a Constitutional Petition as established under the case of Annarita Karimi Njeru vs. Republic (1970) eKLR.
 - c. On the material day 16th December, 2023 KUPPET was celebrating 25 years; the union Silver Jubilee. It was a great event to which they had invited and had the pleasure in attendance of the Prime Cabinet Secretary among other Dignitaries. It is therefore highly regrettable and embarrassing that Ms Musyoka chose such a great occasion to cause chaos.
 - d. KUPPET has been in operation for 25 years during the course of which the union has held Annual Delegates Conferences. Delegates have always displayed utmost discipline and compliance with the Union's Constitutional provisions on meetings being Article 20.0.
 - e. Article 20.1.0 (b) provides that in all meetings a certain procedure shall be followed and the provisions go on to make specific stipulations. Particular to the instant context, Article 20.1.0 states in part: (c) Agenda shall be proposed and moved/ adopted or amended before it is debated. (d) A resolution shall be passed out if it has been arrived at by consensus/division. (e) Members shall only address the agenda of the day being debated. (f) A member who wishes



to debate an agenda shall catch the eye of the chair by a show of hands. (g) The agenda shall be addressed through the Chairperson. (h) Any member who shall show disrespect to the Chairperson/ out of order shall be reprimanded by the Chairperson. Continued defiance shall be punishable by suspension/ exclusion from the meeting by the chairperson.

- f. On the day of the ADC the 3rd respondent, the maker of the affidavit, was at the Dais together with other National Officials including the Chairman. All the Branch Delegates in attendance were down in the plenary as should be. The entire Silver Jubilee Celebration had proceeded very well without event. Some of the invited guests begged to leave and the 3rd respondent therefore stepped out of the meeting venue to see them off. On returning to the Dais there was untold pandemonium! The 3rd respondent recalled seeing Ms. Musyoka, the petitioner, walk up to the Dais un-permitted just as the Chairman was walking over to the Deputy Secretary General intending to hand over the microphone to him to read the Minutes for adoption. He observed in disbelief as Ms. Musyoka went towards the Chairman and snatch the microphone from his hands. Ms Musyoka essentially grabbed the Reins of Power from the Chairman. The unprecedented and totally unexpected move can only be likened to mutiny in the ranks of the Army. It must be condemned in the greatest terms possible. Before the 3rd respondent could ask Ms. Musyoka to cease the insurbodinary behaviour and return to the plenary the 3rd respondent saw irate Delegates lead her away from the Dais back to the plenary. It was an extremely shocking experience.
- g. On 12th January, 2024 the Executive Secretary Machakos wrote to the Union informing it that the Branch held a disciplinary hearing with respect to Ms. Musyoka's misconduct at the past ADC. On 17th January, 2024 the 3rd respondent received a letter from the KUPPET Machakos Branch copied to 3rd respondent, addressed to Ms. Musyoka communicating the recommendation of the Branch to the Union to have her expelled on account of gross misconduct having violated Article 21.2.0 (a) (viii) of the Union Registered Constitution. On the same day, the Union officially informed the petitioner of the said Recommendation for her expulsion from the Union in compliance with the Union's Constitution Article 21.0. As a Union they acted swiftly on the same day, 17th January, 2024 in conformity with Article 21.3.0 (ii) of the Union Constitution and he summoned the Disciplinary Committee of National Executive Board (NEB) for purposes of an urgent Disciplinary Hearing of the offending Union member and Official, Ms Musyoka. as demanded by Article 21.3.0 (iv) of the Union constitution. The 3rd respondent then wrote to Ms. Yvonne Musyoka informing her of the complaints raised, the Branch recommendations, and inviting her to a Disciplinary Hearing scheduled for 31st January, 2024 at the Union offices. In the letter she was asked to bring her evidence and witnesses.
- h. Article 21.2.0 (a) of the Union Constitution clothes the National Executive Board with the power to initiate disciplinary proceedings against Union officials who have conducted such acts or omissions which in the opinion on the NEB grossly offend public policy and interests of the Union. The conduct of the petitioner is one that had never been seen before in the Union, and bound to damage the image and reputation of the Union if left unpunished.
- i. The Petitioner served as the vice chairperson at the Machakos KUPPET Branch, thus she is privy to and well versed with the provisions of the Union Constitution, therefore, her conduct is unbecoming and a threat to the integrity of the Union Constitution. As the Secretary General of the Union, Article 11.3.0 mandates the 3rd respondent with the responsibility to communicate and execute the National Executive Board's decisions and policies.



- j. As the NEB was setting things in motion for the Disciplinary Hearing, they were served with the Court pleadings, to their great surprise in the matter HCJRMISC/E001/2024: Yvonne Mutindi Musyoka Vs Kenya Union of Post Primary Education Teachers Machakos Branch and The Kenya Union of Post Primary Education Teachers and 2 Others at the Machakos High Court. On 24th July, 2024, the Petitioner proceeded to withdraw the matter, which allowed the respondents to proceed with the Disciplinary Action. On the strength of the withdrawal of the suit, the Union was at liberty to proceed with the disciplinary case; via a letter dated 14th November, 2024, the petitioner was invited by the Union to a Disciplinary Hearing which was eventually held on 26th November, 2024 and the Petitioner was accorded a fair hearing and opportunity to defend her actions.
- k. After comprehensive deliberation, the Disciplinary Committee then proceeded to issue the National Executive Board with their recommendation for expulsion of the petitioner, via the letter dated, 26th November, 2024; a decision which the 3rd respondent communicated to the petitioner by his letter to her dated 26th November, 2024.
- l. The Disciplinary Committee's decision is unprecedented and there has never been an expulsion before because of the extremely gross misconduct of the petitioner.
- m. Article 21.2.0 (a) of the Union Constitution provides that the National Executive Board shall have powers to initiate disciplinary proceedings against union officials who commit offences which include acts or omissions which in the opinion of the NEB grossly offend public policy and interests of the union; which is what the petitioner was accused of doing.
- n. Article 21.2.0 (b) of the Union Constitution allows the Disciplinary Committee to recommend sanctions including suspension or expulsion of the Union official found to be in violation of the offences listed in Article 21.2.0 (a). Under Article 21.2.0 (c) of the Union Constitution, the Committee has the discretion of what punishment or remedy to recommend for a member or official, offender, provided that a member can only be suspended or expelled from the union.
- o. Article 21.2.0 (d) of the Union Constitution further provides that suspension or expulsion shall be the recommended punishment for any member who breaches any of the terms of *the constitution* or acts in a manner which is detrimental to the rest of the union; in this case, the committee found the petitioner's conduct to have been grossly detrimental to the Union and hence the recommendation for expulsion.
- p. The Union adhered to its Constitution and regulations in conducting the disciplinary proceedings, ensuring procedural fairness and due process and in line with the fair labour practices enshrined under Article 41 of *the Constitution* of Kenya, 2010. The punishment rendered by the Union was befitting of the offence committed by the Petitioner and in accordance with the provisions of the KUPPET Constitution.
- q. Under Article 21.3.0 (x) of the Union Constitution, the Petitioner reserves her right to appeal against the decision, to expel her from office. In so far as the mandate of the Disciplinary Committee and the National Executive Board is final, same way a judgement at the High Court can be final; however, one has a right to appeal against the said Judgment at the Court of Appeal. The same applies here where the petitioner has a right to appeal against the Decision at the National Governing Council, or at the Annual Delegates Conference. The Petitioner rushing to Court mid-way between the disciplinary process, without exhausting all her available remedies, having full knowledge of the gravity and implications of the offences



she committed and being issued with the Orders will set a bad precedent within the Union and undermine the internal disciplinary process if the Union.

- r. The Petitioner claims that her expulsion from the Union violates her right to a rights under Article 41 of the Union Constitution and that it interferes with her employment contract, however that is far from the truth. The Petitioner is not an employee of the Union but rather a Teacher employed by the Teachers Service Commission teaching at Kaliani Secondary School in Yatta sub-county in Machakos County. Her expulsion from the Union would only mean that she cannot hold any office at the Union and is no longer a member of the Union, however, it does not mean that she does not get to enjoy the benefits of the Collective Bargaining Agreement between the Union and the Teacher's Service Commission and she is still earning a salary all in the same manner as other Secondary School Teachers, who choose not to be members of the Union. The Union relies on the Ruling by Dr. Jacob Gakeri J in ELRCPET/E045/2024: Ronald Kiprotich Tonui and Samuel Orwa Vs Kenya Union of Post Primary Education Teachers where he held that the petitioners therein had failed to exhaust the Union's internal mechanisms before filing the matter in Court. The petition is incurably defective for want of merit; the same is an abuse of the court process, frivolous, vexatious and merely intended to further frustrate a lawful process initiated by the Union without good cause. It should be dismissed.
4. Final submissions were filed for the parties. The Court has considered the parties' respective positions on record and the written and oral submissions. The Court returns as follows.
 5. The 1st issue is whether the petition is premature and the petitioner has not exhausted all available avenues for legal remedy as provided for under Article 21.0 of the Union Constitution. Article 21.3.0 of the union constitution provides:
 - (x) No Member/Official shall be suspended or removed from office unless he/she has been given an opportunity of being heard by relevant organ of the Union. Such member/official shall have the right of appeal in writing within 14 days of any action. The appeal lies with the National Governing Council and shall be addressed to the Secretary General indicating the grounds of appeal and reasons therein.
 - (xi) The Secretary General shall cause the National Governing Council to hear and determine the appeal.
 - (xii) The Decision of the Disciplinary Committee of National Executive Board and National Governing council shall be via a popular vote and a simple majority of the members' present shall be binding on the Union leadership.
 - (xiii) Any decision taken by the National Governing Council (NGC) to suspend or expel a member or official shall be final.
 6. It is submitted for the respondents that the petitioner ought to have appealed. The petitioner submits that the National Governing Council (NGC) met and resolved that the earlier Judicial Review case the applicant had filed be withdrawn and parties to pursue conciliation. The respondents have said nothing about that decision of the NGC and it is not disputed that such decision was made. It appears to the Court that the continuation of the disciplinary proceedings against the petitioner was contrary to that final decision of the NGC that parties reconcile. It is found by the Court that by the quoted provision of the union constitution a final decision had been made and the petitioner was entitled to file the petition herein. It also appears to the Court that the petitioner would in any event be unable to fairly, genuinely and possibly invoke the internal procedure because the 3rd respondent who was to cause the



NGC to hear and determine the appeal was seriously conflicted and the union constitution does not offer an alternative path the petitioner would have pursued. The Court returns that the petition cannot fail for want of exhaustion of the union internal procedures especially that the petitioner questioned the legality or lawfulness of the entire disciplinary procedure and decisions made and which would fall outside the admissibility for determination by the said internal procedure. The petitioner correctly moved to file the petition and it was not premature.

7. To answer the 2nd issue, as set out earlier in this judgment the petition as amended has set out the alleged constitutional violation of rights and fundamental freedoms and the facts to support the allegation. The Court finds that the petitioner set out her claims and alleged violations with sufficient precision.
8. The 3rd issue is whether the provisions of the union constitution on expulsion amounted to violation of the member's right to form, join and participate in trade union affairs contrary to Article 41 of *the Constitution* and is unfair and unlawful limitation to that right as against Article 24 of *the Constitution*. The issue is whether the disciplinary provisions in the union constitution including on expulsion enhance rather than derogate from the worker's right to form, join and participate in union affairs. While the expulsion punishment is drastic and expansive as to affect the member's contract of service which otherwise incorporates the collective bargain, is it a necessary provision for orderly conduct of trade union business? Would it be valid to impose expulsion provided it is provided in the union constitution and imposed in accordance with the strict provisions of the union constitution? Section 14 (1) (b) of the *Labour Relations Act*, 2007 prescribes as one of the preconditions for registration of a trade union thus, "(b) the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;" The requirements in the First Schedule include, "(4) The appointment or election and removal of an executive, and of trustees, secretaries, treasurers and other officers of the trade union or employers' organisation," and "(8) The taking of all decisions in respect of the election of officials, the amendment of *the constitution*, strikes, lockouts, dissolution and any other matters affecting members of the trade union or employers' organisation generally, by secret ballot." It appears to the Court that nothing in the First Schedule mandates a trade union constitution to prescribe suspension or expulsion of members.
9. There appears to the Court that there must be a balance between the constitutional rights to associate, join a trade union, and continue such membership on the one hand, and, the contractual nature of a trade union constitution between the union and its members, on the other. The union constitution constitutes a contract between the union and its members. The Court considers that at a very primary level, any expulsion, if permitted by *the Constitution* of Kenya 2010 and the enabling statute, must comply with the procedures and grounds set out in the union's constitution. But does *the Constitution* of Kenya 2010 and the enabling *Labour Relations Act*, 2007 permit expulsion of a member from a union? Undoubtedly, the union constitution being contractual, it must comply with constitutional and statutory provisions and not derogate therefrom.
10. Article 41 of *the Constitution* of Kenya protects the right to fair labour practices for every person. The Article provides that every worker has the right to form, join or participate in a trade union. The Court considers the right to join and continue as a member of a trade union as foundational and can only be taken away within constitutionally permissible limitations.
11. Article 24 of *the Constitution* of Kenya 2010 on limitation of rights and fundamental freedoms provides as follows:

" 24.



- (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
 - (a) the nature of the right or fundamental freedom;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and,
 - (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom—
 - (a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;
 - (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and,
 - (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.
- (3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.
- (4) The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.
- (5) Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service—
 - (a) Article 31—Privacy;



- (b) Article 36—Freedom of association;
- (c) Article 37—Assembly, demonstration, picketing and petition;
- (d) Article 41—Labour relations;
- (e) Article 43—Economic and social rights; and,
- (f) Article 49—Rights of arrested persons.”

12. Under Article 24 it is elaborate that only a statutory provision can limit a right or fundamental freedom and only within the prescribed safeguards and tests. The First Schedule to the *Labour Relations Act* does not prescribe making of a provision in an employers’ association or a trade union constitution for suspension or expulsion of the members. Let us turn to the primary provisions of the Act. The Court has extensively revisited the Act and nowhere is it provided that a trade union can expel a member. Instead the Act guarantees every employee the right to join, leave or not to join a trade union. The court therefore finds that there is no statutory provision limiting a trade union membership once a worker has decided to join the trade union. The Court finds that the right to join and participate in trade union activities include the right not to be expelled.
13. The provision in the union constitution permitting expulsion of members is found to be unconstitutional limitation to Article 41 on the right to fair labour practices and then Article 36 on the freedom of association which states,

“ 36.

- (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.
- (2) A person shall not be compelled to join an association of any kind.
- (3) Any legislation that requires registration of an association of any kind shall provide that—
 - (a) registration may not be withheld or withdrawn unreasonably; and,
 - (b) there shall be a right to have a fair hearing before a registration is cancelled.

14. There is no legislation limiting membership to a trade union through expulsion under the enabling parent statute, the *Labour Relations Act*, 2007. Instead, the Act in section 4 provides as follows,

“ 4.

- (1) Every employee has the right to –
 - (a) participate in forming a trade union of federation of trade unions;
 - (b) join a trade union; or,



- (c) leave a trade union.
- (2) Every member of a trade union has the right, subject to *the constitution* of that trade union to –
 - (a) participate in its lawful activities;
 - (b) participate in the election of its officials and representatives;
 - (c) stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and,
 - (d) stand for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the provisions of this Act or a collective agreement.
- (3) Every member of a trade union that is a member of a federation of trade unions has the right, subject to *the constitution* of that federation to –
 - (a) participate in its lawful activities;
 - (b) participate in the election of any of its office bearers or officials, and,
 - (c) stand for election or seek for appointment as an office bearer or official and, if elected or appointed, to hold office.”

Thus, under section 4 (1) (c) it is the union member who can leave the union of own discretion.

15. Again, subsections 48(6) and (7) of the *Labour Relations Act*, 2007 specifically govern the cessation of union membership by an employee, stipulating that an employer cannot deduct union dues from an employee who has given written notice of resignation. The resignation becomes effective from the month following the notice.
16. The Court returns that the *Labour Relations Act*, 2007 does not provide for limitations and applicable safeguards relating to employees’ membership to a trade union and the expulsion clause of the KUPPET union constitution is found to be an unconstitutional limitation to the petitioner’s or any other membership in the union. The court upholds the petitioner’s case that the imposition of expulsion was excessive and extremely harsh and that her misconduct at the Annual Delegates Conference, if at all it interfered with the proceedings, then it fell for handling by the chairperson by way of a reprimand and if necessary expulsion from the meeting as per the chairperson’s powers under the union constitution. While the petitioner urged that the chairperson had reprimanded her and the meeting continued, the minutes of the proceedings were not filed at all to verify the same. However, on a balance of probability, there being no mention that the petitioner was suspended from the meeting, it appears that the chairperson sustained control of the meeting through such reprimand



to misconducting members and in that sense, the petitioner's case that the disciplinary process and expulsion amounted to double jeopardy is upheld on a balance of probabilities.

17. In absence of a statutory provision limiting membership or continued membership in a trade union by way of an expulsion, the Court upholds the petitioner's case that the provisions of the KUPPET union constitution on expulsion and which were invoked to expel the petitioner from the union were an unconstitutional limitation of her rights to associate and to form, join and participate in union affairs per Articles 41 and 36 as read with Article 24 of *the Constitution* of Kenya, 2010.
18. To answer the 4th issue the Court finds that the expulsion of the petitioner from the union was both procedurally and substantively unfair, unlawful and unconstitutional and upon the following findings:
 - a. The petitioner has established that her expulsion was based upon a provision in the union constitution which was unconstitutional as already found.
 - b. On a balance of probability, the petitioner has shown that the respondents invoked a committee other than the prescribed Standing Disciplinary Committee put in place at the last union elections. The ad hoc committee has as well been shown by the petitioner to have suffered a conflict of interest as pleaded for the petitioner and not rebutted for the respondents.
 - c. There was no evidence that the petitioner committed the misconduct at the meeting of 16th December, 2023. The petitioner alleged the 3rd respondent assaulted her while the 3rd respondent alleged the petitioner disrupted the meeting. However, there was no evidence of the Chairperson invoking the measures in the union Constitution and no minutes to show the proceedings as was levelled against the petitioner. It is found that the Article 20.1.0 (h) thus "(h) Any member who shall show disrespect to the Chairperson/out of order shall be reprimanded by the Chairperson. Continued defiance shall be punishable by suspension/exclusion from the meeting by the chairperson." If indeed the petitioner misconducted herself at the meeting then the respondents ought to have exhibited the record of the chairperson invoking the provision against her but which is not the case. More important the union constitution provided on record of the union meetings thus, "20.2.0 Minutes: The Secretary General/Branch Executive Secretaries shall cause minutes to be made of all business transacted at meetings of the Union. Minutes which have been confirmed and signed by the Chairperson of the meeting in which they were made shall form conclusive evidence of the business transacted thereat." The respondents failed to provide such minutes of the proceedings of 16th December, 2023. *The constitution* of the union is the binding contract between the union and the members and the respondents having failed to exhibit the minutes are found to have failed to establish that the allegations leveled against the petitioner were valid, genuine and existed as at the time of invoking the disciplinary process.
19. By reason of the foregoing findings the Court returns that the petitioner has substantially established that her rights were violated as alleged and the 5th issue is answered accordingly. While making the awards the Court considers that they are sufficient and an order for damages for breach of constitutional rights and freedoms will not issue especially that the effect of the orders granted is to return the petitioner to the position she would have been had the expulsion not issued. Further, no submissions were made to guide the Court in that regard.

In conclusion judgment is hereby entered for the petitioner against the respondents as follows:

1. The declaration that the failure by the Secretary General of the 2nd respondent to investigate the allegations against the petitioner and table a report before the NEB violated the petitioner's fundamental rights to expeditious and effective administrative action, access to justice and fair



hearing and the same violated Articles 10, 25, 47 and 50 of *the Constitution* and section 4 of the *Fair Administrative Action Act*, 2015.

2. The declaration that the process culminating in the issuance of the impugned letters dated 11.11.2024 and 14.11.2024 respectively was illegal, marred with irregularities, unprocedural and the same is null and void for contravening *the Constitution* of Kenya 2010 as found herein.
3. The declaration that the impugned proceedings held by the respondents in relation to the petitioner were undertaken in an arbitrary and capricious manner besides being in violation of the principles of natural justice and fair hearing.
4. The declaration that the expulsion of the petitioner does not meet the criteria under Article 24 of *the Constitution* of Kenya 2010 as it amounts to unreasonable and unjustified limitation of her right to fair labour practices protected under Article 41 of *the Constitution* of Kenya 2010 for the reason that it derogates from the core and essential content of the right protected and more specifically as found herein
5. The declaration that the provision for expulsion of a member of the union contained under Article 21.2.0 of the 2nd respondent's union constitution is unconstitutional and the same is null and void, and as found herein.
6. The declaration that the continued subjecting of the petitioner by the respondent to the graphic events of her assault by the Secretary General on 16.12.2023 amounts to violation of her right to freedom from torture, inhuman and degrading treatment.
7. The order of certiorari hereby issued to bring to the Court for quashing of the show cause letter dated 30.12.2024.
8. The order of certiorari hereby issued to bring to the Court for quashing the decision made by the respondents through the letters dated 26.11.2024 and 28.11.2024 respectively.
9. The order hereby issued reinstating the petitioner to union membership.
10. The order hereby issued reinstating the petitioner to the position of Vice-Chairperson KUPPET Machakos Branch with her full benefits including her monthly allowance and operation funds until she has served her full term in the office or is not re-elected.
11. The order of injunction restraining the respondents or any member of the 1st and 2nd respondents by themselves, agents, representatives, or any other person whatsoever from preventing, obstructing or interfering with the work and term of the petitioner as Vice-Chairperson KUPPET Machakos Branch and execution of the lawful duties of the Vice-Chairperson until she has served her full term in the office or is not re-elected.
12. The respondents to jointly or severally pay the petitioner's costs of the petition to be agreed or assessed by the taxing master.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 30TH OCTOBER, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

