

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. E093 OF 2025

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL

RIGHTS AND FREEDOMS

AND

IN THE MATTER OF THE PRINCIPLES OF NATURAL

JUSTICE, OPENNESS AND FAIR HEARING

AND

IN THE MATTER OF FUNDAMENTAL RIGHTS AND

FREEDOMS UNDER ARTICLES 19, 20, 21, 22, 23, 27, 40, 47, 50,

159, 165, 258 & 259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONTRAVENTION AND

THREATENED CONTRAVENTION OF FUNDAMENTAL

RIGHTS AND FREEDOMS UNDER ARTICLES 20, 40 AND 47

OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF SECTIONS 1A, 1B, 3A & 63(c), (e) OF
THE CIVIL PROCEDURE ACT (CAP 21); ORDER 1 RULE
10(2), ORDER 40 RULES 1, 2 AND 3 & ORDER 51 RULE 1 OF
THE CIVIL PROCEDURE RULES; RULE 7(1) OF THE
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND
PROCEDURE RULES; RULE 17 OF THE EMPLOYMENT
AND LABOUR RELATIONS COURT (PROCEDURE) RULES
AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

-BETWEEN-

LAMECK ABRAHAMS ODHIAMBO.....PETITIONER

-VERSUS-

UNION OF KENYA CIVIL SERVANTS.....1ST RESPONDENT

TOM MBOYA ODEGE.....2ND RESPONDENT/APPLICANT

ALISOKOR ISHAQ.....3RD RESPONDENT/APPLICANT

-AND-

CONFAT ADEMBA.....1ST INTERESTED PARTY

THE REGISTRAR OF

TRADE UNIONS.....2ND INTERESTED PARTY

(Before Hon. Justice Byram Ongaya on Thursday 13th November, 2025)

RULING

1. The 2nd and 3rd respondents filed the notice of preliminary objection dated 11.07.2025 through Okong'o Wandago & Company Advocates. They raise a preliminary objection on the grounds that:

(i) The internal appeal mechanisms specified by the constitution of the 1st respondent have not been exhausted.

(ii) The procedure for suspension and removal, as well as internal appeals processes of a National Official according to the constitution of the 1st respondent, flows as follows:

A. Article 15(4)(iv) - National Administrative Council takes appropriate disciplinary action against any member or official of the Union on issues relating to constitutional breach and/or indiscipline.

B. Article 12(1) - National Administrative Council presents the disciplinary action to the National Executive Board, which ratifies it.

C. Article 12(2) - National Advisory Council deliberates on the matter and decides whether to uphold the suspension, remove the official or rescind the decision of the National Executive Board of suspending the official.

D. Article 12(4) - An official who has appeared before the Advisory Council in accordance with Article 12, if dissatisfied with the decision of the Advisory Council, has the right to restate his/her case at the Delegates Conference, where the matter will be deliberated.

E. Article 15(1.2) - Appeal/ restatement of case to the National Delegates Conference, which is the Supreme Authority capable of giving final and binding decisions.

(iii) The petitioner rushed to this Court before the restatement of his case to the National delegates Conference as provided for in Article 12(4) and 15(1.2) above.

(iv) This petition is thus premature and offends the doctrines of justiciability, ripeness and mootness as well as exhaustion of internal remedies.

(v) In consequence thereto, the 2nd and 3rd respondents pray that the petition be struck out and the costs thereon be borne by the petitioner.

2. In opposition to the preliminary objection, the petitioner filed a replying affidavit dated 07.10.2025 through Musili & Gathura Advocates. He argued as follows:

a. The preliminary objection is solely based on the ground that the petitioner failed to exhaust the internal appeal mechanisms, specifically the final right to “restate my case at the Delegates Conference” as per Article 12(4) of the 1st respondent's constitution.

b. This petition is not premature, firstly because exhaustion was rendered illusory or ineffective, as the process relied upon by the respondents, culminating in the Delegates Conference, is not an effective or readily available remedy. The Union's

constitution provides for a National Quinquennial Delegates Conference, which is held every five years. Secondly, the Delegate's Conference has not been convened since 2021 and is not scheduled to be convened in the immediate future to address the petitioner's matter. Therefore, being asked to wait for an indeterminate date, potentially years away, renders the constitutional remedy illusory and a practical denial of justice.

- c. After the disciplinary process was relied upon by the respondents, the initial suspension by the National Advisory Council in March 2023, the respondents took a separate and subsequent administrative action that fundamentally violated his constitutional rights: the issuance of a communique on or about 11.04.2025, citing the petitioner's retirement from civil service and consequently, from the 1st respondent.
- d. The internal dispute resolution mechanism of appealing a disciplinary decision to the Delegates Conference (Article 12(4)) is inadequate to address a substantive constitutional violation of the right to property and fair administrative

action (Articles 41 and 47 of the Constitution of Kenya) resulting from an unlawful retirement.

- e. The instant petition is primarily centred on constitutional questions of infringement of fundamental rights (Articles 20, 41 and 47) and the ultra vires actions of the respondents in purporting to unlawfully terminate his employment and union position, which are matters strictly within the constitutional and statutory jurisdiction of this Honourable Court.
- f. The assertion of the preliminary objection is merely a cynical attempt to shield the respondents from judicial scrutiny by employing a legal technicality while actively ensuring that the final internal forum is non-existent or perpetually delayed.
- g. In the premises, it is in the interests of justice and the expeditious resolution of the substantive dispute that the Honourable Court finds the preliminary objection to be without merit and dismisses it with costs.

3. The 2nd and 3rd respondents, and the petitioner filed their written submissions on the preliminary objection.

4. The Court has considered the material on record and returns that the preliminary objection must fail. There is no dispute that the petitioner has undertaken all the steps in the disciplinary process and the only pending step is an appeal to the Delegates Conference constituted per Article 15(1.2) of the 1st respondent's union constitution and appeal to the Delegates Conference is as per the said Article 15 (1.2) as read with Article 12(4) thereof.
5. It is also not in dispute that the Delegates Conference last met sometimes in 2021 and the next date it will meet is not disclosed.
6. A further undisputed position is that Delegates Conference meets every after five years.
7. On 08.03.2023 the petitioner attended the disciplinary proceedings before the National Administrative and on 14.03.2023 the said Council imposed a suspension against the petitioner. The National Executive Board upheld the suspension on 05.04.2023 and the National Advisory Council upheld and enforced the suspension. By designating the 1st interested party as the 1st Deputy Secretary General per Articles 11(5) and 7(7) and (8) of the union constitution. That was in 2023. It is now over two years, the initial

3 months suspension lapsed long time ago, and, it is not clear if the suspension has ever been extended and in accordance with the union constitution.

8. The Court considers that as urged for the petitioner the purported internal appellate procedure does not pass the test of a genuine fair procedure in the circumstances of his case and as tested against the right to fair administrative action in Article 47. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Further, if an individual's rights or freedoms are adversely affected by administrative action, the person has the right to be given written reasons for that action.
9. The Court finds that the long period of time prior to the holding of the Delegates Conference at which the appeal may be considered amounts to inordinate and uncertain delay inconsistent with expeditious, efficient, reasonable and procedurally fair administrative action. The petitioner's case and submission in that respect is upheld.

In conclusion the preliminary objection is dismissed with costs and parties are directed to take directions for the expeditious hearing and

determination of the main petition.

Signed, dated and delivered by video-link and in court at Nairobi

this Thursday 13th November, 2025.

**BYRAM ONGAYA
PRINCIPAL JUDGE**