

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

CAUSE NO. E079 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

RONALD KIPROTICH TONU I CLAIMANT

VERSUS

REGISTRAR OF TRADE UNIONS 1ST RESPONDENT

KENYA UNION OF POST PRIMARY

EDUCATION TEACHERS 2ND RESPONDENT

THE SECRETARY GENERAL KENYA UNION

OF POST PRIMARY EDUCATION TEACHERS 3RD

RESPONDENT

RULING

1. Vide a Statement of Claim dated 6th February, 2025, the Claimant/Applicant sued the 1st, 2nd and 3rd Respondents and sought the following reliefs:-

(a) A declaration that the process of removal of the Claimant from office as Assistant National

Treasurer by the Respondents violates the Claimant's right under Article 41(2)(c) and (4) of the Constitution of Kenya 2010 to join and participate in the activities of a trade union of his choice.

(b) A declaration that the process of removal of the Claimant from the office of Assistant National Treasurer by the Respondents violates his right to fair hearing under Article 36(3)(b), 47 and 50 of the Constitution of Kenya, 2010 as read with Section 35 (2 - 4) of the Labour Relations Act.

(c) A declaration that the procedure leading to the deregistration of the Claimant as an official of the 2nd Respondent Union amounted to an abuse of office by the 1st and 3rd Respondents, and that the same was in violation of the Claimant's rights under Article 36(3)(b), 47 and 50 of the Constitution of Kenya 2010 as read with Section 35 (2 - 4) of the Labour Relations Act.

(d) A declaration that the unlawful removal of the Claimant as the Assistant National Treasurer is an illegal and unconstitutional limitation of the

Claimant's right to fair hearing contrary to Articles 24 and 25 of the Constitution of Kenya 2010.

*(e) A declaration that the publication of the extract dated **2nd December, 2024** by the 1st Respondent in the Union's Register and further by the 2nd and 3rd Respondents in Social Media without conducting an inquiry into the issues and according the Claimant a right of reply amounted to violation of the Claimant's rights under Article 35(2) as read with Article 36(3) of the Constitution of Kenya 2010.*

*(f) A declaration that the Claimant was validly elected in **April 2021** to serve as the Assistant National Treasurer until the year 2026 when the union shall hold its elections.*

*(g) A declaration that the removal of the Claimant as an official of the union in the capacity of Assistant National Treasurer, having been duly elected to serve in the said position during the union's elections held on **2nd April, 2021** was unconstitutional and unlawful, and the same is null and void.*

- (h) A declaration that following the 2nd Respondent Union's elections held on 2nd April, 2021 and the 3rd Respondent having forwarded to the 1st Respondent the name of the Claimant together with other National Officials elected during the same elections for registration as union officials elected during the same elections of the 2nd Respondent, the Respondents are estopped from removing the Claimant from office.
- (i) A declaration that following the election of the Claimant as an elected official of the union in the capacity of Assistant National Treasurer and the 3rd Respondent having served with him **from 6th April, 2021 to 10th December, 2024**, in the National Executive Board, National Governing Council and the National Delegates Conference, the 2nd and 3rd Respondents are estopped from removing him from office.
- (j) A declaration that the 1st Respondent, having duly registered the Claimant as an official as required by Section 35 of the Labour Relations Act on 6th April, 2021, is estopped from removing his name

from the list of officials of the 2nd Respondent union.

(k) An order directed at the 1st Respondent to reinstate the Claimant in the 2nd Respondent Union's register as an official of the 2nd Respondent Union in the capacity of Assistant National Treasurer with immediate effect.

(l) An order directed at the 2nd Respondent to pay the Claimant's accrued salaries, allowances and facilitation towards Union activities for the months of August 2024 to date, and to continue paying the Claimant's salaries and allowances together with operational funds until the lapse of his term as the Assistant National Treasurer of the 2nd Respondent Union.

(m) An order of permanent injunction restraining the Respondents or any member of the Respondents by themselves, their agents, representatives or any other person whatsoever from preventing, obstructing and/or interfering with the work and term of the Claimant as Assistant National Treasurer of **KUPPET**, the 2nd Respondent herein,

and execution of the lawful duties of Assistant National Treasurer until he has served his full term in office and/or is not re-elected.

- (n) An order that the Respondents pay the Claimant general damages.*
- (o) Any other order that the Court may deem fit to issue in furtherance and protection of the rights of the Claimant.*
- (p) Costs of the suit.*

2. The Claimant pleaded, ***inter alia***:-

- (a) that the 2nd Respondent conducted elections in 2021, during which the Claimant was elected Assistant National Treasurer to serve for 5 years pursuant to **Article 12(a)** of the 2nd Respondent Union's Constitution.*
- (b) that the 3rd Respondent was elected in the same elections, whereat he defended his seat as the 2nd Respondent's Secretary General, a position he holds todate as his term is yet to lapse.*
- (c) that the Claimant came to learn through social media that he had been removed from the 2nd*

*Respondent's register of officials, pursuant to a letter written by the 3rd Respondent **on 7th November, 2024**; without following the procedure set out in the Union's Constitution.*

(d) that the 1st Respondent deregistered the Claimant based on the 3rd Respondent's said letter, and without conducting any inquiry, despite the Claimant having been overwhelmingly elected unopposed by members of the 2nd Respondent union.

(e) that there was no justifiable ground for the Claimant's removal from office, and that his removal was malicious and amounted to violation of his rights, and therefore null and void.

(f) that the Claimant is entitled to be reinstated as the Assistant National Treasurer of the 2nd Respondent Union, to serve for the remainder of his term pending Union elections slated for the year 2026.

(g) that prior to the Claimant's illegal removal from office, the 2nd Respondent had stopped paying his salary and allowances, despite the Claimant

having undertaken official duties as the Union's Assistant National Treasurer.

3. The suit was filed contemporaneously with a Notice of Motion dated 6th February, 2025 and filed under a Certificate of Urgency, but which the Court did not certify as urgent.

The Claimant seeks the following Orders in the application:-

(a) *Spent.*

(b) *Spent.*

(c) *Spent.*

(d) *Spent.*

(e) *That pending hearing and determination of the petition herein, an order be issued reinstating **Ronald Kiprotich Tonui** to his position as Assistant National Treasurer, and his name in the register of officials of the Union.*

4. The application sets out on its face the grounds on which it is brought, and is anchored on the Claimant/Applicant's supporting affidavit sworn on 6th February, 2025. It is deponed in the said supporting affidavit, ***inter alia***:-

- (a) that Article 12 (a) of the 2nd Respondent's Constitution provides that all office bearers shall be elected to serve for five (5) years, but eligible for re-election.
- (b) that following the Claimant's election together with the other National officials on 2nd April, 2021, their names were forwarded to the Registrar of Trade Unions by the Secretary General of the Union (3rd Respondent herein) on **6th April, 2021** for registration in the Trade Union's Register.
- (c) that as an Assistant National Treasurer, the Claimant/Applicant is a member of the National Executive Board (NEB) of the 2nd Respondent, which is the organ mandated to undertake day-to-day running of the affairs of the union; and is also a delegate at the Annual Delegates Conference, the supreme organ of the Union, which holds its meetings once every year.
- (d) that under **Section 35 of the Labour Relations Act**, the 1st Respondent is the officer mandated to regulate and to oversee the operations of trade unions, and in particular to register and to

maintain a proper register of the officials of a trade union.

- (e) *that during the tenure of the Claimant/Applicant as an official of the 2nd Respondent, he (the Claimant/Applicant) has been serving with the Secretary General, **Akelo Misori**, and others in the national leadership of the 2nd Respondent Union, and had been diligently attending the functions of the Union's organs (the National Executive Board, National Governing Council and National Delegates Conference).*
- (f) *that while preparing for the Annual Delegates Conference slated for **20th December, 2024**, the Claimant/Applicant came to learn through social media that he had been removed from the extract of the register of union officials of the 2nd Respondent, pursuant to the 3rd Respondent's letter dated 7th November, 2024.*
- (g) *that the contents of the 3rd Respondent's said letter dated 7th November, 2024 are strange to the Claimant/Applicant, as he had satisfied all the*

relevant procedures, and had been serving the union all along.

(h) that the Claimant/Applicant's removal from office did not comply with the 2nd Respondent's Constitution and was malicious, and was meant to **bar the Claimant from attending the Annual Delegates Conference to allow the movers of an impugned Constitutional amendments to pass the same on 20th December, 2024 during the Annual Delegates Conference.**

(i) that under Section 35 of the Labour Relations Act, the Registrar of Trade Unions is required to conduct an inquiry into an application for change of officials submitted to him by the Secretary General to satisfy himself as to the validity of any appointment, or the propriety of any correction, before effecting any change in the register.

(j) that the Claimant/Applicant was never invited by either the Secretary General or the Registrar of Trade Unions to clarify on his election to office as Assistant National Treasurer of KUPPET, neither was he given any written reasons as to why he

was being illegally removed from office, and was not given an opportunity to appear before an organ of the 2nd Respondent Trade Union and to defend himself.

- (k) that the Registrar of Trade Unions acted illegally by removing the Claimant/Applicant from the register of officials without conducting an investigation as required under Section 35(3) & (4) of the Labour Relations Act.*
- (l) that the Claimant/Applicant's removal from office as an elected official of the 2nd Respondent was malicious, null and void.*
- (m) that there were no justifiable reasons for the Claimant/Applicant to be removed from the register by the Respondents.*
- (n) that the Claimant is entitled to be reinstated as the Assistant National Treasurer of the [2nd] Respondent Trade Union, to serve the remainder of his term pending union elections in 2026.*

5. Documents annexed to the supporting affidavit include the 3rd Respondent's letter to the 1st Respondent stating, in part, as follows:-

“It has come to the Union’s attention that *Mr. Ronald Kiprotich Tonui*, the Union’s Assistant National Treasurer, is serving in the office irregularly. From our records, we have no proof that Mr. Tonui was re-elected to his position during the union elections of 2016, upon the lapse of his tenure from 2011.

Our records also indicate that Mr. Tonui was barred from participating in the elections by the Employment and Labour Relations Court, hence the position remained vacant following those elections. However, he appears in the Register of KUPPET officials from 14th July, 2018, when there is no proof that elections were held on that date.

Take note that it is his registration of 14th July, 2018 which qualified him as a Delegate for re-

election as Assistant National Treasurer of KUPPET in the 2021 Union elections.

This office asked Mr. Tonui to provide evidence of his election on 14th July, 2018 or a Court Order reinstating him to the position of Assistant National Treasurer in lieu of elections, which he has failed to do. Attached is my communication to Mr. Tonui which he did not respond to.

Given the foregoing, we hereby demand that you strike Mr. Tonui off the Register of KUPPET officials with immediate effect . . .”

6. Also annexed to the supporting affidavit are copies of a communication by the 1st Respondent to the 3rd Respondent dated 2nd December, 2024 confirming registration of officials of the 2nd Respondent and an Extract of the Register of the 2nd Respondent’s officials, committee members and Trustees, showing the position of Assistant National Treasurer as being vacant.

7. A copy of a Gazette Notice dated 13th December, 2017 listing the Claimant among persons **who had ceased to hold office as trade union officials by reason of being state officers**, is also annexed to the supporting affidavit.
8. The 1st Respondent filed a replying affidavit, sworn on 16th May, 2025, and deponed that the Claimant/Applicant had on 13th December, 2024 filed similar applications in Employment and Labour Relations Court **at Bungoma (ELRC JR No. E002 of 2024 and Mombasa ELRC Petition No. E018 of 2024)**, both of which are active; and that the present suit is **sub-judice**.
9. The 2nd and the 3rd Respondents opposed the application vide a Notice of Preliminary Objection dated 6th May, 2025 and a replying affidavit of **Akelo M. T. Misori** sworn on 21st May, 2025.
10. In the Preliminary Objection dated 6th May, 2025, the 2nd and 3rd Respondents stated that this Court **has no jurisdiction to hear the suit herein for the reasons that:-**

- (a) The suit is sub-judice Kisumu **ELRC PET/E050 of 2024 - John Caleb Hadullo - vs - Kenya Union of Post Primary Education Teachers** in which the Claimant, having lost the case to restrain the union from conducting elections for the Office of Assistant National Treasurer, has issued a Notice of Appeal to challenge the Ruling on Appeal.
- (b) The Court **lacks jurisdiction** to hear the suit for the reason that the same is **res-judicata Nairobi ELRC Petition No. 28 of 2016** whereby **Judgment was delivered on 2nd September, 2016 disqualifying Mr. Tonui (the Claimant/Applicant) from holding the Office of Assistant National Treasurer.**
- (c) That apart from the aforesaid Judgment, the 2nd Respondent (**KUPPET**) has filed an application to set aside an **irregular consent** filed therein which purported to compromise the Judgment of **Hon. Linet Ndolo;** which application is pending determination by the Court.
- (d) That the Claimant is evidently **forum shopping,** is guilty of multiplicity of suits and engages in

abuse of Court. That litigation must come to an end.

11. In the aforesaid replying affidavit of **Akelo M. T. Misori** sworn on 21st May, 2025, the 2nd and 3rd Respondents substantially repeated, on oath, the matters raised in the aforestated preliminary objection, and further deposed:-

*(a) that the application herein is a last minute attempt to embarrass the Court **by forum shopping for favourable outcome**, and is an abuse of the Court's process and that the suit should be dismissed with costs to the 2nd and 3rd Respondents.*

(b) that the 3rd Respondent is improperly sued as the [2nd Respondent's] Secretary General only executes instructions of the union.

12. On 21st May, 2025, the Court gave directions on disposal of the application herein **(the Notice of Motion dated 6th February, 2025)** and the 2nd and 3rd Respondents' Preliminary Objection dated 6th May, 2025. The Court directed that the said application would be canvassed by

way of written submissions; and that the Preliminary Objection would be treated as part of the 2nd and 3rd Respondents' response to the said application. Parties were put at liberty to orally highlight on their respective written submissions, once filed.

13. Written submissions have since been filed, and oral highlighting of the same was done by Counsel for the parties herein on 24th July, 2025. A Ruling date was thereupon reserved.

14. Having perused the pleadings so far filed herein, and having considered the application before me for determination **(dated 6th February, 2025)**; the affidavits sworn in support of the application, those sworn in opposition of the same, the aforesaid Preliminary Objection, the affidavit sworn on 16th June, 2025 in response to the Preliminary Objection and submissions made, issues that fall for determination, in my view, are as follows:-

(a) Whether the suit herein is res-Judicata, whether this Court is seized of Jurisdiction to

entertain, to hear and to determine the suit and the application herein; and if so,

(b) Whether the Orders sought in the Notice of Motion dated 6th February, 2025 are deserved, and can issue.

15. On the first issue, I have noted the following from the facts and documents presented to the Court by the parties herein, and particularly from the Court of Appeal's Ruling in **Civil Appeal No. 311 of 2017 - Ronald Kiprotich Tonui - vs - Robert Nyabuto Obwocha & Kenya Union of Post Primary Teachers (KUPPET) [2017] eKLR:-**

(a) that the Constitution of the 2nd Respondent Trade Union (KUPPET) required that elections for National Officials be held every five (5) years.

*(b) that pursuant to the elections held in 2011, the Claimant/Applicant herein (**Ronald Kiprotich Tonui**) was elected, and held the position of Assistant National Treasurer, which position he intended to defend during the elections that were scheduled to be held on **19th March, 2016**, even after becoming a Member of Parliament in 2013.*

(c) that **Robert Nyabuto Obwocha** filed a Petition challenging the eligibility of the Claimant/Applicant to contest for re-election as Assistant National Treasurer of the 2nd Respondent herein (**KUPPET**) as he was a state officer within the meaning of **Article 260 of the Constitution**, and as **Article 77** expressly bars a state officer from participating in any other gainful employment. That the petition filed by the said **Robert Nyabuto Obwocha** was **this Court's Nairobi ELRC Petition No. 28 of 2016 (Robert Nyabuto Obwocha - vs Ronald Kiprotich Tonui & Kenya Union of Post Primary Teachers)**.

(d) that upon hearing the matter and interrogating provisions of the Constitution, the Court (**Ndolo, J**) made a finding that a Member of Parliament (**MP**) is a state officer, and is precluded from engaging in other gainful and full time employment; and that **Article 8:6 of KUPPET's Constitution** provided that the Union's (**KUPPET's**) National Executive Board comprised of ten elected national officials (including the Assistant National

Treasurer), **and that their work was full time;**
and

(e) that the Claimant/Applicant, being a state officer,
was precluded by the Constitution to contest
the position of Assistant National Treasurer.

(f) that the Court directed that elections for the
position of Assistant National Treasurer **be held**
within sixty (60) days of the Court's
Judgment, which was 2nd September, 2016.

(g) that aggrieved by the said Judgment, the
Claimant/Applicant herein filed a Notice of Appeal
and subsequently filed in the Court of Appeal an
application for stay of this Court's said decree
pursuant to **Rule 5(2)(b) of the said Court's**
Rules, which the Court of Appeal heard and
dismissed vide its Ruling delivered on 15th
December, 2017.

16. This Court has **not** been told **whether** the
Claimant/Applicant herein **eventually pursued his appeal**
in the Court of Appeal, and what the outcome was.
Further, the Claimant/Applicant has **not** told this Court

whether the elections for the position of Assistant National Treasurer of the 2nd Respondent were held as decreed by the Court on 2nd September, 2016, and if so, who was elected to fill the position, and when.

17. Of great interest is the fact that the Claimant/Applicant has **not** told the Court whether he has **ceased being a Member of Parliament/a state officer, and if so, when.**
18. It has been submitted and demonstrated that an application filed by the 2nd Respondent herein in this Court's said **Petition No. 28 of 2016**, challenging a **consent** filed therein purporting to **compromise** the **aforsaid 2016 decree that has been and/or is the subject of Court of Appeal proceedings**, is still pending determination. We indeed live in interesting times.
19. Whereas the suit and application herein are shown to relate to an alleged **removal by the 1st Respondent of the Claimant/Applicant's** name from the 2nd Respondent's Register of Members and Officials, the same matter is shown to have been the subject in **Kisumu ELRC Petition No.**

E050 of 2024 (John Hadullo & Another - vs - The Registrar of Trade Unions, Kenya Union of Post Primary Teachers, Secretary General of Kenya Union of Post Primary Teachers & The Cabinet Secretary of Labour and Social Protection. The Court sitting at Kisumu (**Gakeri, J**) struck off the said Petition vide the Court's Ruling delivered on **24th February, 2025**. Aggrieved by the said Ruling, the Petitioners in the said Petition **filed a Notice of Appeal**. This Court has **not** been told whether the appeal instituted vide the aforesaid Notice of Appeal has been pursued, and the current status of the same. Under **Order 42 Rule 6(4) of the Civil Procedure Rules**, an appeal to the Court of Appeal is deemed to have been filed **when a Notice of Appeal has been filed pursuant to the said Court's Rules**.

20. The Black's Law Dictionary (Tenth Edition) defines the term **res-judicata** as:-

"An issue that has been definitively settled by Judicial decision.

An affirmative defence barring the same parties from litigating a second law suit on the same

claim, or any other claim arising from the same transaction or series of transactions and that could have been but was not raised in the first suit. The three essential elements are:-

(1) An earlier decision on the issue.

(2) A final Judgment on the merits, and

(3) The involvement of the same parties, or parties in privity with the original parties . . .”

21. In the present case, there was a **final Judgment** in the merits on the issue of the Claimant/Applicant holding the position of Assistant National Treasurer in the 2nd Respondent Trade Union, duly delivered on 2nd September, 2016 by this Court (**Ndolo, J**) in **Nairobi ELRC Petition No. 28 of 2016**. The said final Judgment has been the subject in Court of Appeal proceedings as demonstrated in the Court of Appeal’s Ruling delivered on 15th December, 2017 in the Court’s Nairobi Civil Appeal No. 311 of 2017 (**Ronald Kiprotich Tonui - vs Robert Nyambuto Obwocha & Kenya Union of Post Primary Teachers**). As already stated elsewhere in this Ruling, the Claimant/Applicant, who

is/was the Appellant/Applicant in the said matter, **has not made a disclosure to this Court** on whether the appeal process against this Court's said Judgment was completed, **and what the final outcome was.** Additionally, it has been submitted and demonstrated that **there are ongoing proceedings in this Court's said Petition No. 28 of 2016, whereby some applications are pending determination, including one whereby the Claimant/Applicant herein has been cited for contempt of Court for alleged disobedience of the Court's said Judgment delivered on 2nd September, 2016.**

22. As already stated in this Ruling, the alleged cause of action pleaded in the suit herein was also pleaded in **Kisumu ELRC Petition No. E050 of 2024;** which the Court (**Gakeri, J**) struck off vide a Ruling delivered on 24th February, 2025. The Claimant/Applicant filed a Notice of Appeal regarding the said Ruling. A Notice of Appeal in law institutes an appeal, and this Court has not been told that the said Notice of Appeal has been withdrawn pursuant to the Court of Appeal Rules.

23. In view of all the foregoing, I do agree with the Respondents that the suit herein is ***res-judicata***, in view of this Court's Final Judgment in **Petition No. 28 of 2016**, and **Sub-Judice** in view of the appeal instituted by the Claimant/Applicant against the Court's Ruling in **Kisumu Petition No. E050 of 2024**.

24. Section 7 of the Civil Procedure Act provides as follows:-

“7. Res-judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

25. In view of the foregoing, this Court is **not** seized of Jurisdiction to entertain and to try the suit herein or to hear and to determine any application anchored thereon, the suit itself being **res-judicata**. As stated by the Supreme Court of Kenya in the case of **Samuel Kamau Macharia & Another - vs - Kenya Commercial Bank Limited & 2 Others [2012] eKLR:-**

“A Court’s Jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise Jurisdiction as conferred by the Constitution or other written law, and cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law . . . whether a court of law has jurisdiction to entertain a matter before it . . . goes to the very heart of the matter, for without Jurisdiction, the Court cannot entertain any proceedings.”

26. Having made a finding that the Court has **no** jurisdiction to entertain the suit herein, determining the second issue will be an act in futility. This Court must down its tools. The Court of Appeal stated as follows in the case of **Owners of**

Motor Vessel “Lilian S” - vs - Caltex Oil (Kenya) Limited (Nyarang, JA):-

“. . . I think it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obligated to decide the issue straight away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a Court has no Jurisdiction, there would be no basis for a continuation of the proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without Jurisdiction.”

27. The suit herein is hereby struck off. Each party shall bear its own costs.

28. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS

7TH DAY OF NOVEMBER 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Bogongo for the Claimant/Applicant

No appearance for the 1st Respondent

Miss Akello for the 2nd and 3rd Respondents