



**Universities Academic Staff Union (UASU) & another v General & another;  
Kenyatta University Chapter Election Board & 19 others (Interested Parties) (Civil  
Appeal E301 of 2024) [2025] KECA 2022 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KECA 2022 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL E301 OF 2024  
DK MUSINGA, JM NGUGI & GV ODUNGA, JJA  
NOVEMBER 28, 2025**

**BETWEEN**

**UNIVERSITIES ACADEMIC STAFF UNION (UASU) ..... 1<sup>ST</sup> APPELLANT**

**UNIVERSITIES ACADEMIC STAFF UNION (UASU) NATIONAL SECRETARY-  
GENERAL ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF TRADE UNIONS (RTU) ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENYATTA UNIVERSITY CHAPTER ELECTION BOARD .... INTERESTED  
PARTY**

**UNIVERSITIES ACADEMIC STAFF UNION (UASU) KENYATTA UNIVERSITY  
CHAPTER ..... INTERESTED PARTY**

**LABOUR COMMISSIONER ..... INTERESTED PARTY**

**MAGERO FIDELIUS BUNYASI ..... INTERESTED PARTY**

**LEMOOSA PETER LETOTIN ..... INTERESTED PARTY**

**ITOLONDO WILFRIDA ARNODAH ..... INTERESTED PARTY**

**MAKOKHA GEORGE LUKOYE ..... INTERESTED PARTY**

**OBONYO MARK MAKORI ..... INTERESTED PARTY**

**CALVIN KAYI ..... INTERESTED PARTY**

**KANDIRI JOHN MUGO ..... INTERESTED PARTY**

**MAGORE GEORGE OMONDI ..... INTERESTED PARTY**



<b>MOHAMED DEKOW SHALLOW .....</b>	<b>INTERESTED PARTY</b>
<b>KATAM ELIZABETH JEROP .....</b>	<b>INTERESTED PARTY</b>
<b>BETT SHADRACK .....</b>	<b>INTERESTED PARTY</b>
<b>OWOUR IRENE AWOUR .....</b>	<b>INTERESTED PARTY</b>
<b>ONG'ANG'A HUDSON OUKO .....</b>	<b>INTERESTED PARTY</b>
<b>OWILI FLORENCE AKINYI .....</b>	<b>INTERESTED PARTY</b>
<b>MUTHONI MAINA FLORENCE .....</b>	<b>INTERESTED PARTY</b>
<b>NGAO GLADYS KASIVA .....</b>	<b>INTERESTED PARTY</b>
<b>DR FRANKLINE KABURU KINOTI .....</b>	<b>INTERESTED PARTY</b>

*(Being an appeal from the Judgement of the Employment and Labour Relations Court, Nairobi (A. N. Mwaure, J). delivered on 9th February 2024 in ELRC Constitutional Petition No. E157 of 2023)*

## JUDGMENT

1. The dispute giving rise to this appeal has a chequered history. The Universities Academic Staff Union (UASU) Kenyatta University Chapter (hereinafter referred to as “the Chapter”), is one of the 1<sup>st</sup> appellant’s chapters established under Article 19(a) of the UASU Constitution (*akn ke act 2010 constitution the constitution*). Pursuant to Article 19(g) read together with Article 14 of *akn ke act 2010 constitution the constitution*, the Chapter carried out its elections on 25<sup>th</sup> March 2021 during its Annual General Meeting (AGM).
2. Aggrieved by the result of the said elections, some members of the Chapter challenged the outcome of the elections in Nairobi ELRC Petition No E043 of 2021, which was eventually consolidated with Nairobi ELRC Petition No E093 of 2021 (both of which are referred to as “Petition No. E043 of 2021”). On 20<sup>th</sup> August 2021, the judgment in the consolidated Petition No E043 of 2021 was delivered in which the court nullified the election results conducted on 25<sup>th</sup> March 2021 and ordered the 1<sup>st</sup> and 2<sup>nd</sup> respondents, in that petition, to update the Chapter’s voter’s register and upon updating and inspection of the register by members, and with concurrence of the 3<sup>rd</sup> and 4<sup>th</sup> respondents (in that petition), the Chapter to hold fresh elections within 60 days from the date of judgment. Dissatisfied with the said judgement, the Chapter and its Secretary filed Nairobi Civil Appeal Number E534 of 2021 before this Court which, we were informed, is still pending.
3. According to the appellants, following the judgement of 25<sup>th</sup> March 2021 nullifying the Chapter’s elections, a vacuum resulted in the leadership of the Chapter as a result of which the 1<sup>st</sup> appellant resolved, through its National Delegates Conference (NDC) held on 17<sup>th</sup> December 2021, that the national office, through the 2<sup>nd</sup> appellant takes over the management of the Chapter’s affairs pending resumption of normalcy. The 1<sup>st</sup> appellant, in attempt to comply with the judgement, organised fresh elections and slated 15<sup>th</sup> September 2022 as the election date. However, the petitioners in Petition No E043 of 2021 moved to court and obtained an order staying the holding of the AGM and intended elections. The application was, however, eventually dismissed on 24<sup>th</sup> February 2023.



4. According to the appellants, when the aspirants were invited by the Elections Board to pick nomination papers and submit themselves as candidates in the elections, the petitioners in Petition No E043 of 2021 declined to participate in those elections. Consequently, the only people who picked and returned their nomination papers became the sole candidates in the respective positions that they submitted for. The 2<sup>nd</sup> appellant then issued a notice to the Chapter's members for the resumption of the AGM previously stayed for 27<sup>th</sup> February 2023. During that AGM, fresh elections were conducted from which it was returned that the 4<sup>th</sup> – 19<sup>th</sup> interested parties were elected into office. The 2<sup>nd</sup> appellant registered and notified the 2<sup>nd</sup> respondent of the result, but by a letter dated 8<sup>th</sup> June 2023, the 2<sup>nd</sup> respondent notified the 1<sup>st</sup> appellant of its decision declining to register the 4<sup>th</sup> – 19<sup>th</sup> interested parties as officials of the Chapter.
5. It was the action by the 2<sup>nd</sup> respondent that triggered the filing of ELRC Petition No. E157 of 2023 from which this appeal arises. In the petition, the appellants complained: that the 2<sup>nd</sup> respondent's refusal to register the Chapter's officials was a contravention of Article 36(1) of *akn ke act 2010 constitution the Constitution*; that by unlawfully refusing to register the duly elected officials, the 2<sup>nd</sup> respondent denied the Chapter's members the right to join in the activities of the 1<sup>st</sup> appellant, a trade union, in contravention of the provisions of Article 41(2)(c) of *akn ke act 2010 constitution the Constitution*; that whereas the 2<sup>nd</sup> respondent's reason for declining to register the Chapter's duly elected officials was the receipt of objections from a group led by the 20<sup>th</sup> interested party, by entertaining these objections, the 2<sup>nd</sup> respondent converted her role into that of a dispute resolution body hence usurping the powers of the court; that in the letter declining to register the officials, the 2<sup>nd</sup> respondent purported to identify and highlight alleged illegalities that were committed during the Chapter's elections conducted on 27<sup>th</sup> February 2023 and in so doing acted ultra vires by usurping the powers of the Employment and Labour Relations Court which is clothed with the jurisdiction to interpret the law; that the other reason for declining to register the new officials, as given by the 2<sup>nd</sup> respondent, being the receipt of information from one Sheikh Abdullahi Bundid that he had conducted a parallel set of elections on 27<sup>th</sup> February 2023, constituted constitutional and legal irregularity since Sheikh Abdullahi was former chair of election board of the Chapter; that the 2<sup>nd</sup> respondent's contention that there was no confirmation that the members of the Chapter from all campuses voted, was misplaced insofar as the 1<sup>st</sup> appellant's constitution did not envisage several AGMs being held concurrently and therefore, by requiring a different standard, contravened section 34(1) of the *akn ke act 2007 14 Labour Relations Act*; that the 2<sup>nd</sup> respondent in her letter threatened to suspend or deregister the Chapter out of failure to hold elections, yet the Chapter not only conducted elections whose outcome the 2<sup>nd</sup> respondent unlawfully failed to register, but the 2<sup>nd</sup> respondent had no power to deregister or suspend the Chapter; that the elections had only single candidates for the positions available therefore, ballot papers could not be printed where the candidates were unopposed; that the 2<sup>nd</sup> respondent acted in contravention of Article 47 of *akn ke act 2010 constitution the Constitution* which entitles everyone to fair administrative action; that the 2<sup>nd</sup> respondent's unlawful refusal to register the officials on the allegations that it issued a notice lasting 3 days was a misrepresentation as the notice ran for 20 days from 25<sup>th</sup> August 2022 to 6<sup>th</sup> September 2022 and again from 24<sup>th</sup> February 2023 to 27<sup>th</sup> February 2023, giving a total of 15 days and not 3 days as misrepresented by the 2<sup>nd</sup> respondent; that the appellants complied with constitutional threshold of not less than 14 days' notice period as provided under Article 19(d) and (g) of the union's constitution; that the 2<sup>nd</sup> respondent directed the Chapter to hold fresh elections within the next 60 days, yet the court had already ruled on the election date vide a decision which was on challenged before this Court; that the 2<sup>nd</sup> respondent acted ultra vires by usurping the powers of court as enshrined by Article 159(1) of *akn ke act 2010 constitution*



*the Constitution*; and that the appellants attained the quorum of one third in the meeting because 988 members were eligible to vote and 351 attended and participated in the AGM.

6. In opposing the petition, the respondents contended: that the 2<sup>nd</sup> respondent received a letter from Onesmus Maluki on 8<sup>th</sup> September 2022 seeking concurrence on the voters' register of the Chapter but there was no registrar in the office as the term of the former Registrar expired in June 2022; that it was therefore not possible to respond or provide concurrence on the voters' register as ordered by the Court; that following the stoppage the elections slated for 15<sup>th</sup> September 2022, the appellants appointed a new Election Board pursuant to Article 14 and 19(e) of the Union's registered constitution comprising Sheikh Abdullahi Bundid (Chairperson), Father Boniface Kariuki (Member) and Rev. Esther Kariuki (Member); that the appellants, in defiance of the judgment in Petition No. E043 of 202, reconstituted the Elections Board and nominated officials from the national office as members of the Board in contempt of the judgment while the 2<sup>nd</sup> appellant appointed the Commissioner of Labour to preside over the said elections; that the elections were to be conducted by the Elections Board (the 3<sup>rd</sup> respondent in Petition No. E043 of 2021) not the Commissioner of Labour; that this was contrary to section 34(1) of the *akn ke act 2007 14 Labour Relations Act* which provides that elections of trade union officials shall be conducted in accordance with its registered constitution; that the 1<sup>st</sup> appellant's registered constitution does not provide for conduct of the elections of the Union by the Commissioner of Labour but by an Electoral Committee Commission; that the appellant did not involve the Elections Board, the 3<sup>rd</sup> respondent in Petition No. E043 of 2021, contrary to the said judgment; that apart from the elections not being conducted by the Election Board, the voters register was not updated as per the court order and the 2<sup>nd</sup> respondent did not give their concurrence in regard to the register forwarded on 9<sup>th</sup> September 2022; that the voters' register would have ensured that only members who are not in arrears of the Union's subscriptions for more than thirteen weeks would be eligible to vote as provided under section 33(c) of the *akn ke act 2007 14 Labour Relations Act*; that the branch elections could not proceed immediately after delivery of the ruling on 24<sup>th</sup> February 2023 as the voters' register had been updated in September 2022, over 5 months before, hence the need to update the register after delivery of the ruling to confirm eligibility of the members to participate in the elections since there was a possibility that during the period of 5 months, some members ceased being members of the Union through death, termination, dismissal, resignation or retirement from employment; and that members who had not expressed interest to contest may have wished to express interest after the ruling made on 24<sup>th</sup> February 2023 while some members who may not have been eligible to contest in September 2022 may have become eligible to contest after 24<sup>th</sup> February 2023.
7. The respondents further contended: that the 2<sup>nd</sup> respondent received a notice of change of names of officials (Form Q) dated 28<sup>th</sup> February 2023 seeking registration of officials elected on 27<sup>th</sup> February 2023 and vide a letter dated 8<sup>th</sup> June 2023, refused to register the change of officials based on the reasons provided above which are lawful and in accordance with section 35(4) of the *akn ke act 2007 14 Labour Relations Act*; that if the appellants were aggrieved by the said decision, they ought to have preferred an appeal to the ELRC as provided under section 30 of the *akn ke act 2007 14 Labour Relations Act* and section 12(5) of the *akn ke act 2011 20 Employment and Labour Relations Court Act* within 30 days of the decision, but did not do so, hence the petition was incompetent and bad in law; that the petition was an appeal against the decision of the 2<sup>nd</sup> respondent made on 8<sup>th</sup> June 2023 but veiled as a constitutional petition; that the Chapter held two elections on 27<sup>th</sup> February 2023, one presided over by the Commissioner of Labour and another by the initial Election Board chaired by Mr Sheikh Abdullahi Bundid, the 3<sup>rd</sup> Respondent in Petition No. E043 of 2021; that the 2<sup>nd</sup> respondent received an application for registration of election officials from Mr Sheikh Abdullahi Bundid and, vide a letter dated 8<sup>th</sup> June 2023 declined to register the officials pursuant section 35(4) of the *akn ke act 2007 14*



*Labour Relations Act*; that the 2<sup>nd</sup> respondent received an objection, dated 28<sup>th</sup> August 2023, to the registration of the application for change of officials made by the appellants, from Kaburu Frankline Kinoti and decided not to register the appellants' Notice of Change of Officials (Form Q) dated 28<sup>th</sup> February 2023; and that he informed the appellants that there was another election held on the same day by a separate group of members from the union from UASU Kenyatta University Branch and also forwarded the objection from Frankline Kinoti, the election report and other documents filed by the Chairman of the initial Election Board.

8. According to the respondents, the ELRC had no jurisdiction to entertain and determine the complaint, which ought to have been instituted at the High Court if the appellants' rights and fundamental freedoms have been violated, denied or infringed upon. Their view was that the 2<sup>nd</sup> respondent is empowered under section 28(2) of the *akn ke act 2007 14 Labour Relations Act* to cancel or suspend the registration of a trade union, employer's organization or federation where, inter alia, the provisions of the *akn ke act 2007 14 Labour Relations Act* were contravened. Such power, it was contended, extended to cancellation or suspension of registration of branches. It was their position that the court cannot prevent the 2<sup>nd</sup> respondent from exercising the powers donated to it by statute as it is tantamount to interfering with its regulatory mandate granted under the law.
9. It was further contended: that the 2<sup>nd</sup> respondent did not vary the terms of the judgment or usurp the powers of the Court as provided under *akn ke act 2010 constitution the Constitution* as alleged by the appellants; that both under its regulatory mandate and the orders issued in Petition No. E043 of 2021, the 2<sup>nd</sup> respondent was entitled to direct the Union to carry out fresh elections as per the judgment; the appellants have not exhausted the remedies and mechanisms provided under the *akn ke act 2007 14 Labour Relations Act* in the event that they were aggrieved by the decision of the 2<sup>nd</sup> respondent taken under the Act.
10. On their part, the 4<sup>th</sup> - 13<sup>th</sup> and 15<sup>th</sup> - 19<sup>th</sup> interested parties took the position: that they were elected unopposed to various positions during the Chapter's elections held in accordance with the 1<sup>st</sup> appellant's constitution during its AGM on 27<sup>th</sup> February 2023; that in its judgment in Petition No. E043 of 2021, the court, having nullified the elections held on 25<sup>th</sup> March 2021 and ordered the Chapter to hold fresh election within 60 days from the date of judgment, the mandate of the former officers expired on the day of election and as a consequence the immediate former officials lacked mandate to represent the Chapter; that after the ruling of 22<sup>nd</sup> July 2022, the 2<sup>nd</sup> appellant issued a notice for convening the Chapter's AGM on 15<sup>th</sup> September 2022 and the decision was communicated to its members by the 2<sup>nd</sup> appellant vide a letter dated 25<sup>th</sup> August 2022; that in preparation of the fresh elections, the 1<sup>st</sup> appellant appointed the Chapter's Election Board to organise the elections which the Board released a schedule of activities culminating into the fresh elections; that the Election Board invited all interested aspirants to pick, fill and return the nomination papers which were followed by reminders; that through a letter dated 7<sup>th</sup> September 2022, the 1<sup>st</sup> interested party circulated a provisional list of persons who had been nominated for various position to members of the Chapter and on 9<sup>th</sup> September 2022, the Board circulated the final list; that as each of the duly nominated candidates did not have competitors, they became elected unopposed at the scheduled AGM; that the AGM slated for 27<sup>th</sup> February 2023 was meant to lead to holding of fresh elections pursuant to the judgment in Nairobi Petition No. E043 of 2021 and the election was conducted and presided over by the Assistant Commissioner for Labour; that the elections did not involve casting of votes because each position had attracted only one candidate, hence each of the nominated candidates was declared elected unopposed; that the 2<sup>nd</sup> respondent did not, however, acknowledge receipt of Form Q on 28<sup>th</sup> February 2023 and made no communication until 8<sup>th</sup> June 2023, when she wrote a letter to the 2<sup>nd</sup> appellant giving reasons for her refusal to register the names in the said Form; and that 101 members of the Chapter participated in the



election of 27<sup>th</sup> February 2023 at Kasarani presented a written petition to the 2<sup>nd</sup> respondent requesting her to register the said interested parties but there was no response.

11. The 3<sup>rd</sup> interested party's case was: that it received a request from the 2<sup>nd</sup> appellant to have the office serve as a returning officer in its elections slated for 15<sup>th</sup> September 2022 and appointed Grace Mweresa, an Assistant Commissioner of Labour, to serve as the presiding Officer during the Chapter's fresh elections; that the 1<sup>st</sup> interested party informed it that the provisional register was shared with members through emails on 2<sup>nd</sup> September 2022, through WhatsApp, university notice boards and UASU Kenyatta University office for purpose of verification; that it was assured by the 1<sup>st</sup> interested party that all issues raised by the Chapter's members were resolved and an updated memos were shared with them on 6<sup>th</sup> September 2022; that it then invited all parties from both the appellants and respondents' sides in Petition No. E043 of 2021 to verify the register of voters; that while some members of the 1<sup>st</sup> and 2<sup>nd</sup> interested party attended the meeting on 14<sup>th</sup> September 2022 to verify the register and none raised any complaints or issues, none of the former petitioners in Petition No. E043 of 2021 attended the meeting; that sometime on 24<sup>th</sup> February 2023, the 2<sup>nd</sup> appellant communicated that the application temporarily stopping the holding of elections had been dismissed and orders vacated and the elections had been rescheduled for 27<sup>th</sup> February 2023; that since the requisite preparation of the elections had been finalised in September 2022, it then proceeded to preside over the fresh elections in accordance with the terms of Article 14 of the UASU constitution; that the AGM was attended by 351 members out of 988 members, hence met the one third threshold quorum provided in the 1<sup>st</sup> appellant's constitution, therefore the election proceeded as planned; that all members in attendance participated in the elections and were eligible since their subscriptions were not in arrears as required by the 1<sup>st</sup> appellant's constitution; and that no ballot papers were printed because none of the contested positions attracted more than one candidate, hence all candidates stood elected unopposed.
12. The case for the 20<sup>th</sup> interested party was: that the purported "Repeat election" done at a Hotel in Kasarani was a sham; that the 2<sup>nd</sup> appellant handpicked his cohorts who are the "unopposed elected leaders" and went ahead to declare them as winners, yet they never observed the election rules as set under the UASU constitution; and that there was no free and fair election conducted on 27<sup>th</sup> February 2023 and there were no ballot papers printed or any votes cast.
13. The learned Judge in her judgement identified the issues for determination as:
  - i. Whether the Chapter's fresh election complied with the relevant procedures including directions of the court in Nairobi ELRC Pet No. E043 of 2021.
  - ii. Whether the 2<sup>nd</sup> respondent's refusal to effect registration of officials is a violation of the rights of the appellants, the Chapter and members of the Chapter.
  - iii. Whether the Appellants are entitled to the reliefs sought.
14. On the first issues, the learned Judge found: that considering that the ruling was delivered 6 months from the date of issuance of the first notice on 25<sup>th</sup> August 2022, it would have been prudent for the appellants to once again comply with court orders given in the judgment delivered in Petition No E043 of 2021; that the verification of the voter's register should have been redone as some members may have ceased or resigned their membership due to different reasons and further given a 14 days' notice period to its members informing them of their intention to hold the AGM and consequent elections as provided under Article 19(d) and (g) of their constitution; that the appellants therefore failed to prepare for the Chapter's fresh elections held on 27<sup>th</sup> February 2023 in accordance with the Union's constitution and the orders issued in Petition No E043 of 2021.



15. On whether the 2<sup>nd</sup> respondent's refusal to effect registration of officials was a violation of the rights of the appellants, the Chapter and members of the Chapter, the learned Judge found: that having established that the fresh elections held on 27<sup>th</sup> February 2023 did not satisfy the provisions of the Union's constitution and the orders granted in Petition No E043 of 2021, the 2<sup>nd</sup> respondent acted well within its powers to reject the appellants' application to register the new officials; that whereas the 2<sup>nd</sup> respondent, vide its letter dated 8<sup>th</sup> June 2023, refused to register the new officials for various reasons, only one reason was valid and that was that the elections were not conducted as per the court orders issued in Petition No E043 of 2021; that since Article 14(g) of the Union's constitution provides that a returning officer shall be an independent person body identified by the Union's NEC, the request by the NEC, upon taking over the management of the Chapter's affairs, to the 3<sup>rd</sup> interested party to preside over the elections as the returning officer, was well within the Union's constitution; that there was no compliance with the order that the Chapter and its Secretary update the Chapter's voter's register as advised by registrar of trade union, the 4<sup>th</sup> respondent, in Petition No 043 of 2021; that upon updating the voter's register and inspection of register by members with the concurrence of chairman of the Kenyatta University Chapter Elections Board and the Registrar of Trade Unions, the Chapter was to hold fresh elections within 60 days from 21<sup>st</sup> August 2021, which direction was not complied with.
16. In conclusion, the learned Judge found: that the 2<sup>nd</sup> respondent did not violate the petitioners' rights and or those of the interested parties and that the petitioners should comply with the direction of the court as per the orders of 21<sup>st</sup> August 2021 as well as the timelines. The learned Judge directed the said timelines to start running from the date of the judgment. Save for that, the petition dated 9<sup>th</sup> August 2021 and the prayers therein were dismissed with no order as to costs.
17. Aggrieved, the appellant challenged the decision on the grounds that the learned Judge erred in law and in fact: in failing to declare that the 2<sup>nd</sup> respondent's refusal to effect registration of the Chapter's officials violated the appellants' and members' of the Chapter's fundamental rights enshrined in Articles 41(1), (2) & (4) and 47 of *akn ke act 2010 constitution the Constitution*; by finding that the fresh elections conducted by the Chapter did not comply with the Union's constitution and the directions of the court in Petition No. E043 of 2021; in finding that the 2<sup>nd</sup> appellant and the Chapter failed to update the Chapter's voters as advised by the 2<sup>nd</sup> respondent; by holding that the Chapter had disregarded court orders and had failed to hold elections within 60 days from 21<sup>st</sup> August 2021; by directing former officials of the Chapter whose mandate had been declared by the court to have lapsed and are now ordinary members of the union hence unable to conduct elections of the Chapter; by faulting the notice period given by the 2<sup>nd</sup> appellant in relation to the Chapter's elections held on 27<sup>th</sup> February 2023; in failing to take note of the fact that the affairs of the Chapter are presently being managed by the 1<sup>st</sup> appellant pursuant to the resolution of the 1<sup>st</sup> appellant's National Delegates Conference of 17<sup>th</sup> December 2021; by sitting as an appellate court over a decision delivered in Petition No. E043 of 2021; in failing to analyse the issues critically, wholly and properly and that her decision was flawed and evidently indefensible and has resulted in a serious miscarriage of justice that offends the law; and by failing, ignoring and or completely neglecting to take into account the pleadings and submissions of the 1<sup>st</sup> interested party.
18. We heard the appeal on the Court's virtual platform on 16<sup>th</sup> July 2025 during which learned counsel, Mr Leonard Sanga, held brief for Mr Odhiambo, for the appellants and the 1<sup>st</sup> interested party, learned counsel, Ms Anita Masaki, appeared for the 20<sup>th</sup> interested party, learned counsel, Ms Atieno, held brief for Mr Koceyo for the 1<sup>st</sup> interested party, learned counsel, Mr Akuno, appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondents as well as the 3<sup>rd</sup> interested party. Ms Itondolo, the 8<sup>th</sup> interested party, appeared in



person and informed us that she was representing the 4<sup>th</sup> to the 13<sup>th</sup> interested parties and the 15<sup>th</sup> to the 19<sup>th</sup> interested parties. The parties relied on their written submissions which they briefly highlighted before us.

19. On behalf of the appellants and the 1<sup>st</sup> interested parties, it was submitted: on the authority of *Clay Odari & 2 others v Kenya Petroleum Oil Workers Union & 8 others* (2018) eKLR, that the 2<sup>nd</sup> respondent has no power to refuse to register Form Q filed for registration subsequent to the holding of fresh elections, unless there is an order of the court stopping any such registration; that elections of trade union officials is governed by section 34 of the *akn ke act 2007 14 Labour Relations Act* and section 34(4) stipulates that only the superior court has the requisite jurisdiction to handle any disputes relating to elections of trade unions as was reiterated in *Eliud Wanjohi Gwandaru v Samuel Waita & 11 others* (2021) eKLR; that section 34 of the *akn ke act 2007 14 Labour Relations Act* deals with elections of officials of the trade union and where there are disputes in relation to the said elections, the disputes may be referred to ELRC; that the action of the 2<sup>nd</sup> respondent in declining to register the Form Q relating to the Chapter's elections was, therefore, null and void, ab initio and hence without jurisdiction (see *Phoenix E.A. Assurance Company Limited v S.M. Thiga t a Newspaper Service* (2019) eKLR, citing *Macfoy v United Africa Co. Ltd* (1961) 3 All ER 1169); that the 2<sup>nd</sup> respondent's decision purporting to entertain a dispute resolution forum was undertaken without any lawful basis, hence, a usurpation of the powers of the superior court as was held in *Dr. Magare Gikenyi Benjamin and Kenya Medical Practitioners and Dentists versus Registrar of Trade Unions Nairobi ELRC Appeal No. E087 of 2022*; that section 35(4) of the *akn ke act 2007 14 Labour Relations Act*, which was relied on by the Registrar, was inapplicable to the circumstances of a fresh election such as the Chapter's case and that the provisions of sections 34 and 35 of the *Labour Relations Act* cannot be applied interchangeably because they relate to very different circumstances as was appreciated in paragraph 130 of *Nairobi ELRC Appeal No. E087 of 2022 - Dr. Magare Gikenyi Benjamin and Kenya Medical Practitioners and Dentists versus Registrar of Trade Unions*; that once the court found that the mandates of the immediate former officials had lapsed, it follows that the former officials became ordinary members of the Union and consequently, could not have any obligation, including, organising for fresh elections as a consequence of the nullification of the results of the elections held at the Chapter on 25<sup>th</sup> March 2021; that with the Chapter lacking officials with effect from 20<sup>th</sup> August 2021, a solution was provided in section 34(1) of the *akn ke act 2007 14 Labour Relations Act* as read with Article 6 of the 1<sup>st</sup> appellant's constitution which establishes the National Delegates Council Conference (NDC) as the highest decision-making organ; that the 1<sup>st</sup> appellant's NDC resolved, on 17<sup>th</sup> December 2021, to have the 1<sup>st</sup> petitioner take over the management of the affairs of the Chapter, through the 1<sup>st</sup> appellant's National Executive Committee (NEC) pursuant to Article 7 of its constitution; that the 1<sup>st</sup> appellant's NEC assumed the responsibility for organising fresh elections as had been decreed by the court through its judgment delivered on 20<sup>th</sup> August 2021; and that the fresh elections conducted at the Chapter's chapter on 27<sup>th</sup> February 2023 were in full compliance with the 1<sup>st</sup> appellant's constitution, section 34(1) of the *akn ke act 2007 14 Labour Relations Act*, as well as the judgment of the superior court in *Petition No. E043 of 2021*.
20. The appellants submitted that having invoked the relevant provisions of the law to justify the remedies sought in the petition, this appeal should be allowed with costs.
21. On behalf of the 1<sup>st</sup> interested party it was submitted, in support of the appeal: that in order to comply with the requirement of the judgement in *Petition No. E043 of 2021*, the voters' register was constantly updated and the Elections Board kept all the Chapter's members updated with the status of the voters register; that the Chapter shared both the provisional and final voters register with its members and the nomination forms were also made available; that from the foregoing, the Chapter fully discharged



- its duties in compliance with the orders of the court; that the Chapter's AGM which was held on 27<sup>th</sup> February 2023 resulted in the holding of fresh elections as had been directed by the court in Petition No. E043 of 2021 and it was from the said elections that the 4<sup>th</sup> to 19<sup>th</sup> interested parties got into the office unopposed; and that following the conclusion of the elections and declaration of results, the 2<sup>nd</sup> appellant submitted an application to the 2<sup>nd</sup> respondent seeking the registration of the 4<sup>th</sup> to 19<sup>th</sup> interested parties as the new officials of the Chapter but the 2<sup>nd</sup> respondent declined to act on it; and that the Chapter acted procedurally when conducting the elections.
22. The 3<sup>rd</sup> interested party's submissions mirrored those of the 1<sup>st</sup> interested party while the 10<sup>th</sup> interested party filed submissions, indicated to have been made on behalf of the 6<sup>th</sup> to 15<sup>th</sup> and 17<sup>th</sup> to 21<sup>st</sup> respondents (sic), were a reflection of what was averred before the ELRC.
23. In opposing the appeal, the respondent submitted: that the refusal by the 2<sup>nd</sup> respondent to register the Chapter's Form Q was in accordance with the law and was based on non-compliance with the orders issued in Petition 043 of 2021; that even though the 2<sup>nd</sup> respondent may generally lack the power of refusing registration with regards to change of persons within an election of a trade union, an existing court order takes precedence and subsequently grants the Registrar the necessary authority to withhold the registration; that this interplay between statutory provisions and judicial oversight reinforces our position regarding compliance with legal directives; that the failure by the appellants to comply with the directions of the court and their own constitution was what led to the conclusion that the elections were not conducted as per the procedures set out in the *akn ke act 2007 14 Labour Relations Act* and the UASU constitution; that the assertion by the appellants that their rights were infringed upon by the 2<sup>nd</sup> respondent must be scrutinised against their own non-compliance with established court orders; and that the appeal should be dismissed with costs.
24. According to the 20<sup>th</sup> interested party, the orders issued in Petition E043 of 2021 were unambiguous and clear and they were specifically directed towards the respondents in that matter and not to any other party; that the appellants had no legal authority to conduct fresh elections of the Chapter, hence the purported resolution of the NDC that directed the appellants to take over the affairs of the Chapter and conduct its elections was improper; that the said resolution effectively sought to override the judgement of the court in Petition No. E043 of 2021 contrary to Article 159 of *akn ke act 2010 constitution the Constitution*; that the elections that were conducted were marred with irregularities such as the failure to update the register and exclusion of some members of the Chapter from participating in the elections as well as *akn ke act 2010 constitution the constitution* of a new election board, notwithstanding the fact that the 1<sup>st</sup> interested party was properly constituted at that time; that the said elections were void ab initio for non-compliance with the court order; that in determining who has the mandate of conducting repeat elections of the Chapter, reference is to be made to the orders of the court in petition E043 of 2021; that updating of the Chapter's register was to be done by the Executive and Secretary of the Chapter in accordance after which members of the Chapter were to inspect it and thereafter, with concurrence of the Chairperson of the 1<sup>st</sup> interested party, one Sheikh Abdullahi Bundid and the 2<sup>nd</sup> respondent, the Chapter would hold its elections; that whereas the office of the Executive and secretary of the Chapter was vacant as a result of the nullification of the election results in petition E043 of 2021, the 1<sup>st</sup> interested party, whose chairperson was the 3<sup>rd</sup> respondent in the said petition, is still in the office alongside two other members and their appointment to the Election Board was legal and above board as they were appointed by the then secretary of the Chapter; and that since the 1<sup>st</sup> interested party was involved in the organisation of the initial election of 25<sup>th</sup> March 2021, there was no harm if the 1<sup>st</sup> interested party organised the repeat elections in compliance with the directions of the court in the said petition.



25. We have considered the appeal and the submissions made by the parties. With due respect to the appellants, this appeal was approached as if it was the petition before the ELRC. Whereas a first appeal is in the nature of a rehearing and the first appellate court has a duty to re-evaluate, re-assess and re-analyze the evidence on record and draw own conclusions thereon, while being cautious of the advantage that the trial court may have had over the appellate court, an appeal is not strictly speaking a trial. The parties, on appeal, while challenging the findings of the trial court, are free to dwell on the facts as were before the trial court. In its determination, the appellate court is free to reappraise the facts with a view to finding whether they are correct based on the material placed before the trial court. While doing so, the eye of the court must, however, be on the decision being challenged rather than on the parties' primary cases. In other words, the re-evaluation of the case presented before the trial view, is with a view to arriving at the decision whether or not the decision of the trial court should stand, as opposed to arriving at a totally different determination that was not urged before the trial court. Unless this distinction is made there would be no difference between the trial court and the first appellate court. It is in this light that this Court has consistently taken the position that it ought to be slow in reversing the trial court's findings on facts unless it is shown that the trial Judge took into account facts or factors which should not have been taken into account, or that there was a failure to take into account matters which should have taken into account or that there was a misapprehension of the effect of the evidence or that in reaching the findings arrived at, it is demonstrated that wrong principles were acted upon. See *Mohammed Mahmoud Jabane v Highstone Butty Tongoi Olenja* [1986] KLR 661; [1986-1989] EA 183.
26. In this case, the issues that we have to decide are: the nature of the elections that were directed to be held by the order made in Petition No. E043 of 2021; whether those directions were complied with in the subsequent elections; and whether the learned Judge was correct in arriving at the decision arrived at.
27. In their submissions, the appellants heavily relied on the provisions of the *akn ke act 2007 14 Labour Relations Act* and the 1<sup>st</sup> appellant's constitution in submitting that the re-elections were properly conducted. Very little attention was paid to the directions by the learned Judge. In our view, where elections are being conducted pursuant to an order of the court, those directions must be adhered to unless, in giving directions, the court failed to address its mind to certain necessary steps in which event the relevant regulations may be resorted to in order to fill up the lacuna, and as long as the filling up does not go contrary to the court order. In our view, where a party is of the view that an order issued by a court is irregular or incapable of performance in the manner issued, the party should return to the court that issued the order and seek a revision or an interpretation thereof. Therefore, where a party is of the view that an order, as issued, may cause undue hardship in terms of its implementation, the recourse is to apply for an appropriate variation thereto, rather than giving it a different complexion and purporting to comply with it, in that mutated form.
28. It is clear from the decision of the learned Judge (Mwaure, J.) that the only reasons why the petition was allowed were non-compliance with the orders issued in Petition No. E043 of 2021 and the failure to adhere to the notice period provided in UASU Constitution. In the learned Judge's words:

“The Petitioner argues that the notice period ran from 25<sup>th</sup> August 2022 to 6<sup>th</sup> September 2022 and again from 24<sup>th</sup> February 2023 to 27<sup>th</sup> February 2023 giving a total of 15 days and not 3 days as misrepresented by the 2nd Respondent. The Petitioners complied with constitutional threshold of not less than 14 days' notice period as provided under Article 19 (d) and (g) according to the Petitioners averments but in view of the differing timeliness the notice should have run concurrently for 14 days. However, with due consideration that the ruling was delivered 6 months from the date of issuance of the first notice on 25<sup>th</sup> August



2022, it would have been prudent that the Petitioners once again complied with court orders given in the judgment delivered in Nairobi ELRC Petition No E043 of 2021. As the 2<sup>nd</sup> Respondent submitted the verification of the voter's register should have been redone as some members may have ceased or resigned their membership due to different reasons and further given a 14 days' notice period to its members informing them of their intention to hold the AGM and consequent elections as provided under Article 19 (d) and (g) of their constitution. The Petitioners therefore failed to prepare for the 2<sup>nd</sup> Interested Party's fresh elections held on 27<sup>th</sup> February 2023 in accordance with the Union's constitution and the orders granted in Nairobi ELRC Petition No E043 of 2021."

29. In Petition No. E043 of 2021, the petitioners were Frankline Kaburu Kinoti, Crispus Koinange Wawire, Athony Wanyonyi Wasena and Moses Onyango Opiyo. The Respondents were University Academic Staff Union [UASU] Executive, Kenyatta University Chapter as 1<sup>st</sup> respondent, University Academic Staff Union [UASU] Secretary, Kenyatta University Chapter, as 2<sup>nd</sup> respondent, University Academic Staff Union [UASU] Chairman, Kenyatta University Chapter Elections Board, as 3<sup>rd</sup> respondent and Registrar of Trade Unions, as 4<sup>th</sup> respondent. In that case the court
- a. Petition No. 093 2021 is declined with costs to the Respondents therein.
  - b. It is declared that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in Petition 043 2021, violated the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners' fundamental rights and freedoms under *akn ke act 2010 constitution the Constitution* of Kenya and the *akn ke act 2007 14 Labour Relations Act*, by excluding them from the voters' register.
  - c. No registration shall be effected by the 4<sup>th</sup> Respondent, with regard to results from the elections of 25<sup>th</sup> March 2021.
  - d. The election results of 25<sup>th</sup> March 2021 are nullified.
  - e. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents shall update the Chapter's voters' register, as advised earlier by the 4<sup>th</sup> Respondent.
  - f. Upon updating the voters' register; upon inspection of that register by members; and with the concurrence of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the Kenyatta University UASU Chapter, shall hold fresh elections within 60 days of this Judgment.
  - g. No order on costs in Petition No. 043 2021.
30. From the said order, University Academic Staff Union [UASU] Executive, Kenyatta University Chapter and University Academic Staff Union [UASU] Secretary, Kenyatta University Chapter, were to update the Chapter's voters' register after which that updated register would be inspected by members. After that, and with the concurrence of University Academic Staff Union [UASU] Chairman, Kenyatta University Chapter Elections Board and Registrar of Trade Unions, the Chapter's elections would be held within 60 days of the Judgment.
31. In this case, as found by the learned Judge, the Election Board forwarded the voters' register to all members vide an email dated 6<sup>th</sup> September 2022 for verification and invited the 2<sup>nd</sup> respondent to verify the same in accordance with the judgment delivered in Petition No. E043 of 2021. Although the elections were initially slated for 15<sup>th</sup> September 2022, there was an intervening court order that temporarily applied brakes on the election schedule. It was not until 24<sup>th</sup> February 2023 that the green light was given for the elections to proceed. By then, slightly more than 5 months had gone under the drain, so that the elections that were conducted on 27<sup>th</sup> February 2023 could not be said to have



been conducted in the manner contemplated by the order issued in Petition No. E043 OF 2021 which had stipulated that the members' register be updated and inspected and the elections be conducted all within 60 days from the date of the judgement. In our view, the strict timelines set by the court in that petition were meant to ensure that, as much as possible, the register was up to date. A five months' lull in the proceedings during which time the court battle was raging cannot be said to be in sync with that decision.

32. We also agree that the UASU constitution contemplated a continuous 14 days notification of the date of election as opposed to one where there were breaks in between as was the case in this matter.
33. Ultimately, we find no reason to fault the learned Judge in finding that the re-elections were not conducted in accordance with the court order and that the timelines for notification of elections stipulated in UASU Constitution were not adhered to. We uphold the judgement delivered on 9<sup>th</sup> February 2024 in ELRC Constitutional Petition No. E157 of 2023, save that we now order that the timelines start running from the date of this judgement.
34. We make no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**D. K. MUSINGA (PRESIDENT)**

.....

**JUDGE OF APPEAL JOEL NGUGI**

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**JUDGE OF APPEAL**

**G. V. ODUNGA**

.....

**JUDGE OF APPEAL**

I certify that this is the true copy of the original

signed

Deputy Registrar

Civil Appeal No. Nai E301 of 2024

