

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**OF KENYA AT NAIROBI**  
**PETITION NO. E220 OF 2025**

**IN THE MATTER OF ARTICLES 27, 36, 41, 47 AND 50 OF  
THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE EMPLOYMENT AND LABOUR  
RELATIONS COURT ACT NO. 20 OF 2011**

**AND**

**IN THE MATTER OF THE LABOUR RELATIONS ACT NO.  
14 OF 2007**

**BETWEEN**

**SYLVIA SHALLYNE OBULINJI..... PETITIONER**

**- VERSUS -**

**UNIVERSITY OF NAIROBI..... 1<sup>ST</sup> RESPONDENT**

**KENYA UNIVERSITY STAFF UNION..... 2<sup>ND</sup> RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Wednesday 17<sup>th</sup> December,  
2025)*

## **JUDGMENT**

1. The petitioner filed the petition and supporting affidavit dated 22.10.2025 through OCO Law & Company Advocates, praying that this Honourable Court be pleased to:
  - a) Declare that the actions of the respondents in unilaterally changing the petitioner's membership status violate the petitioner's constitutional rights under Articles 27, 41 and 47 of the Constitution and contravene Section 56 of the Labour Relations Act No. 14 of 2007.
  - b) Declare that the actions of both respondents in colluding to exclude the petitioner from union membership participating in the union activities and elections constitute unfair labour practices and a violation of Sections 5, 10, and 11 of the Labour Relations Act No. 14 of 2007.
  - c) Declare that the petitioner is entitled to be reinstated as a member who is in good standing or the 2<sup>nd</sup> respondent and is eligible to participate in all union activities and to contest in union elections.

- d) Declare that the petitioner's constitutional rights under Articles 27, 36, 41, 47 and 50 of the Constitution have been violated by the respondents.
- e) A mandatory order compelling the 1<sup>st</sup> respondent to immediately regularize the petitioner's union membership status with the 2<sup>nd</sup> respondent and provide the petitioner with written confirmation of her regularized membership status.
- f) A permanent order of Prohibition prohibiting the respondents jointly and severally from engaging in any conduct that has the effect of undermining the petitioner's union membership or participation in future union activities
- g) An award of general damages to the petitioner for violation of her constitutional rights.
- h) An order that the costs of this petition be borne by the respondents jointly and severally.

2. The petitioner's case was as follows:

- a. The 1<sup>st</sup> respondent has employed the petitioner as an Assistant Registrar within the Department of Library and Information

Services. She has been in its employment since June 2009, when she started as an Administrator. She diligently performed her duties throughout her employment and maintained an exemplary record, enabling her to rise through the ranks.

- b. As a term of her employment and in exercise of her constitutional right under Article 41(2)(c), she became a member of the 2<sup>nd</sup> respondent, the recognized trade union representing non-teaching staff members of the 1<sup>st</sup> respondent and in all universities in Kenya. She consented to the 1<sup>st</sup> respondent deducting 2% of her basic salary from her monthly salary. Consequently, the 1<sup>st</sup> respondent has consistently deducted union dues from her salary every month since June 2009.
- c. The 1<sup>st</sup> respondent has a statutory and contractual obligation through the check-off system on her pay-slip to remit the deducted union dues to the 2<sup>nd</sup> respondent in accordance with the law and the existing recognition agreement between the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

- d. As an active member of the 2<sup>nd</sup> respondent, she participates in its meetings, general assemblies, activities and programs. She has also continued to receive updates and communication in her email and messages from the union. She has earned the respect and confidence of fellow union members through her commitment to workers' welfare and her advocacy for better working conditions. She has neither been subject to any disciplinary proceedings within the union nor violated any provision of the union's constitution
- e. On 25.09.2025, the Registrar of Trade Unions in Kenya issued a notice calling for union elections for the 2026 cycle to elect new officials for various positions within the registered trade unions in Kenya. The union elections are scheduled to take place on 05.01.2026 or before 31.03.2026, in accordance with the registrar's circular or elections guidelines and the 2<sup>nd</sup> respondent's constitution.
- f. The petitioner desires to serve her colleagues in a leadership capacity and thus expressed her wish to vote and contest for a position in the upcoming union elections. She has met all the

qualifications and requirements for candidature as stipulated in the 2<sup>nd</sup> respondent's constitution.

- g. In May 2025, she discovered that her pay-slip indicated a change in membership to KUSU agency fees from the KUSU UoN Chapter. Upon inquiry, officials of the 2<sup>nd</sup> respondent informed her that she was not a member of the union and in good standing. She was further informed that her membership status was changed owing to a resignation letter alleged to have been submitted on 10.11.2021, yet she has neither resigned nor withdrawn from the union. She immediately contacted several officers of the 1<sup>st</sup> respondent to seek clarification regarding her union status. She also reported the matter of forgery of her signature on the alleged withdrawal letter to the Central Police Station in August 2025.
- h. Despite the petitioner repeatedly demanding that the 1<sup>st</sup> respondent immediately regularize her membership status by reinstating her name as a member of the 2<sup>nd</sup> respondent, the respondents have failed, refused and/or neglected to take any

meaningful action to address her legitimate concerns and demands.

- i. There exists a calculated, deliberate and premeditated scheme between the 1<sup>st</sup> and 2<sup>nd</sup> respondents to exclude her from participating in the union elections. Certain individuals within the current leadership of the 2<sup>nd</sup> respondent view her candidature as a threat to their interests and colluded with officials of the 1<sup>st</sup> respondent to engineer her exclusion. She contends that her selective targeting is discriminatory, unfair and violates her constitutional rights.
  - j. As a result of the respondents' unlawful, unconstitutional and discriminatory actions, she has suffered, and continues to suffer, harm and damage, including loss of democratic and leadership opportunity, psychological distress, damage to reputation, financial loss, and ongoing prejudice.
3. The petitioner particularized the violation of the Constitution as follows:
- i) The actions of the respondents in selectively targeting the petitioner and changing her membership status constitute

unlawful discrimination in violation of Article 27(1), (2) and (4). She has been denied equal protection and equal benefit of the law without justifiable cause.

ii) The respondents' conduct violates Article 36(1) of the Constitution. The right to participate in trade union activities includes the right to contest for elective positions within the union and to engage in its democratic processes. Excluding the petitioner from membership in the 2<sup>nd</sup> respondent ultimately excludes her from voting and contesting in the union elections in violation of her freedom to participate in the 2<sup>nd</sup> respondent's activities.

iii) By changing the petitioner's status from membership to agency, the 1<sup>st</sup> respondent has engaged in unfair labour practices. The respondents are excluding her from union activities on spurious and manufactured grounds, in violation of Article 41(1) and 41 (2)(c).

iv) The decision by the 1<sup>st</sup> respondent to change the petitioner's membership status constitutes administrative action that directly affects her rights and interests. She was not afforded

an opportunity to be heard before the decision to change her status was made. She has also not been provided with written reasons for the unilateral change. The respondents' administrative action has been unreasonable, procedurally unfair and unlawful in violation of Articles 47(1) and (2).

v) The petitioner's dispute with the respondents relates to her employment rights, union membership and eligibility to participate in union activities, all of which are justiciable matters. The respondents' conduct violates Article 50(1).

4. The 1<sup>st</sup> respondent filed its replying affidavit, sworn by Harrison Shimanyi Akala on 07.11.2025, through CS. Fredrick Collins Omondi. It was averred as follows:

a. The 1<sup>st</sup> and 2<sup>nd</sup> respondents signed a recognition agreement in 2016, and the petitioner is a member of the 2<sup>nd</sup> respondent.

b. The 1<sup>st</sup> respondent received a letter dated 06.12.2021 from Chwero & Company Advocates acting on behalf of staff members, forwarding an additional list of 113 members of staff who had withdrawn from the 2<sup>nd</sup> respondent. The petitioner was captured as number 331 on the list and a letter

of resignation from the 2<sup>nd</sup> respondent was attached. The 1<sup>st</sup> respondent's Director, Finance was instructed to stop recoveries of trade union dues from the listed members of staff in the petition salary. Copies of the staff resignation letters were also forwarded to the Secretary General of the 2<sup>nd</sup> respondent in compliance with Section 48 of the Labour Relations Act, 2007.

- c. Further, the 1<sup>st</sup> respondent received a letter dated 09.10.2024 from the 2<sup>nd</sup> respondent, UoN Chapter, forwarding a list of 77 members of staff under the 2<sup>nd</sup> respondent cadres that were neither contributing dues nor agency fees to the 2<sup>nd</sup> respondent, despite benefitting from the union's negotiations. In this list, the petitioner was captured as number 27.
- d. In effect, the petitioner was not remitting to the 2<sup>nd</sup> respondent trade union dues or agency fees as at 07.10.2024 when it was discovered by the 2<sup>nd</sup> respondent. The same was corrected by placing the petitioner on agency fees since she has not filled the Form "S" as proof of union membership.

- e. On or about 08.08.2025, the 1<sup>st</sup> respondent wrote to the petitioner in reply to her letter dated 10.11.2021, clarifying that there was no irregular conversion of her status from paying union dues to agency fees.
  - f. The petitioner has failed to establish violation of constitutional rights and freedoms, and legitimate expectations, and there is no justification for granting any orders in her favour. She has also failed to prove that her fundamental rights and freedoms, and legitimate expectations have been denied, violated, infringed or threatened by the 1<sup>st</sup> respondent.
  - g. The petition is untenable and bad in law and this Honourable Court should, in light of the aforementioned events, dismiss the petition with costs.
5. The 2<sup>nd</sup> respondent filed their replying affidavit, sworn by Peter Muthama Waita on 06.11.2025, through Wagara, Koyyoka & Company Advocates. They averred as follows:
- a. Sometime in January 2022, the 2<sup>nd</sup> respondent received a letter dated 03.01.2022 from the 1<sup>st</sup> respondent's Registrar, Administration, forwarding a list of 58 staff members who had

expressed their wish to withdraw their membership from KUSU. A letter dated 06.12.2021 from Chwero & Company Advocates was attached to the Registrar's letter, which included 113 names of employees also seeking to withdraw their membership from the union, along with their individual signed letters. The petitioner's letter of withdrawal from membership of the 2nd respondent, dated 10.11.2021, was among the batch of letters forwarded. In her letter, the petitioner unequivocally tendered her resignation from the 2nd respondent and expressly requested her employer to stop any trade union deductions from her wages toward KUSU.

- b. The 1<sup>st</sup> respondent subsequently stopped remittance of any union dues or agency fees from the petitioner to the 2<sup>nd</sup> respondent for the period between November 2023 and October 2024, amounting to approximately Kshs. 27,108/=. Failure to remit union dues for a period of more than 13 weeks in itself renders the petitioner a non-member if she had not already resigned.

- c. On 09.10.2024, the 2<sup>nd</sup> respondent notified and required the 1<sup>st</sup> respondent to recover agency fees from all eligible unionisable employees benefitting from the terms of the Collective Bargaining Agreement entered into between the 1<sup>st</sup> and 2<sup>nd</sup> respondents on employees' remunerations, allowances and benefits. The petitioner was in the forwarded list of the eligible unionisable employees enjoying such a benefit.
- d. The 2<sup>nd</sup> respondent maintains a current register of its members that is regularly updated, and the petitioner does not appear thereon as a member. It also maintains an updated register of unionisable employees of the 1<sup>st</sup> respondent who are not members of the 2<sup>nd</sup> respondent but liable to pay agency fees for benefitting from the collective negotiations and agreements procured by the trade union, and the petitioner's name is on this list.
- e. Following the petitioner's resignation from the union on 10.11.2021, she was only deducted agency fees between January 2022 and October 2023. No union dues whatsoever were recovered or remitted by her between November 2023

and October 2024. She has also voluntarily failed to apply to rejoin the union to regain her membership.

- f. If the petitioner wishes to regain membership in the union, she is procedurally required to pay the Kshs. 27,108/= and execute Form S to signify to the employer consent to the deduction of union dues. Whereas she has been apprised of these requirements, she has refused to comply and thus opted to remain a non-member of KUSU.
  - g. The petitioner is at liberty to regularize her trade union membership, upon which she will be entitled to exercise all the rights and privileges of a member, including the right to participate in elections and to run for office.
  - h. Therefore, the petition is frivolous and an abuse of the court's processes, and should be dismissed with costs.
6. The petitioner filed a further affidavit, sworn on 13.11.2025, averring that the deponent, Peter Muthama Waita, being the Branch Secretary of KUSU, UoN Nairobi Branch, lacks legal capacity under the Labour Relations Act and KUSU Constitution to bind the 2<sup>nd</sup> respondent on matters of membership rights and

registers, legal disputes of constitutional nature, or interpretation of statutory obligations. The lawful union spokesperson in such matters is the Secretary General, as provided in law and the KUSU constitution. Mr. Waita's affidavit is therefore defective, incompetent, of no probative value and should be struck out. She further averred that her alleged resignation letter is forged, irregular and unverifiable because it contains the wrong payroll number. In November 2021, her correct payroll number was E2021/200380 and not 200380 as alleged. She argued that the 2<sup>nd</sup> respondent has not produced any evidence to prove that her alleged resignation was processed through check-off cancellation procedures or communicated to her as required under Article 47 of the Constitution. Further, the 2<sup>nd</sup> respondent has not produced the 113-member list referred to as *PMW2* and her name does not appear on the 58-member list marked *PMW1*. The purported 331-member list is defective, has different fonts on pages 5 and 6, has mixed members of two distinct unions - KUDHEIHA and KUSU, is not signed, and appears to have been manufactured, rendering it null and void. She refuted the alleged arrears of 13 weeks,

asserting that the 1<sup>st</sup> respondent has always deducted dues from her pay-slip, as evidenced in her December 2024 pay-slip, January to April 2025 pay-slips and earlier pay-slips for 2021 showing consistent deduction of full union dues. She further argued that any failure to remit dues is solely attributable to the 1<sup>st</sup> respondent and that she cannot be compelled to reapply for a membership she never relinquished. She asserted that the 2024 KUSU Membership Register is inauthentic for lacking workers' signatures and not being stamped received by the VC.

7. The parties filed their written submissions in court. The Court has considered the parties' respective positions, pleadings, affidavits and submissions. The Court returns as follows.
8. The **1<sup>st</sup> main issue** is whether the petitioner has never resigned from the union and whether his membership has never had a break since she joined the union. The Court observes and finds as follows:
  - a) The petitioner has exhibited her payslips for January 2021, December 2024, February 2024, and March 2025 all showing that the 1<sup>st</sup> respondent deducted her with respect to

KUSU –UON Chapter. However, May 2025 shows that the respondent deducted her with respect to KUSU –AGENCY. On that account it is her case that the 1<sup>st</sup> respondent arbitrarily and in breach of her rights as pleaded changed her union status from a union member to a non-member.

b) For the 1<sup>st</sup> respondent the letter dated 06.12.2021 from Chwero & Company Advocates acting on behalf of staff members, forwarding an additional list of 113 members of staff who had withdrawn from the 2<sup>nd</sup> respondent has been exhibited. It was received at the Vice –Chancellor’s office on 07.12.2021. The petitioner is listed as number 331 on the forwarded list. However, the resignation letter said to have been attached on the Advocates’ forwarding letter and signed by the petitioner has not been exhibited on the 1<sup>st</sup> respondent’s replying affidavit. While the 1<sup>st</sup> respondent urges that the Finance officer was directed to stop deduction of union dues from the petitioner’s monthly salary, evidence of such instructions as given promptly after the receipt of

the Advocates' letter on 07.12.2021 has not been exhibited at all.

c) The relevant sub-sections of section 48 of the Labour Relations Act, 2007 state as follows,

“(6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.

(7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.

(8) An employer shall forward a copy of any notice of resignation he receives to the trade union.”

d) The Court finds that the 1<sup>st</sup> respondent appears to have failed to comply with the quoted sub-section of Act. There is no evidence that a month after the alleged resignation by the petitioner, the respondent stopped deducting the union dues (being sometimes end of January 2022). Further, the 1<sup>st</sup> respondent has not offered evidence that the resignation notice was forwarded to the 2<sup>nd</sup> respondent.

e) Accordingly, the Court finds that the 1<sup>st</sup> respondent has failed, on a balance of probability, to show that indeed the petitioner resigned from the union and the quoted subsections of the Act were implemented. On the other hand, the petitioner has shown on a balance of probability per exhibited pay-slips that the 1<sup>st</sup> respondent continued to deduct union dues from the petitioner's monthly salary and the 2<sup>nd</sup> respondent has urged that such evidence of deduction of union dues by itself and without more established that a unionisable staff was indeed a member of the union. Accordingly, in absence of any other material evidence with respect to the resignation of the petitioner from the union, the Court finds that she never resigned and she has continued to be a member in good standing.

f) The 2<sup>nd</sup> respondent wrote the letter dated 09.10.2024 addressed to the 1<sup>st</sup> respondent and stating that some unionisable staff were enjoying benefits of collective bargain without their being union members and without paying union agency fees. The letter requested the 1<sup>st</sup>

respondent to deduct agency fees from unionisable staff not being union members but benefitting from the collective agreement. The petitioner is listed as number 27 on the list attached on the said 2<sup>nd</sup> respondent's letter. It appears the 1<sup>st</sup> respondent embarked and narrowed down on the petitioner so that by a schedule attached to the memo by 1<sup>st</sup> respondent's acting Director Finance and addressed to Registrar Administration, the petitioner's payment of union dues and agency fees purportedly for the period January 2021 to August 2025 was attached. Without explanations, for a few months there were no deductions then for months after alleged resignation in December 2021, for some months union dues were deducted and for others agency fees was deducted. Notable is that for November 2024 to April 2025, the schedule shows that the petitioner was being deducted union fees and not agency fees. The schedule is secondary and not primary evidence such as a pay-slip but it goes to reinforce the petitioner's case that she had all along been a member of the union and further reinforces the

Court's finding that on a balance of probabilities, the petitioner never resigned and in any event, any such alleged resignation was never perfected in terms of the quoted subsections of section 48 of the Act.

g) The Court further observes that while the 1<sup>st</sup> respondent alleged in the affidavit that an additional list of 113 of staff resigning from the union was forwarded and as observed, the petitioner was listed as 331, the 2<sup>nd</sup> respondent's replying affidavit states that the 1<sup>st</sup> respondent had forwarded to the 2<sup>nd</sup> respondent by letter dated 03.02.2022 a list of 58 who had withdrawn membership. The petitioner's concern that her name is not in the listed 58 names is found correct. It is notable that without explanation the 2<sup>nd</sup> respondent also exhibits a long list in which the petitioner is listed as number 331 but just like the list exhibited for the 1<sup>st</sup> respondent, the exhibit lacks authenticity and the Court finds that both lists by the respondents listing the petitioner as number 331 lack authenticity and as originating from the Advocates. In any event no explanation is given by the

respondents of the initial list so that the Advocates were forwarding 113 further names. The Court opines that if the advocate was forwarding 113 further names, then how the petitioner get listed as 331, a figure far much beyond the 113. The Court finds that with such discrepancies in both respondent's accounts and exhibits, the petitioner's account will be upheld and that of the respondents found implausible.

h) The Court further observes that the schedule by the acting Director Finance also shows that the 1<sup>st</sup> respondent at will and whimsically deducted the union dues, urgency fees and sometimes failed to deduct at all. Such deficiencies on the part of the 1<sup>st</sup> respondent cannot be visited upon the petitioner and do not offer a useful basis to find that when agency fees were deducted the petitioner was not a member and when the union dues was deducted, then she was a member. in any event the respondents offer no explanation and the petitioner's union membership status for the months

the schedule showed no union dues or agency fees had been deducted.

i) The upshot is that the petitioner joined the union and never validly ceased to be a member or resigned and on a balance of probability, she continues to be a fully paid up member of the union.

9. To answer the **2<sup>nd</sup> issue**, the Court returns that in view of the evidential findings, the petitioner has established that her rights have been violated in the manner the respondents have jointly and severally undermined her union membership.

10. Accordingly, to answer the **3<sup>rd</sup> issue**, the petitioner is entitled to the remedies as prayed for except award of damages for violations of rights. The petitioner prayed for an award of general damages to the petitioner for violation of her constitutional rights. The Court considers that the reliefs awarded will meet the ends of justice. Further, the petitioner has not offered by way of submissions to guide the Court on the would be fair award in that regard. The ends of justice in the circumstances of this case will be served by the other reliefs now granted as prayed for.

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

- 1) The declaration that the actions of the respondents in unilaterally changing the petitioner's membership status violated the petitioner's constitutional rights under Articles 27, 41 and 47 of the Constitution.
- 2) The declaration that the actions of both respondents in colluding to exclude the petitioner from union membership, participating in the union activities and elections constituted unfair labour practices and a violation of section 5 of the Labour Relations Act No. 14 of 2007 protecting her trade union membership and participation.
- 3) The declaration that the petitioner is entitled to be reinstated as a member who is in good standing of the 2<sup>nd</sup> respondent and is eligible to participate in all union activities and to contest in union elections.
- 4) The declaration that the petitioner's constitutional rights under Articles 27, 36, 41, 47 and 50 of the Constitution have been violated by the respondents.

- 5) The mandatory order hereby issued compelling the 1<sup>st</sup> respondent to immediately regularize the petitioner's union membership status with the 2<sup>nd</sup> respondent and provide the petitioner with written confirmation of her regularized membership status forthwith within a day.
- 6) The permanent order of Prohibition hereby issued prohibiting the respondents jointly and severally from engaging in any conduct that has the effect of undermining the petitioner's union membership or participation in future union activities.
- 7) The costs of this petition be borne by the respondents jointly or severally.

**Signed, dated and delivered by video-link and in court at Nairobi  
this Wednesday 17<sup>th</sup> December, 2025.**

**BYRAM ONGAYA,  
PRINCIPAL JUDGE**