

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT ELDORET**

*(Before Hon. Lady Justice Maureen Onyango)*

**PETITION NO. E013 OF 2025**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010  
AND IN PARTICULAR ARTICLES 2, 3, 10, 19, 20, 21, 22, 23,  
27, 36, 41 AND 258**

**AND**

**IN THE MATTER OF ARTICLES 6(C), 8(C), 9(C), 9(D),  
11(C), 14(E), (G), (H), (I), AND 19(F) OF THE UNIVERSITIES  
ACADEMIC STAFF UNION (UASU) CONSTITUTION, 2014**

**AND**

**IN THE MATTER OF SECTION 4, 14, 27, 33 AND 34 OF THE  
LABOUR RELATIONS ACT**

**BETWEEN**

**REUBEN ODHIAMBO OYAMO ODOYO .....**

**PETITIONER**

**VERSUS**

**UNIVERSITIES ACADEMIC STAFF**

**UNION (UASU) .....**

**RESPONDENT**

**AND**

**THE REGISTRAR OF TRADE UNIONS ..... INTERESTED PARTY**

**JUDGMENT**

1. The Petitioner herein states that he is a lecturer at Moi University in the School of Information Science and a Moi University UASU delegate.
2. The Respondent is a trade union registered under section 12 of the Labour Relations Act with its membership drawn from Academic Staff of all public universities in Kenya.
3. The Interested Party, the Registrar of Trade Unions, is described in the petition as a statutory institution established under section 31 of the Labour Institutions Act whose mandate inter alia is: to register and regulate the operations and activities of trade unions.

**The Petitioner's case**

4. In the Petition dated 27<sup>th</sup> October 2025, the Petitioner avers that the Respondent has violated section 1(3) of the 5<sup>th</sup> Schedule to the Labour Relations Act which mandated all

trade unions including the Respondent to amend their constitutions within 6 months of commencement of the Act, which provides that:

- i. (3) If any provision of a constitution of a trade union, employers' organisation or federation does not comply with the requirements of this Act, the trade union, employers organisation or federation shall amend its constitution and submit the amendments to the Registrar within six months of the commencement of this Act.

5. The Petitioner avers that instead of carrying out a comprehensive amendment of its constitution the Respondent only revised a single article of its constitution to increase the union dues from 1 per cent to 2 per cent of members' salaries.
6. The Petitioner states that article 8(c) of the Respondent's revised constitution provides that the National Executive Committee (NEC) shall be composed of the Chairperson, Vice-Chairperson, Secretary-General, Deputy Secretary-General, Treasurer, Assistant Treasurer, Organizing

Secretary and such other officials as may be co-opted from time to time.

7. The Petitioner avers that the constitution vests significant power and discretion upon the NEC, particularly through the provision allowing co-option of additional officials “*from time to time*”. That such arrangement creates room for abuse, as NEC may co-opt individuals who are aligned or loyal to the incumbent leadership rather than those who represent independent or dissenting voices within the union.
8. The Petitioner avers that such co-option has the effect of bypassing democratic processes mandated by law to advance the interests of NEC rather than representing views of members of the union, limiting transparency, accountability and checks and balances essential for proper governance. That this concentration of power undermines the principle of internal democracy, as members are deprived of the right to freely elect their leaders and participate meaningfully in decision-making processes, contradicting the spirit of section 34(2)(b) of the Labour Relations Act.

9. The Petitioner further states that article 9(c) of the Respondent's constitution provides that: *"All prospective candidates to National Office must be delegates as defined in 6(c)."* That Article 6(c) does not define who a delegate is or the method through which delegates are appointed or elected. That this inconsistency renders the eligibility criteria vague, incomplete and legally uncertain, thereby undermining the clarity, coherence and enforceability of the constitutional provision.
10. The Petitioner further states that Article 9(d) of the Respondent's constitution provides: *"Every elected officer of the union shall vacate office at the expiry of five (5) years but shall be eligible for re-election for a final 5-year term subject to the provision of c above."* The Petitioner avers that this provision is inconsistent with section 34(2)(b) of the Labour Relations Act which provides for elections by secret ballot of all officials of a trade union at least once every five years.
11. The Petitioner avers that the article further contradicts the Interested Party's circular reference No. ML&SP/TU/ADM/23

dated 25<sup>th</sup> September, 2025 which provides at No. 2 on tenure of office that:

“In addition to the above, section 34 of the Act further provides that the prescribed term of officials of all trade unions, employers Organizations and federations is five years, officials are required to be elected through secret ballot at least every five years. The last elections were conducted in the year 2021 and therefore the next elections are due in 2026.”

12. The Petitioner avers that section 34(2)(d) safeguards the fundamental democratic right of union members to freely and fairly elect their leaders through a transparent and periodic electoral process. That the two-term limit on union officials distorts the legislative intent of section 34(2)(b) and unduly infringes upon the rights of union officials to vie for elective positions and allow union members to elect officials of their choice.
13. The Petitioner further avers that Article 11(c) of the Respondent’s constitution is inconsistent with section 34(2)

(b) of the Labour Relations Act which provides for the election, by secret ballot, of all officials of a trade union at least once every five (5) years. Article 11(c) of the Revised UASU constitution provides that: *“A Trustee shall hold office for a maximum of five (5) years or until such time as he/she resigns by notice in writing to the National Executive Committee or is removed by vote at a National Delegates Conference or Special Delegates Conference...”*.

14. The Petitioner avers that while other officials of the Respondent are allowed re-election for a final five years, Trustees are limited to only by a maximum of five years. That this differential treatment between other officials and Trustees lacks any reasonable, rational or objective justification and is not supported by any legitimate organizational necessity or legal standard, and is a violation of Article 27(1), (2) and (4) of the Constitution of Kenya, 2010.

15. The Petitioner further avers that Article 14(e) of the Respondent’s Constitution is inconsistent with and contrary to section 34(2)(a) of the Labour Relations Act as it

introduces a qualification that discriminates unfairly between incumbents at national level and other candidates in trade union elections. Article 14(e) of the Respondent's constitution provides: *"All candidates seeking election to National Executive Committee positions must first be delegates from their respective chapters and be eligible to attend and vote at the National Delegates Conference."*

16. The Petitioner avers that the article treats incumbents at national level unfairly by subjecting them to two separate electoral processes in contravention of the circular dated 25<sup>th</sup> September, 2025 which recognizes two levels of elections at branch and national elections.
17. The Petitioner avers that Article 14(e) of the Respondent's constitution further contradicts Article 6(a) of the Respondent's constitution which provides: *"The National Delegates Council shall be composed of the National Chairperson, Vice-Chairperson, National Secretary General, Deputy Secretary General, National Treasurer, Assistant Treasurer, National Organizing Secretary, National Trustees,*

*Chapter Officials, Committee Members, Trustees and Delegates from Chapters.”*

18. The Petitioner argues that Article 14(e) introduces procedural and substantive discrimination unfairly burdening incumbents at the national level to vie in chapter elections since they already qualify by dint of Article 6(a) of the Respondent’s Revised Constitution to attend and vote at the National Delegates Conference.
19. The Petitioner further avers that Article 14(i) of the Respondent’s Revised Constitution is inconsistent with section 33(c) of the Labour Relations Act which provides that no person shall be eligible to contest for office if that person’s subscription fees are more than thirteen weeks in arrears. Article 14(i) of the Respondent’s Revised Constitution provides that: *“To be eligible, candidates should have been members of a trade union for at least twelve (12) months preceding the date of election.”*
20. He argues that such extended membership restricts the democratic rights of union members to participate fully in the activities of the union particularly vying for leadership

positions in the union, undermining the rights of new members.

21. The Petitioner further urges that Article 6(c) violates Article 27 of the Constitution of Kenya, 2010; that the lack of a clear and definition of “delegate” creates uncertainty undermining the right of members to challenge unfair decisions as there is no predictable or transparent standard for eligibility.
22. The Petitioner avers that the ambiguity infringes upon the freedom of association under Article 36 of the Constitution of Kenya, 2010. The Petitioner argues that the provisions of Articles 6(c) and 9(c) of the Respondent’s Revised Union Constitution further violate Article 41 of the Constitution of Kenya, 2010 which provides for the right to form, join and participate in the activities of a trade union.
23. The Petitioner further argues that Article 9(d) and 14(i) and (e) of the Respondent’s Revised Union Constitution violates Articles 27, 36 and 41(2)(c) of the Constitution of Kenya, 2010 by imposing a term limit.
24. It is further the averment of the Petitioner that Article 14(g) of the Respondent’s Revised Constitution which provides

that the Returning Officer shall be identified by the National Executive Committee undermines the independence of the Returning Officer who should be identified by an independent entity to avoid inherent conflict of interest and enhance transparency and impartiality which are fundamental to credible elections.

25. The Petitioner further avers that Article 14(h) of the Respondent's Revised Constitution undermines democracy, accountability and good governance as the same organs that are subject to elections exercise control over the electoral process as the returning officers who are expected to form the UASU Electoral Committee being All Returning Officer from Chapters are elected and approved by their respective Chapter Officials, many of whom are contestants or aligned to testers.
26. The Petitioner further avers that the Respondent's Revised Constitution does not specify who between the Returning Officer and the Electoral Committee is responsible for the conduct of elections thereby creating ambiguity and

uncertainty as the Constitution does not specify respective roles, duties or hierarchy between the two entities.

27. The Petitioner prays for the following reliefs:
- a) A declaration that Articles 6(c), 8(c), 9(c), (d), 11(c), 14(e), (g) (h), (i) and 19(f) of the Revised UASU Constitution are unconstitutional to the extent that they violate articles 10(1), 27, 36 and 41 of the Constitution of Kenya and Section 4, 14, 33(c) and 34(2)(a) and (b) of the Labour Relations Act, 2007.
  - b) An order is hereby issued directing the Interested Party, to delete Articles 6(C), 8(c), 9(c), (d), 11(c), 14(e), (g), (h), (i) and 19(f) of Revised UASU Constitution for breaching Article 10, 27, 36 and 41 of the Constitution of Kenya, 2010 and Section 4, 14, 33(c) and 34(2)(a) and (b) the Labour Relations Act, 2007.
  - c) A PERMANENT INJUNCTION restraining the Interested Party either jointly or severally by themselves, officers subordinate to them, agents assigns, representatives, employees, servants or otherwise howsoever from taking any steps to enforce or in any way implement the

impugned Articles 6(C), 8(c), 9(c), (d), 11(c), 14(e), (g), (h), (i) and 19(f) of the Revised UASU Constitution.

d) Costs of the suit.

e) Any other or further orders that the Honourable Court may deem fit to grant.

28. The petition was filed together with a Notice of Motion application in which the Petitioner sought the following orders:

- a) The Notice of Motion be certified EXTREMELY URGENT due to the urgency pleaded herein and be heard Ex-parte in the first instance.
- b) The Interested Party has issued a circular referenced ML&SP/TU/ADM/23 dated 25<sup>th</sup> September, 2025 to all registered trade unions concerning the election cycle for the year 2026.
- c) These circular underscores the imminence of the upcoming union elections and highlights the necessity for the issues raised in this application to be heard and determined urgently.

- d) Therefore, in the interest of upholding the rule of law, ensuring compliance with the Labour Relations Act, 2007, and protecting the democratic rights of union members, it is imperative that this application be heard on an expedited basis to enable the appropriate orders and declarations to be made prior to the Commencement of the 2026 election cycle.
- e) Pending the hearing and determination of the petition inter partes, no elections shall be held pursuant to the Interested Party's circular referenced ML&SPTUADM/23 dated 25<sup>th</sup> September, 2025 or any related election timetable issued in respect of the 2026 election cycle until the matter is heard and determined.
- f) Pending the hearing and determination of this Petition inter parties, a conservatory order does issue staying and/or suspending further implementation, administration, application and/or enforcement of in the matter of sections

6(c),8(c),9(c), 9(d),11(c) 14 (e) (g), (h) (i) and 19(f)  
the Universities Academic Staff Union (UASU)  
Revised Constitution.

- g) Consequent to the grant of the prayers above the Honourable Court be pleased to issue such further directions and orders as may be necessary
- h) Costs of this Application be provided for.

### **The Respondent's Case**

- 29. The Respondent opposed the Petition. It was the Respondent's contention that the Petition is misconceived, frivolous and amounts to an abuse of court process. That the amendments of the Respondent's constitution were undertaken in full compliance with the Labour Relations Act, the Registrar's directives and the Union internal democratic procedures.
- 30. The Respondent contends that the entire process of review of the Respondent's constitution was inclusive, participatory, and transparent, having been debated, adopted, and ratified by the NDC, where all registered chapters were duly represented.

31. The Respondent contends that the impugned provisions serve legitimate, lawful, and rational purposes, including ensuring leadership renewal, maintaining institutional stability and promoting internal accountability.
32. The Respondent contends that the co-option of officials is intended to fill temporary vacancies and ensure continuity of operations, not to usurp members' electoral rights.
33. The Respondent prays that the court finds the Petition to be without merit, and that the Respondent acted lawfully and within its statutory and constitutional mandate. The Respondent prays that the Petition be dismissed with costs.
34. The Petition was disposed of by way of written submissions. Parties further agreed to proceed with the Petition instead of the application in view of the fact that union elections are expected to commence in January, 2026 as per the timelines in the circular from the Registrar of Trade Unions dated 25<sup>th</sup> September, 2025. Both parties filed submissions.
35. The Interested Party did not participate in the proceedings.

### **Analysis and Determination**

36. I have considered the pleadings and the rival submissions of the Petitioner and Respondent. The issues that arise for determination are the following:
- a. Whether this court has jurisdiction to determine the petition herein
  - b. Whether the prayers in the Petition are merited

### **Jurisdiction of the Court**

37. It was the contention of the Respondent that this court has no jurisdiction to interfere in the internal democratic processes of a trade union. That trade unions, being autonomous and voluntary associations, the framework for internal processes rest with the voluntary framework under the Labour Relations Act and the constitutional principles of freedom of association and democratic self-governance.
38. The Respondent urges that the courts have therefore recognized that internal affairs of trade unions fall primarily within the province of their membership and judicial interference is permissible only in exceptional cases

involving illegality, breach of statute or violation of fundamental rights.

39. For emphasis the Respondent relied on section 4(1) of the Labour Relations Act which provides that

*4. Every employee has the right to -*

*a. participate in forming a trade union or federation of trade unions;*

*b. join a trade union; or*

*c. leave a trade union.*

40. The Respondent further submitted that members may leave the membership of trade unions if dissatisfied rather than invite judicial control over internal affairs of a trade union.

41. The Respondent further relied on the decision in **Hadullo & another v Registrar of Trade Unions & 3 others [2025] eKLR**. With utmost respect to the Counsel for the Respondent the facts of this case do not seem to support the argument as proposed in the submissions of the Respondent. The same was a petition which was dismissed on the basis of

a preliminary objection on grounds that the petition did not meet the threshold of a constitutional petition.

42. The Respondent further relied on the decision in **Kenya Union of Commercial Food and Allied Workers Union v Water Resources Management Authority [2015] eKLR** where the court observed that internal management and decision-making of a trade union are vested in its members, and courts will not interfere unless there is demonstrated illegality or violation of fundamental rights.
43. The Respondent also relied on the decision in **George Muchai v Kenya Union of Domestic, Hotels, Educational Institutions and Allied Workers [2014] eKLR** and the case of **Francis Atwoli v Registrar of Trade Unions & another [2014] eKLR** in submitting that this court lacks jurisdiction to entertain this suit. It argues that the Petition discloses no statutory or constitutional breach.
44. The Petitioner on his part submitted that the instant petition arises out of matters relating to employment and labour relations which under section 12 of the Employment and

Labour Relations Court Act falls within the jurisdiction of this court. For emphasis the Petitioner quoted and relied on the decision in **Public Service Commission v Erick Cheruiyot** where the court stated that the Employment and Labour Relations Court has jurisdiction to hear any disputes contemplated under section 12(1) of the Employment and Labour Relations Court Act and that the court can also determine disputes arising from alleged breach or any violations of constitutional rights of any party.

45. The Petitioner further relied on the Supreme Court decision **In the Matter of Interim Independent Electoral Commission [2011]** where the Supreme Court held that jurisdiction of courts in Kenya is regulated by the Constitution, statutes and principles laid out in judicial precedent and that a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavours to discern or interpret the intentions of Parliament where the wording of legislation is clear and there is no ambiguity.

46. The Petitioner further relied on Article 162 of the Constitution which provides-

*(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).*

*(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—*

*(a) employment and labour relations; and*

*(b) the environment and the use and occupation of, and title to, land.*

*(3) Parliament shall determine the jurisdiction and functions of the courts.*

47. The jurisdiction of this court has been the subject of many judicial decisions and in my view it is a matter that can be considered as settled. In the case of **Mugendi v Kenyatta University & 3 others (Civil Appeal 6 of 2012) [2013] KECA 41 (KLR) (17 May 2013) (Judgment)** and **Petition No.170 of 2012 - United States International University (USIU) Vs The Attorney General & Others**

the courts held that this court has jurisdiction to hear all employment and labour relations matters.

48. In the **United States International University** case it was held:

*“A correspondent court to the High Court, that is the Industrial Court, has now been established to deal with employment and labour matters. It follows that all employment and labour relations matters pending in the High Court shall now be heard by the Industrial Court which is now a court of the status of the High Court. The High Court therefore lacks jurisdiction to deal with matters of employment and labour matters whether filed in the High Court before or after the establishment of the Industrial Court.”*

49. I think I will not belabor the issue. Suffice to state that the issue in dispute herein arises from the Labour Relations Act which expressly defines the court to be this court. The issues are further labour relations rights in the constitution of a trade union which are within the exclusive jurisdiction of this

court. This court therefore is the right forum for the instant petition.

50. The second issue is whether the petition is merited. The Respondent avers that the petition is unmeritorious as it invites the court to interfere with internal affairs of the Respondent union, does not establish any violation of the Constitution or statutory breach and that the decisions complained of were duly approved by the Registrar of Trade Unions. The Respondent relies on the decisions in **Anarita Karimi Njeru v Republic [1979] eKLR** where the court emphasized the importance of precision in reference to the provisions of the Constitution and the manner in which those provisions are alleged to have been infringed. In **Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR** the court stated that vague, generalized and speculative pleadings cannot sustain a constitutional claim.
51. In the instant petition the petitioner has gone to lengths to make specific reference to both statutory and constitutional provisions which he alleges have been infringed. He has further explained with clarity how, according to him, those

provisions have violated or are likely to violate his rights and the rights of other members of the Respondent. I find that the Petition meet the threshold according to both **Anarita Karimi** and **Mumo Matemu** cases.

52. Now I will consider the specific provisions of the Respondent's constitution that the Petitioner avers to be inconsistent with the Constitution of Kenya 2010 and the Labour Relations Act. The constitutional provisions alleged to have been infringed are Articles 27, 36, 41 and 258. The statutory provisions he has referred to are sections 4, 14, 27, 33, and 34 of the Labour Relations Act.

53. The impugned sections of the Respondent's constitution are 6(c), 8(c), 9(c), 9(d), 11(c), 14(e), (g), (h), (i) and 19(f). My understanding of the Petitioner's case is that he avers that by the impugned provisions of the Respondent's constitution violating the Act, the Respondent's constitution also violates the constitutional rights of the Petitioner and members of the Respondent. That the said provisions of the Respondent's Constitution do not comply with both the

Constitution of Kenya, 2010 and the Labour Relations Act referred to.

54. I will start by laying the basis of the Petitioner's discontent with Article 8(c) and 19(f) of the Respondent's Constitution which the Petitioner avers are contrary to section 34(2)(b) of the Labour Relations Act.

55. Article 8(c) of the Respondent's constitution provides:

*"The National Executive Committee (NEC) shall be composed of the Chairperson, Vice-Chairperson, Secretary-General, Deputy Secretary-General, Treasurer, Assistant Treasurer, Organizing Secretary and such other officials as may be co-opted from time to time."*

56. Article 19(f) of the Respondent's constitution provides:

*"The Chapter Executive Committee shall be responsible for each chapter subject to the control of the National Executive Committee. Such chapter committee shall be composed of the Chapter Chairperson, Chapter Vice-Chairperson, Chapter Secretary-General, Chapter Assistant Secretary General, Chapter Treasurer,*

*Chapter Assistant Treasurer, Chapter Organizing Secretary and other co-opted officials to ensure representation of special interest groups.”*

57. The Petitioner avers that the above two provisions are inconsistent with section 34(2)(b) of the Act which provides that all union officials must be elected. He avers that the effect of these provisions is to undermine the democratic principles of accountability, transparency and representation as enshrined in the Constitution of Kenya, 2010 by allowing the NEC to appoint additional members without such members being subjected for election by members as provided in the Labour Relations Act.
58. The Petitioner further argues that the provisions concentrate power on elected members to appoint additional members of their choice without being subjected to election by members.
59. The court notes that there is no limit to the number of members who may be co-opted both at national and chapter levels and that there is no provision limiting the voting rights of such co-opted members thus giving the NEC and chapter officials unlimited powers to co-opt unelected members.

60. I agree with the Petitioner that these two provisions go against the rights of members to elect their officials and undermine the democratic principles for governance of trade unions. The provisions further violate the provisions of section 34(2)(b) of the Act which provides that all union officials must be elected. The provisions thus undermining the rights of members to elect representatives of their choice.
61. The other issue that the Petitioner avers is unconstitutional and unlawful is the ambiguity in the definition of “delegate” under Article 6(c) which according to the Petitioner renders Article 9(c) unlawful for failing to provide clarity and predictability to prospective candidates.
62. Article 9(c) provides: *“All prospective candidates to the National Office must be delegates as defined in Article 6(c).”*
63. Article 6(c) provides: *“The Secretary General shall convene National Delegates Conference by giving a 21 (twenty one) days notice in writing to each chapter secretary.”*
64. Article 6(c) does not state who a delegate is or how such delegates are elected or appointed to office. Article 6(d)

*provides that “Every chapter of the union shall have the right to send one delegate for every 100 (one hundred) members or part thereof of duly registered members in the membership register at such chapter provided that nothing herein contained shall authorize a chapter to send more than 7 (seven) delegates to the National Delegates Conference. The registered members of the chapter concerned shall elect such delegates for that purpose.”*

65. Article 6(b) states that: *“The National Delegates Council shall be the supreme authority of the Union and shall hold National Delegates Conference every year at such time and place as decided by the National Executive Committee.”*
66. The composition of the National Delegates Council is provided in Article 6(a) as follows: *“The National Delegates Council shall be composed of the National Chairperson, Vice Chairperson, National Secretary General, Deputy Secretary General, National Treasurer, Assistant Treasurer, National Organizing Secretary, National Trustees, Chapter officials, Committee members, Trustees and Delegates from chapters.”*

67. This means that delegates from chapters participate in the supreme organ of the Respondent yet the mode of their election is not provided for in the Constitution of the Respondent. This is a serious omission that undermines the governance of the Respondent and the rights of members who wish to contest for national office.
68. The First Schedule to the Labour Relations Act provides for matters for which provision must be made in the constitution of a trade union or employers' organization and item (4) is *"The appointment or election and removal of an executive, and of trustees, secretaries, treasurers and other officers of the trade union or employers' organisation."*
69. The Respondent's Constitution thus fails to meet this requirement in terms of election of delegates at chapter level. By so doing it undermines the rights of the members to fully participate in the affairs of the trade union as enshrined in Article 41(2)(c) of the Constitution of Kenya, 2010.
70. The other provision that the Petitioner avers is inconsistent with the Constitution of Kenya, 2010 and the Labour

Relations Act is the imposition of two term limit at Article 9(d) of the Respondents Constitution. The Article provides: *“Every elected officer of the union shall vacate office at the expiry of five (5) years but shall be eligible for re-election for a final five-year term subject to the provision of C above.”*

71. According to the Petitioner this provision is inconsistent with section 34(2)(b) of the Act which does not impose a term limit and which instead guarantees members the right to participate in periodic democratic elections without artificial restrictions on who may contest. He submits that the provisions of the Respondent’s constitution contradict and undermine express provisions in national legislation.
72. The Petitioner further avers that Article 9(d) further contradicts Article 23 of the Respondent’s constitution which provides for amendment and alteration of the constitution of the Respondent. The Petitioner relied on the decision of the Supreme Court of Kenya in **British American Tobacco Kenya Limited v Cabinet Secretary for Ministry of Health** where the Supreme Court discussed the definition of public participation.

73. The Respondent did not specifically deny this averment that the amendment limiting the term of office was not participatory or did not comply with the union constitution. All it stated is that the two-term limit for national officials promotes leadership renewal, accountability and transparency consistent with Article 10 of the Constitution of Kenya 2010.
74. The Petitioner further contested the differential treatment in the introduction of term limits of union officials as the term limit for Trustees is not the same as other national officials.
75. According to the Petitioner section 34(2)(b) of the Act requires that all trade union officials be elected every 5 years. He submits that the limitation of Trustees' tenure is therefore in conflict with the statutory requirement.
76. Freedom of Association INTERNATIONAL LABOUR OFFICE GENEVA Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO Fifth (revised) edition Copyright © International Labour Organization 2006 First edition 1972 Fifth (revised) edition 2006 states at paragraph 425:

*A ban on the re-election of trade union officials is not compatible with Convention No. 87. Such a ban, moreover, may have serious repercussions on the normal development of a trade union movement which does not have a sufficient number of persons capable of adequately carrying out the functions of trade union office. (See the 1996 Digest, para. 388.)*

77. At paragraph 426 of the Digest it states:

*426. Legislation which fixes the maximum length of the terms of trade union officers and which at the same time limits their right of re-election violates the right of organizations to elect their representatives in full freedom. (See the 1996 Digest, para. 389.)*

78. As stated by this court in **Mohamed v Union of Kenya Civil Servants, Registrar of Trade Unions (Interested Party) [2025] KEELRC 2727 (KLR)**, where compliance with a constitutional safeguard is contested, the burden rests with the party alleging that there was compliance to produce evidence of the same. In the said suit as in the

instant petition, the Petitioner challenged the introduction of term limit for a category of union officials.

79. Article 11(c) of the Respondent's constitution provides: "*A Trustee shall hold office for a maximum of five (5) years or until such time as he/she resigns by notice in writing to the National Executive Committee or is removed by vote at a National Delegates Conference or Special Delegates Conference...*".
80. Section 34 of the Act provides for election of all union officials every five years. The First Schedule to the Act further provides that the constitution of a union must provide for the appointment or election and removal of an executive, **and of trustees**, secretaries, treasurers and other officers of the trade union or employers' organisation.
81. The two provisions read together imply that all union officials including Trustees must be subjected to elections every five years. There is no statutory limitation or term limit for any category of union officials except the requirement for vacation of office every five years to pave way for fresh elections. The provision of differential terms of office

between Trustees and other union officials is thus inconsistent with statute. The same thus applies discriminately between the Trustees and other officials of the Respondent and in violation of Article 27 of the Constitution of Kenya, 2010.

82. The Petitioner further avers that Articles 14(e), 14(g), 14(h), and 14(i) of the Respondent's constitution are unlawful for introducing eligibility restrictions
83. Articles 14(e) provides: *"All candidates seeking election to National Executive Committee positions must first be delegates from their respective chapters and be eligible to attend and vote at the National Delegates Conference."*
84. According to the Petitioner, the Article treats incumbents at national level unfairly by subjecting them to two separate electoral processes in contravention of the circular dated 25<sup>th</sup> September, 2025 which recognizes two levels of elections at branch and national elections and is inconsistent with section 34(2)(a) of the Act.
85. I do not think this section is inconsistent with the provisions of the Act. By the nature of union membership, having direct

suffrage would require numerous administrative and financial resources. That is why voting at branch level is through direct ballot while national level elections are through delegate system. A candidate must be a voter as provided in section 33 of the Labour Relations Act to participate in elections either as a voter or as a candidate. It is therefore only logical that a candidate qualifies at branch level in order to vie for national office. This is why in the Circular of the Registrar of Trade Unions on the 2026, union election are staggered with branch elections expected to be carried out between 5th January and 31<sup>st</sup> March 2026 and national elections to be carried out between 1<sup>st</sup> April and 30<sup>th</sup> June, 2026 with federation elections to be held by 30<sup>th</sup> August, 2026.

86. This however does not mean that the provision cannot be improved to ensure all members have access to vie for national office without being delegates at the branch level as the Labour Relations Act does not require national office holders to be branch officials or delegates.

87. Article 14(g) and 14(h) which the Petitioner has also impugned provide: 14(g): *The returning officer shall be an independent person/body identified by the National Executive Committee.*
88. Article 14(h): *“The UASU electoral committee shall be composed of all returning officers from chapters.”*
89. The Petitioner’s argument is that these provisions create a conflict of interest as chapter returning officers are selected by chapter officials who are in many cases contestants in the elections being incumbents seeking re-election.
90. The Petitioner further submits the constitution of the Respondent provides for 7 chapters yet currently there are thirty-eight (38) chapters. That an electoral committee of 7 persons from 38 chapters is too large and would create both functional and managerial weaknesses as well as being financially burdensome and structurally untenable. He submits that Article 14(h) no longer serves the principles of independence, efficiency, impartiality or financial prudence.
91. I agree with the Petitioner that an electoral committee composed of 7 members from each of the 38 chapters of the

Respondent is not tenable both financially and logistically. There is thus need to rethink and realign and if possible amend this provision in order for the 2026 elections to be administratively, logistically and financially manageable. There is also need to provide for a transparent and objective mode of appointment or selection of the electoral committees that are not amenable to manipulation by incumbents. There is further need to agree on who is responsible for elections at each level to avoid overlapping or conflict in roles between the electoral body at branch level and at national level.

92. The issues of electoral committees would however, not qualify as either statutory or constitutional violation. They are administrative issues but can compromise elections if not sorted out.
93. Finally, on Article 14(i) the Petitioner submits that the provision that a member is eligible to vie as a candidate only if the member has been a paid up member of the union for at least 12 (twelve) consecutive months preceding the date of elections is in violation of the statutory provisions and

potentially excludes candidates who are eligible under the Labour Relations Act.

94. Section 33 of the Act provides that a member is not eligible to vote if they are more than 13 weeks in arrears of subscriptions. Locking out members for 12 months is thus in direct conflict with the Act and unfairly discriminates against new members.
95. The provision further discriminates unfairly between incumbents and other members as all incumbents would have been in the membership of the union for more than 12 months. Section 34(2)(a) prohibits any provision that discriminate unfairly between incumbents and other candidates in elections.
96. The Petitioner further avers that the amendment of the impugned articles of the Respondent's constitution did not comply with Article 23 of the Respondent's Constitution which provides that any amendments or adoption of constitutional provisions must be subjected to proper voting procedures including secret balloting. He avers that there is no evidence that the impugned amendments were ever

subjected to secret balloting nor that the general membership was consulted. The Petitioner relies on the decision in **Mohamed v Union of Kenya Civil Servants** (supra) where the court nullified certain provisions of the union constitution that were carried out without membership participation.

97. The Respondent in both the reply and the submissions only stated that the amendments were carried out in conformity with the union constitution and the law but did not attempt to prove its averments by submitting any evidence of compliance. I therefore find no reason to disagree with the Petitioner that the amendments did not comply with the Respondent's constitution.

**Whether the Petitioner is entitled to the orders sought**

98. The Petitioner prayed for a declaration that the impugned provisions are unconstitutional and unlawful and for an order directing the Interested Party to delete the impugned provisions of the Revised Constitution of UASU. He further

prayed for an injunction restraining the Interested Party from taking any steps to enforce the said provisions.

99. I am however conscious of the fact that union elections are due to be held from January, 2026 and that nullifying all the provisions cited by the Petitioner may cripple the elections which would not be in the interest of the members of the Respondent.

100. For the foregoing reasons I make orders as follows:

a. The following provisions of the Revised Constitution of the Respondent are unconstitutional and unlawful and are therefore declared null and void:

- i. the provisions of Articles 8(c) and 19(f) allowing the National Executive Committee and the Chapter Executive Committees to co-opt members.
- ii. Article 9(d) to the extent that it limits the term of office of Officials.
- iii. Article 11(c) in so far as it limits the term of office of Trustees and creates a differential between the term of office of Trustees and other union officials.

iv. Article 14(i) in so far as it discriminates against new members who wish to vie for elective positions.

b. The following provisions of the Respondent's Constitution are to be amended as specified:

i. Article 6(d) to be amended to remove the ambiguity in the procedure for election of delegates.

ii. Article 14(e) to be amended to remove the restriction of eligibility to vie for national positions by members who are not delegates

iii. 14(g) to be amended to remove the ambiguity with regard to identification of returning officers

iv. 14(h) to be amended to provide for a manageable number of electoral committee and define roles of returning officers vis-à-vis returning officers

101. The Interested Party is directed to ensure compliance with this judgment.

102. Each party shall bear its costs of this suit.

103. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON  
THIS 22<sup>ND</sup> DAY OF DECEMBER, 2025**

**MAUREEN ONYANGO  
JUDGE**