

(b) That this Honourable Court be pleased to grant leave to the Applicant to apply for an order of mandamus directing that the Respondent immediately reinstate the Ex-parte Applicants as members of the Respondent union and recognize them as members and officials of the union with immediate effect.

The gravamen of the application discerned from the grounds set out on the face of the application and supporting affidavit of Aggrey Keya Osogo the 1st Ex-parte Applicant is that on the 17th November 2025, the Respondent at its Annual National Delegates Conference (ADC) held at Taveta Beach Hotel and Club in Mombasa County, passed a vote of no confidence against the Exparte Applicants and as a consequence revoked their membership to the Kenya University Staff Union (KUSU) reverting them to Agency Fee paying status. That the decision was communicated to the Vice Chancellor of Kibabii University by a letter dated 20th November 2023 signed by the secretary general of the union Dr. Charles Mukhwaya.

That the said decision was made pursuant to Article 18(1)(c) of the KUSU constitution which provides:

“a member of the Branch Executive Committee National Executive Committee/National Governing Council or the entire Executive Committee/ Governing Council or Trustee(s) shall relinquish office: By a vote of no confidence passed by two thirds majority of the voting members present at the National Delegates Conference on special National Delegates Conference as the case may be: provided that such motion shall not be passed until the official sought to be removed or the chairperson in case of a resolution to remove entire

committee has been given a reasonable opportunity to present a defense at the meeting.”

That the Exparte Applicants were not afforded a chance by the Respondent to respond to the allegations levelled against them at the ADC held on 17th November 2023.

That the Respondent did not invite the delegates from Kibabii University to the ADC. It took the decision of the court to allow the delegates to attend the ADC. That this was a clear violation of the Exparte Applicants' right to fair Administrative Action.

That the 2nd Exparte Applicant is a Branch Secretary to the Kibabii branch and cannot be impeached by the ADC. That a vote of no confidence could only be made against him by the branch Annual General Meeting.

That in terms of section 4(3) of the Fair Administrative Action Act, 2015 where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator is required to give the person affected by the decision a prior and adequate notice of the nature and reasons for the proposed administrative action and an opportunity to be heard and to make representation in that regard.

That the Respondent did not give the Applicants an opportunity to be heard prior to making the decision thus falling short of the criteria stipulated under section 4 of the Act.

That the Applicants' right to fair labour practices guaranteed under Article 41 of the constitution of Kenya 2010 was violated by the Respondent.

That the Secretary General of the union was just settling scores with the Exparte Applicants and had issued threats to them in this regard. That the Secretary General had indeed recommended that the Exparte applicants be processed for immediate expulsion from the union in a National Governing Council (NGE) communique to the branch leadership of Kibabii.

That the court do intervene to stop this unlawful, unfair and unreasonable conduct by the Respondent.

Replying Affidavit

The Respondent replied to the notice of motion application dated 2nd December 2023 vide a replying affidavit by Dr. Charles Mukhwaya sworn to on 11th February 2024 in which he deposes inter alia that the Exparte Applicants were formerly the Deputy Secretary General of the Respondent as well as the Branch Chairman and the Branch secretary of Kibabii Branch of the Respondent. That the two respectively relinquished their offices following a vote of no confidence which was passed by two thirds majority of voting members present at the ADC held on 17th November 2023 in Mombasa.

That the Exparte Applicants' subscription to the Respondent union was converted from membership to an Agency Fee paying subscription upon the expulsion from the union.

That the action taken was well within the Respondent's constitution under Article 20 which provides for discipline of members.

That the ADC duly communicated the decision to expel the Exparte Applicants from the union to them.

That the procedure for removal of an official of the Respondent from office as enshrined under Article 18(1)(c) of the union constitution was followed.

That the Notional Governing Council (NGC) had recommended the processing of the Exparte Applicants for immediate expulsion from the union prior to the holding of the ADC on 17th November 2023 at Mombasa.

That the motion for vote of no confidence and removal of the Exparte Applicants from office was raised during plenary session wherein the delegates present were sharing views in regard of the minutes of the previous meetings and the reports presented by the National Executive Committee.

That there was no ulterior motive as suggested by the Exparte Applicants. That the Applicants had not met the criteria for participation in the ADC by virtue of not having paid up their subscription to the union for more than 13 weeks.

That the Exparte Applicants obtained a court order directing the Respondent to allow their attendance and participation in the ADC

fraudulently by forging evidence of payment of their subscription when they had not actually paid.

That the two were involved in fraudulent activities such as opening new bank accounts for the branch without authorization from the national office. That the bank account was never disclosed and the Exparte Applicants misrepresented that the Respondent is a faith-based organization for reasons best known to themselves.

That the funds deposited in the Kenya Commercial Bank Account number 131297002, which is not a union account have never been accounted for and or remitted for the intended purpose to the national office.

That even after obtaining court orders to attend the ADC, to represent their branch as they had purported, they failed to attend that conference. The two therefore wasted an opportunity to address the conference and defend themselves from accusations leveled against them.

That the Exparte Applicants, lack clean hands and good faith and are not deserving of the orders sought.

That the secretary general is the chief Executive Officer of the union in terms of Article 10(c) and has the duty to communicate decisions made by the national organs of the union. Such communication is therefore not demonstration of any personal vendetta against the Applicants.

That the Applicants did not exhaust internal dispute resolution mechanisms by way of an appeal in terms of Article 20(a)(ii) of the union constitution.

That the union has the right to exercise disciplinary control over its membership and acted within that mandate.

That the application be dismissed with costs.

DETERMINATION

The parties filed written submissions which the court has considered together with the depositions by the parties. The issues for determination are: -

- (a) Whether the Respondent had a valid reason to expel the Exparte Applicants from the union membership and from the official positions the two held in the union
- (b) Whether the Respondent followed a fair procedure in expelling the Ex-parte Applicants.
- (c) Whether the Ex-parte Applicants are entitled to the reliefs sought.

The Applicants have adduced evidence which is common cause that they were expelled as members of the Respondent union and also removed from their elected positions as Deputy Secretary General of the Respondent as well as the Branch Chairman and the Branch secretary of Kibabii Branch of the Respondent respectively by the KUSU Annual Delegates Conference (ADC) held on 17th November 2023.

It is not in dispute that the two members of the union who were also elected officials were not present at the ADC on 17th November 2023, when the adverse decision was taken against them. The Respondent states that the ADC passed a vote of no confidence in the Exparte Applicants as elected officers of the union and also revoked their union membership and converted it to Agency Fee paying status.

The Respondent placed two letters dated 20th November 2023 conveying the ADC decision to the Exparte Applicants. The letters were under the hand of the Secretary General of the union.

The Exparte Applicants adduced evidence that they had not received prior to the holding of the ADC on 17th November 2023 notices setting out alleged offences or misconduct against them with invitation to respond to the misconduct or offences. The Applicants further adduced evidence that they had no opportunity to respond to the alleged offences in writing prior to the holding of the ADC, that decided their fate. The Applicants further stated that they did not receive notices to attend the ADC specifically to answer to charges of misconduct that were likely to cause them to be removed from the membership of the union and to have their election as union officials revoked for alleged misconduct.

The Respondent did not present before court any notice of alleged misconduct duly served to the Applicants with a request to answer to the charges. The Respondent did not also present before court any notice to the Applicants requesting them to attend the ADC to answer to alleged

misconduct which misconduct if proved would cause them to be removed from their official positions and as members of the union.

In short, the Respondent has failed to rebut the credible evidence by the Applicants that the adverse action taken by ADC, against them was done without notice, notice to show cause or any opportunity to the Applicants to defend themselves before the ADC which made the adverse decision against them.

The court finds that the conduct by the Respondent violated Article 18(1)(c) of the KUSU constitution which provided that any vote of no confidence may be passed against a national or Branch Executive such as the two Applicants by a two thirds majority vote of the voting members present at the ADC provided such a motion shall not be passed until the official sought to be removed has been given a reasonable opportunity to present a defence at a meeting. (emphasis added)

The court finds that the Respondents made no effort at all to notify the Applicants of the charges they were faced with and to provide them with opportunity to be heard by the ADC before they made decision to remove them as officials of the National Executive Committee and Branch Executive Committee respectively.

The Respondent not only engaged in unfair labour practice in violation of Article 41 of the constitution by condemning the Applicants unheard, but also the Respondent violated Article 47(1) of the constitution read with section 4(3) of the Fair Administrative Action Act, 2015 by failing to give the Applicants adequate notice of the nature and reasons for the proposed

administrative action meant to be taken against them by the ADC, and further failed to give them opportunity to be heard and to make representation in that regard.

The Respondent did not produce an iota of evidence to the contrary. The Applicants therefore have proved their case on a balance of probability and are entitled to the reliefs sought.

The decision by the Respondent against the Applicants was in sum unlawful, unreasonable, irrational and procedurally obtained unfairly. The decision violated the Applicants' right to be heard; to fair labour practices and to expeditious, efficient, lawful, reasonable and procedurally fair administrative action.

The application is granted and the following orders made in favour of the Ex-parte Applicants against the Respondent:

(a) An order of certiorari is issued to bring to this Court for the purpose of being quashed, the decision of the Kenya University Staff Union to revoke the Ex-parte Applicants membership to the union and to hold official position at the National Executive Committee and Branch Executive Committee pursuant to the Annual Delegates Conference decision communicated vide the letters dated 20th November 2023 cited **CESSATION AS UNION MEMBER AND OFFICIAL OF KUSU: AGGREY KEYA OSOGO P/F. 0317 AND JOSECK OLUKUSI ALWALA P/F. 0318.**

(b) An order of mandamus is issued directing that the Respondent to immediately reinstate the Ex-parte Applicants as members of the

Respondent union and recognize them as members and officials of the union with immediate effect.

(c) Costs of the application

Dated at Nairobi this **18th Day of December 2025.**

Mathews Nduma

JUDGE

Appearance:

Mr. Mukonyi for Exparte Applicants

M/s. Kibit for Respondent

Mr. Kemboi – Court Assistant