

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
PETITION NO. E011 OF 2025

**IN THE MATTER OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF THE CONTRAVENTION OF THE
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
ARTICLES 10, 23, 27, 41, 47 & 50 OF THE CONSTITUTION OF
KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF
ARTICLES 1, 3, 4, 5(d) 8, 12, 15, 18, 21, 24 AND 25(2) AND 29 OF
THE UNION OF KENYA CIVIL SERVANTS' CONSTITUTION**
BENARD OTIENO PETITIONER

-VERSUS-

TOM MBOYA ODEGE1ST RESPONDENT
UNION OF KENYA CIVIL SERVANTS2ND RESPONDENT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. The petitioner commenced these proceedings by way of a petition dated 18th August 2025 through M/s Abok Odhiambo & Company Advocates seeking for the following reliefs –
 - a. A declaration that the decision by the Respondents Body National Executive Board (NEB) meeting of 21st February 2025 to terminate membership of the petitioner in the union of Kenya Civil Servants is unconstitutional, null and void, and is of no consequence.*
 - b. A declaration that the Petitioner is a bonafide member of the 2nd respondent.*
 - c. A permanent order of injunction against the respondents restraining them from terminating the membership of petitioner from the 2nd respondent body and interfering with his democratic participation in the affairs of the labor union including elections of the union officials at all levels.*
 - d. A declaration that the decision by the 2nd respondent body National Executive Board (NEB) meeting of 21st February 2025 terminating the membership of the petitioner violates the petitioner's fundamental rights and freedom and is entitled to compensation.*

4. ***THAT pending the hearing and determination of the petition, an order be and is hereby issued directing the 1st and 2nd respondents to issue the petitioner with a letter inviting him to the National Delegates Conference slated for 6th October 2025 within 14 days and ensure his full participation without harassment, intimidation or humiliation whatsoever from any person, agent or assigns of the 2nd respondent including the security officers of the KICD.***
5. ***THAT pending the hearing and determination of the substantive petition, a conservatory order do issue against the Interested party herein restraining them from making any alterations, modification and/or changes of the registered officials of the 2nd respondent's Kakamega Union branch.***
6. ***THAT pending the hearing and determination of the petition, an interlocutory injunction be and is hereby issued against the respondents, their agents, organs and or assigns, restraining them from taking further steps to remove, discuss the membership of the petitioner, interfere with, intimidate, or in any other way whatsoever interfere with the membership of the petitioner in the 2nd respondent body, and his lawful participation in all activities.***
7. ***THAT costs of the application be provided for.***

3. The application is expressed to be brought under the provisions of

Rules 4(1) & 23(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (the Mutunga Rules) & Section 3A of the Civil Procedure Act.

4. The application is supported with an affidavit sworn by the petitioner on even date with several annexures thereto.
5. On 5th November 2024 when the matter came up in court it was directed that the application be served upon the respondents for the inter-partes hearing on 23rd September 2025. The court also issued an ex-parte interim order injunctioning the respondents and the interested party from initiating, effecting, and or making any changes to the register of the officials of the Kakamega branch of the 2nd respondent pending inter-partes hearing of the application or further or other orders of the court.
6. On 23rd September 2025 Mr. Muluma appeared for the petitioner and Mr. Okong'o from Okong'o, Wandago & Company appeared for the 1st and 2nd respondents. There was no appearance for the interested party though duly served. It was by consent directed that the respondents and the interested party respond to the application and that the same be canvassed by way of written submissions. The petitioner was granted leave to file a further or supplementary affidavit upon service of the replying affidavits.
7. In response to the application, the 1st and 2nd respondents filed a

joint replying affidavit sworn by the 1st respondent on 19th September 2025. The application is opposed from various fronts and perspectives.

8. The petitioner filed a further affidavit sworn by himself on 27th October 2025 responding to the replying affidavit alluded to above.
9. Counsel for the petitioner Mr. Mulama filed written submissions dated 27th October 2025 while Mr. Okong'o for the 1st and 2nd respondents filed written submissions dated 23rd October 2025.
10. No response was received from the interested party.

II. EVIDENCE

11. As contained and expressed in the petition and the application, the petitioner's case is that he is the duly elected secretary of the Kakamega Branch of the 2nd respondent and an active and fully paid up member of the union from 2011 to date.
12. It is deposed that as a unionist the petitioner has actively participated in the programs and management of the union both at the branch and national level and in the process faced hostilities from other members and officials of the union opposed to the reforms and accountability in the union.
13. It is deposed that towards the end of year 2024 the petitioner noticed that union dues had not been deducted from his pay-slips for October, November, and December and he immediately acted to rectify the situation by making payments directly to the union.

Subsequently, the payroll was rectified and monthly deductions made in full and updated.

14. It is deposed that while the above anomaly affected many members, on 28th February 2025 the 2nd respondent issued a notice to the petitioner purporting to terminate his membership with the union on the basis of the already cleared arrears of union dues hence locking him out of union activities.
15. It is further deposed that he was locked out of Advisory Council meeting held in Nairobi on 11th April 2025 and his allowances were also withheld.
16. It is deposed that the respondents have unlawfully stripped the petitioner of his constitutional and statutory rights to and participate in the activities of the union. It is deposed that the petitioner took up the matter with the interested party but no help came along as he was advised to exhaust the internal dispute resolution mechanism.
17. In the joint replying affidavit for the respondents it is deposed that the removal of the petitioner as a member of the union vide a letter dated 28th February 2025 was done in accordance with the law and in any event the action is not conclusive as the same is subject to review or ratification in a forthcoming national delegates conference. However, it is deposed that, *prima facie*, the petitioner's continued membership with the union is untenable for the reasons stated in the said letter.

18. It is deposed that the petitioner has not approached the Advisory Council of the union and the National Delegates Conference and hence the petition is filed in violation of the *doctrine of exhaustion* and the principle of constitutional avoidance. It is further stated that the petitioner admits to having approached the interested party over this subject matter and was advised to exhaust the internal dispute resolution mechanism before taking any other or further step. Instead of doing so, the petitioner prematurely filed this matter in court.
19. It is deposed that the petitioner has violated Articles 4, 5, 12, & 15 of the constitution of the union and should therefore not benefit from any orders issued by the court. It is deposed that the petitioner has been in suspension since 31st August 2023 and has failed, refused, and or neglected to attend disciplinary hearing when summoned by the relevant organ of the union, the National Executive Board.
20. It is further deposed that if the petitioner was unhappy with the decision made by the National Executive Board to terminate his membership, he had a right to appeal to the Advisory Committee and thereafter appeal to the National Delegates Conference. It is categorically stated that the petitioner has ignored this agreed and binding process and instead approached the court prematurely.
21. The 1st respondent stated that he did not pray any part, in person, in

the suspension of the petitioner from the union and his being joined in the petition is malicious and intended to undermine him in his position as the Secretary General of the 2nd respondent. It is further deposed that the decision to suspend the petitioner was made in a meeting of the National Executive Board to which the petitioner was invited but absconded.

22. For all the foregoing, the court is urged to strike out the application and the petition with costs.
23. In the further affidavit by the petitioner, it is deposed that the letter suspending him dated 23rd August 2023 and that terminating his membership with the union dated 28th February 2025 are contradictory on the reasons therefor hence demonstrating malice and unfairness of the actions taken against him. It is further deposed that both actions were taken without a hearing.
24. It is deposed that the petitioner is not in arrears of union dues and no notice or demand of such arrears was ever made to him.
25. It is deposed that the petitioner's appeal to the Advisory Council was not responded to and or was ignored and that there is no National Delegates Conference pending as elections for all trade unions are due.
26. It is further deposed that the notice of 28th February 2025 was a consequence of a meeting of the National Executive Board held on 21st February 2025 whereto he was not invited and no notice of

invitation has been availed by the respondents.

27. It is deposed that the suspension of 31st August 2023 was lifted by the court in Kakamega ELRC No. 007 of 2023 and the petitioner and the entire branch officials reinstated into office and hence the purported termination of the petitioner's union membership is unfair and unlawful. It is further deposed that it is the 1st respondent who unilaterally purported to terminate the membership without any legal basis.
28. It is deposed that the respondents have withheld the monthly allowances and emoluments payable to the petitioner since August 2023 for no reasonable or just cause. It is further deposed that the petitioner is now owed over Kshs412,000/= as explained in the supporting affidavit to the application and the petition.
29. The court is urged to allow the application with costs.

III. SUBMISSIONS

30. In support of the application counsel for the petitioner submitted on one broad issue – *Whether the application dated 18/08/2025 is merited and whether the orders sought should be granted.*
31. It is submitted that the evidence placed before the court confirms that the suspension and termination of the petitioner's union membership was undertaken without due process. It is submitted that the purported reason for the termination of the membership as per the letter of 28th February 2025 is that he failed to remit

monthly subscriptions while the supporting affidavit confirms that the petitioner was not in such arrears as at the time the said letter was issued. It is submitted that no rebuttal was made by the respondents to this fact.

32. It is further submitted that no evidence has been availed that indeed the National Executive Board of the 2nd respondent met on 21st February 2025 or at any other time or at all and resolved to terminate the petitioner's membership with the union.
33. It is further submitted that the petitioner's case that he was denied a hearing before the administrative action was taken against him has not been disputed or disapproved by the respondents. The court is reminded that the suspension was set aside in the cause alluded to in the foregoing part of this ruling and, in any event, the reasons therefor were different from those for the termination of the petitioner's membership.
34. It is thus submitted that the termination was targeted, discriminative, unfair, unjust, and unlawful and should not be allowed to stand pending the hearing of the petition. It is further submitted that if the application fails the petition shall be rendered nugatory since the petitioner has demonstrated a *prima facie* case with a high chance of success. Counsel cited ***Njagi Zachariah Mwaniki V Lucy Muthoni Ndiga & Others (2025) KEHC 9562 (KLR)*** in support of the foregoing.

35. The court is urged to allow the application to maintain *status quo* pending the hearing and determination of the petition.
36. For the respondent's counsel therefor submitted that the letter dated 28th February 2025 terminating the petitioner's membership was authored by the 1st for and on behalf of the 2nd respondent. It is submitted that the expulsion was not final as the same was subject to ratification in the annual or special delegates conference. It is submitted that the reason for the termination was stated in the letter as failure by the petitioner to meet monthly subscriptions in violation of Article 4(2) of the Constitution of the 2nd respondent.
37. It is further submitted that under Article 15(4)(iv) of the constitution of the 2nd respondent the petitioner was supposed to challenge the termination by the National Administrative Council to the National Executive Board. The court is urged not to intervene unless and until the petitioner has exhausted this alternative internal dispute resolution mechanism. It is submitted that the filing of this petition offends the *doctrine of exhaustion* and the principle of constitutional avoidance. It is further submitted that the petitioner failed, refused, and or neglected to take this option even after being so advised by the interested party.
38. It is submitted that the petitioner was invited to a meeting with the National Executive Board but he failed to attend and his termination was discussed and the decision thereof communicated to him as per

the letter of 28th February 2025. The court is urged not to allow the petitioner to benefit from his own misconduct and arrogance.

39. In support of the submission that the petitioner is guilty of violation of the *doctrine of exhaustion* counsel referred to the decision in *Nyaoga V Chairman of the Kisii County Assembly & 3 Others (2023) KECA 1540 (KLR)* and *William Odhiambo Kamogi & 3 Others V Attorney General & 4 Others (2020) eKLR*. It is further submitted that as a member of the union the petitioner is bound by the constitution of the union wherein the internal dispute resolution mechanism is provided for.
40. The court is urged to dismiss the petition with costs for lack of merits.

IV. ISSUES FOR DETERMINATION

41. The court has gone through the petition, the supporting affidavit and the annexures thereto, the application, the supporting affidavit and the annexures thereto, the replying affidavit and the annexures thereto, the supplementary affidavit, and the written submissions by counsel for both sides.
42. The materials above raise many issues for consideration and determination by the court but the court considers the issue for consideration and determination at this stage of the proceedings to be - *Whether the petitioner is deserving of the interim orders sought in the application pending the hearing and determination*

of the petition.

V. DETERMINATION

43. As stated above, the respondents are opposed to the petition and the application on the basis of purported lack of jurisdiction of the court over the subject matter and the alleged violation of the *doctrine of exhaustion* by the petitioner hence rendering the petition premature and incompetent. This is a serious jurisdictional issue that deserves investigation, ventilation, and determination ahead of the hearing of the petition. However, the respondents did not file a notice of preliminary objection (PO) but rather raised the issue in opposition to the application. Nonetheless, that does not diminish the importance and value for the court to determine the same as a fundamental issue.
44. The evidence on record is that the petitioner was evicted from the union, the 2nd respondent, vide a letter dated 28th February 2025. The letter was signed off by the 1st respondent in his capacity as the Secretary General of the 2nd respondent. For ease of reference, the said letter provided as follows –



UNION OF KENYA CIVIL SERVANTS

“We serve the Nation”

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Moi Avenue, Next to Jeevanjee Gardens
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Tel: 0722 225 908,0737 435 755
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UKCS/BRA/KKM/VOL.1 (148)

28th February, 2025

Bernard Otieno

P.O. Box 218-50100

KAKAMEGA.

Dear Comrade,

RE: TERMINATION OF MEMBERSHIP

***This is to notify you about stand and eligibility for membership of
Union of Kenya Civil Servants.***

***You have contravened article 4(2)(a)(b) of the Union constitution by
ceasing your monthly subscription.***

***It has been noted that you stopped your monthly subscription since the
month of October 2024 to date.***

***The National Executive Board (NEB) meeting of 21st February, 2025
directed you be struck from Register of Registrar of Trade Unions as***

Kakamega branch secretary and member of Ukcs.

Kindly be guided.

Yours faithfully,

Hon. Tom M. Odege, MP

SECRETARY GENERAL

<i>National chairman</i>	<i>- Allsokor M. Ishaq</i>	<i>Secretary General</i>	<i>- Tom M. Odege</i>	<i>National Organizing secretary</i>	<i>-</i>
<i>1st National chairman</i>	<i>Vice Chairman -Tiff Mbwana</i>	<i>1st Deputy Secretary General -</i>	<i>- contant Ademba</i>	<i>National treasurer</i>	<i>- Wilson Asingo</i>
<i>2nd National Vice Chairman</i>	<i>- Benard Makutitu</i>	<i>2nd Deputy Secretary General</i>	<i>- Francis Aleto</i>	<i>Deputy National Treasures</i>	<i>- Abdul Malik A</i>
		<i>1st Ass, Secretary General</i>		<i>Women Leader</i>	<i>- Judy Wangari</i>
		<i>2nd Ass. Secretary General</i>		<i>National Young Worker</i>	<i>- Mary Mukiri</i>
					<i>- Ellon Cheruiyot</i>

45. There is no evidence from the respondents that the petitioner was given a hearing before this notice of termination of union membership was issued. The reason given for the termination is alleged failure by the petitioner to remit monthly union membership dues. However, the assertion by the petitioner that the non-remittance was occasioned by his employer and that he rectified the situation and paid the dues for October, November, and December, 2024, is neither denied nor rebutted by the respondents.
46. Further, the respondents, though so challenged by the petitioner, failed to avail evidence, say minutes, in support of the alleged National Executive Board meeting held on 21st February 2025 wherein it was resolved that the petitioner be removed from membership of the union. In my view, this somehow supports the

theory by the petitioner that his removal from the membership of the union was a unilateral decision by the 1st respondent based on his personal differences with the petitioner.

47. The stripping of the membership of the petitioner with the union was allegedly to be ratified in a National Delegates Conference that was to take place on 6th October 2025. The court has not been informed of the outcome of that meeting in regard to the subject matter. The court had already issued an order, by consent, directing the respondents to allow the petitioner to attend and participate in the said conference.

48. *Prima facie*, therefore, there was a purported removal of the petitioner from the membership of the union without due process or some basic hearing. On the other hand, the constitution of the union provides for an appeal process that the petitioner has clearly not followed before filing this matter in court hence the charge by the respondents that he is in violation of the ***doctrine of exhaustion***. However, the petitioner countered that his appeal was ignored and or neglected by the respondents.

49. In the circumstances, and in the interest of justice, pending the hearing and determination of the petition, it is only fair and just that the decision by the respondents as communicated in the letter of 28th February 2025 be suspended. In the meantime, the petitioner shall be free to challenge the termination of his membership using

the recognized internal dispute resolution mechanism as per the constitution of the union and the respondent shall be obligated to receive, process, and hear the appeal.

50. The court was informed that a notice of elections has been issued by the interested party for new officials to take over the management of the union nationwide. Unless and until new officials are elected the interested party shall not alter the register and the other details for the Kakamega branch of the union.

51. Consequently, the petitioner is entitled to all the allowances and other emoluments payable to him as the branch secretary until a new team takes over.

52. The court has said all the above in full cognizance of the fact that this petition may be rendered moot by the soon to be conducted nationwide elections not only for the 2nd respondents but all unions across the country.

VI. ORDERS

53. In allowing the notice of motion by the petitioner dated 18th August 2025, the court makes the following orders –

a) That pending the hearing and determination of the petition, the letter dated 28th February 2025 terminating the petitioner’s membership with the 2nd respondent is hereby suspended.

b) That the petitioner is free to attend and participate in the

meetings and activities of the union.

c) That unless and until an election is held as intimated and or the petitioner is lawfully removed from office, the interested party is barred from making any changes in the entries for the Kakamega branch of the union.

d) Costs of the application shall be in the petition.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
BUNGOMA THIS 15TH DAY OF JANUARY, 2026.**

.....
DAVID NDERITU
JUDGE