

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC CAUSE NO. E260 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

JOASH OKEO.....1ST
APPLICANT/PETITIONER

MARTIN ONYANGO OCHIENG.....2ND
APPLICANT/PETITIONER

PATRICK ONDUKO ONYANCHA.....3RD
APPLICANT/PETITIONER

MOSES GICHU MWAURA..... 4TH
APPLICANT/PETITIONER

VS

COUNTY GOVERNMENT

WORKERS UNION (K).....1ST
RESPONDENT

MR ROBA DUBA.....2ND
RESPONDENT

AND

REGISTRAR OF TRADE UNIONS..... 1ST INTERESTED
PARTY

CENTRAL ORGANIZATION OF
TRADE UNIONS (COTU).....2ND INTERESTED
PARTY

RULING

1 The Petitioners/Applicants filed a Notice of Motion dated 15th December 2025 seeking orders that: -

- 1) *Spent.*

- 2) *pending the hearing and determination of this Application inter partes, a conservatory order does issue suspending, staying and/or quashing the decision of the 1st Respondent fixing the National/Branch Elections of the union for 17th January 2026.*
- 3) *pending the hearing and determination of this Application and Petition inters partes, an order of prohibition restraining the 1st Respondent from proceeding with the elections on the impugned date.*
- 4) *pending the hearing and determination of the petition herein, a declaration that the 1st Respondent's decision is unconstitutional, discriminatory, and violates Articles 27,32, 38, and 41 of the Constitution.*
- 5) *pending the hearing and determination of the petition, a order directing the Respondent to fix a new election date within the statutory window provided by the Registrar of Trade Unions that ensures full participation of all members.*
- 6) *Costs of this application.*
- 7) *Any other relief the Court may deem just and equitable*

Petitioners/Applicants' Case

- 2 The Applicants aver that vide a notice to members by the 1st Respondent's Branch Secretary dated 13th November

2025, the Respondent issued a notice scheduling its Branch Elections for 17th January 2026.

- 3 The Applicants aver that a segment of the union's membership observe Saturday as a sacred day of worship and cannot participate in secular activities on that day. Additionally, the proposed venue is within the place of work posing reasonable difficulty for members to travel to the venue noting that the said date of election falls outside the working days for members.
- 4 The Applicants aver that the Respondents is aware of this minority and has previously accommodated religious observance in union activities.
- 5 It is the Applicants' case that the Respondents' decision of scheduling the elections on Saturday excludes and disenfranchises the affected members in contravention of Articles 27, 32, 38 and 41 of the Constitution.
- 6 The Applicants aver that the Respondents have provided no justification under Article 24 for limiting members' constitutional rights.
- 7 The Applicants contend that Internal union rules cannot override constitutional norms; the Board's discretion under the Union Constitution is not unfettered.
- 8 The Applicants aver that the 1st Interested Party has provided that elections may be held any time between January and March 2026, demonstrating that rescheduling is administratively feasible.

- 9 They further aver that the 1st Respondent's Constitution affords power to the 2nd Respondent to deal with any eventuality whenever branch elections are not held on the date determined and advised by the Central Administration Board (CAB).
- 10 The Applicants aver that unless this Court intervenes, the 1st Respondent will proceed with elections on the impugned date, resulting in irreparable violation of my constitutional and labour rights and of other aggrieved members.
- 11 The Applicants aver that the Respondents' the decision will cause irreparable constitutional harm if allowed to proceed on the impugned date.

Respondents' Case

- 12 In opposition to the application, the Respondents filed a replying affidavit dated 11th January 2025 and further affidavit dated 15th January 2025.
- 13 The Respondents aver that the Petitioners application and petition based on the scheduling of the 1st Respondent union's branch elections on 17th January, 2026 which falls on a Saturday is irrational and unlawful as the said date excludes and disenfranchises members of the 1st Respondent Union who observe Saturday as a sacred day of worship and conflicts with their religious observance.

- 14 The Respondents aver that the process of scheduling of union elections is guided by the 1st Interested Party's circulars and directives and once the same are issued, the 1st Respondent's Central Administration Board (CAB) sets and determines the dates of the elections and the 1st Respondent then proceeds to undertake the necessary internal processes in preparation of the union elections in strict adherence to its constitution, which mandate the 1st Respondent's CAB carried out as dictated under the 1st Respondent's union constitution.

- 15 The Respondents aver that the Petitioners have failed to demonstrate and satisfy the principles for the grant of conservatory orders, being a showing of an arguable *prima facie* case, prejudice or harm to be suffered, the promotion or enhancement of constitutional values, objects, and principles, preservation of the substratum of the petition from being rendered nugatory, and the broader public interest being prejudiced.

- 16 The Respondents aver that the broader public interest would be prejudiced by a decision to exercise discretion to grant the conservatory orders being sought since the Petitioners constitute only a simple minority of the 1st Respondent's members who are disgruntled by the Union's decision to conduct its branch elections on 17th January, 2026, being only 4 out of the 9,000 plus members due to participate in the said elections scheduled on the said date.

- 17 The Respondents aver that Articles 26 and 48 of the 1st Respondent's constitution provide that CAB and the Elections Committee are the sole bodies charged with the mandate of organizing, managing, and overseeing all union election processes, which includes the setting and confirmation of union election dates, which mandate the said bodies have performed with strict adherence to the 1st Respondent's constitution.
- 18 It is the Respondents' case that the Petitioners' claim of illegality, irrationality, and disproportionality in the selection of Saturday as the date for conducting the 1st Respondent's branch elections is misconceived and unfounded.
- 19 The Respondents assert that the election date was strategically selected by the CAB pursuant to Article 26.6 of the Union's constitution to ensure maximum participation, operational continuity, and alignment with the established county work culture.
- 20 The Respondents aver that on 31st October, 2025, the 1st Respondent's CAB met at the Nairobi Safari Club Hotel to discuss the Union's Quinquennial elections pursuant to CAB's mandate under Article 26.6 of the Union's Constitution to determine the dates of the elections of Union officials both at the national and branch levels, and that in the said meeting, a resolution was proposed and seconded to the effect that all branch elections of the 1st Respondent be held on Saturday 17th January, 2026 and national elections be held on Friday 27th February, 2026,

after taking into account all the relevant factors and member views.

- 21 The Respondents aver that the scheduling of the Union's quinquennial branch elections on Saturday 17th January, 2026 was lawfully undertaken in strict compliance with the Union Constitution, established internal procedures, and the applicable labour law framework.
- 22 It is the Respondents' case that the election date was validly determined by the Central Administration Board (CAB) pursuant to Article 26.6 of the Union Constitution, which expressly mandates the CAB to fix a uniform national date for all quinquennial branch elections preceding the National Delegates Conference (NDC), within the timelines advised by the Registrar of Trade Unions and the General Secretary.
- 23 The Respondents contend that the decision to hold the elections on 17th January 2026 was neither arbitrary nor unilateral, but was reached after extensive deliberations within the Union's governing organs, followed by the issuance of a formal and binding notice to all members in November 2025.
- 24 The Respondents assert that the election date applies uniformly across all branches nationwide and forms an indispensable part of the statutory and constitutional process leading to the NDC. Altering the date would disrupt a nationally coordinated electoral programme governed by timelines set by the Registrar of Trade Unions.

- 25 It is the Respondents' case that holding the elections on a Saturday does not contravene the Constitution of Kenya, the Labour Relations Act, or the Union Constitution. There is no violation of the right to freedom of religion under Article 32, as participation in the elections is voluntary, non-attendance is not penalised, and no member is compelled to act contrary to their faith.
- 26 The Respondents further aver that the Petitioners' objection is de minimis, noting that only 15 members out of over 9,000 members of the Nairobi Branch raised the concern, and that acceding to their demands would unjustly prejudice the rights and legitimate expectations of the overwhelming majority of members and disrupt the Union's national electoral calendar affecting over 50,000 members.
- 27 The Respondents contend that rescheduling or cancelling the elections would occasion undue hardship, severe logistical challenges, and substantial financial loss, given the resources already expended in preparation, and would destabilise the planned transition from branch elections to national elections scheduled for February 2026.
- 28 The Respondents assert that reasonable accommodation has nonetheless been offered to Adventist members by prioritising their voting early on the election day to enable them to observe their religious practices without hindrance.

- 29 It is the Respondents' case that all Petitioners are employees of the Nairobi City County Government, where Saturday is a recognised working day for key departments, including Revenue and Finance, and where essential services such as Health, Fire, Enforcement, and Environment operate continuously throughout the year.
- 30 The Respondents aver that holding elections on a Saturday aligns with the County's operational structure, ensures continuity of essential services, avoids disruption of revenue collection, and facilitates the participation of employees already deployed on duty, thereby enhancing rather than restricting enfranchisement.
- 31 The Respondents contend that the election date was a product of extensive internal consultations and reflects democratic consensus within the Union. A Saturday election was preferred to avoid mid-week interference, intimidation, or operational disruptions that could arise if elections were held on ordinary weekdays.
- 32 The Respondents further assert that the selection of a Saturday mitigates economic disruption, promotes higher voter turnout, enables efficient tallying and declaration of results before the new work week, and ensures administrative stability.
- 33 It is the Respondents' case that the practice of holding union elections on Saturdays is common across the labour movement, including among other national trade unions, and has not attracted claims of religious discrimination or disenfranchisement.

- 34 The Respondents therefore contend that the Petitioners have failed to demonstrate any illegality, constitutional violation, or prejudice arising from the scheduled election date, and that the petition and application are frivolous, misconceived, and an abuse of the court process, warranting dismissal with costs.
- 35 The Respondents averred that in preparation for the Union branch elections scheduled for 17th January 2026, which date falls on a Saturday, the 1st Respondent had already expended substantial time, resources, and financial costs. They contended that the Petitioners' assertion that the said date constitutes their day of worship was made without any proof whatsoever.
- 36 It is the Respondents' case that as part of the preparatory process, the 1st Respondent formally applied for the use of Joe Kadenge Stadium (formerly City Stadium) as the election venue through a letter dated 16th December 2025. The County Government of Nairobi City has since approved the request vide a letter from the County Secretary dated 6th January 2026.
- 37 The Respondents contend that following the County's approval, no other activities were scheduled to take place at the Stadium on 17th January 2026, and that postponement or rescheduling of the elections at that stage would occasion inconvenience to both the County Government and the 1st Respondent Union.

- 38 The Respondents assert that further preparations included formal engagement with national security agencies. By a letter dated 8th January 2026 addressed to the Regional County Commander, Nairobi Area, the 1st Respondent requested deployment of security personnel to ensure a peaceful and orderly election.
- 39 It is the Respondents' case that postponing or rescheduling the elections at a time when security arrangements were already underway would significantly inconvenience County and national security administrators and disrupt coordinated public safety planning.
- 40 The Respondents aver that the Nairobi City County branch elections involved 10 elective positions, with approximately 9,000 union members eligible to participate, and that the 1st Respondent had already incurred substantial costs in the printing of ballot papers.
- 41 The Respondents aver that suspending, staying, postponing, or rescheduling the elections as sought by the Petitioners would subject the 1st Respondent to undue, substantial, and insurmountable financial and operational hardship, particularly given that national elections were already scheduled for 27th February 2026, with preparations at an advanced stage.
- 42 It was the Respondents' case that the Court is required to balance the Petitioners' individual rights to religious freedom against the broader public interest, and the

operational and financial responsibilities of the 1st Respondent Union, which operates solely on members' contributions and has a fiduciary duty to expend such funds prudently and in the collective interest.

- 43 The Respondents further aver that they have demonstrated willingness to provide reasonable accommodation to the Petitioners by proposing a less restrictive and less costly alternative. They offered in writing to accord the Petitioners priority voting early in the morning of 17th January 2026 to enable them to vote and thereafter observe their religious faith.
- 44 It is the Respondents' case that the Petitioners' right to manifest religion under Article 32(2) of the Constitution is not absolute and is subject to limitation under Article 24(1), provided such limitation is reasonable and justifiable in an open and democratic society, taking into account the nature of the right, the purpose and extent of the limitation, the rights of others, and the availability of less restrictive means.
- 45 The Respondents contend that allowing the Petitioners' religious observance to override the collective rights of thousands of union members to participate in elections on a constitutionally selected date would unjustifiably prejudice the rights and freedoms of others, contrary to Article 24(1)(d) of the Constitution.

- 46 The Respondents further aver that union membership is voluntary, and that the overwhelming majority of over 8,000 members had no objection to the elections being held on 17th January 2026, had legitimate expectations that the elections would proceed as scheduled, and that any alleged infirmities could still be addressed by the Court post-election, including nullification if warranted.
- 47 The Respondents aver that even in the event the Court were to find a violation of constitutional rights after hearing the petition on the merits, the Petitioners would not be without remedy, as the Court retains jurisdiction under Article 23(3)(e) of the Constitution to award compensation.
- 48 Consequently, the Respondents contend that the Petitioners were not entitled to the conservatory or interlocutory orders sought, and that granting such orders in the context of union elections would not serve the broader public interest.

Petitioners/Applicants' Submissions

- 49 The Applicants submitted that they are members of the County Government Workers Union (K) and practising Seventh Day Adventists whose sincerely held religious belief recognises the Sabbath as a sacred period running from sunset on Friday to sunset on Saturday, during which participation in secular activities, including elections, is prohibited, a fact not disputed by the Respondents.

- 50 It is the Applicants' submissions that the 1st Respondent scheduled its branch elections for Saturday, 17th January 2026 pursuant to a resolution of the Central Administration Board, despite being aware that the said date coincides with the Applicants' Sabbath observance, thereby directly implicating their freedom of religion under Article 32 of the Constitution.
- 51 The Applicants submitted that the Registrar of Trade Unions authorised the conduct of branch elections within a broad statutory window spanning from 5th January 2026 to 31st March 2026, and no evidence has been placed before the Court to demonstrate that the Registrar imposed a mandatory or fixed election date within that window.
- 52 It is the Applicants' submission that Article 22.7 of the Union's Constitution expressly empowers the National Secretariat to provide an alternative date where branch elections are unable to proceed as scheduled for any reason whatsoever, and that the Respondents failed or refused to invoke this internal mechanism despite it being readily available and lawful.
- 53 The Applicants submitted that following attempts by the court at amicable settlement, the Respondents proposed "priority" or time-managed voting on the morning of Saturday, 17th January 2026, which proposal they have rejected on the basis that it fundamentally misunderstands the nature of Sabbath observance, which is indivisible and not limited to church attendance.

- 54 It is the Applicants' submissions that compelling them to participate in elections at any time during the Sabbath would violate their conscience and religious freedom contrary to Article 32, and place them in the unconstitutional dilemma of choosing between faith and participation in union democracy, a dilemma condemned by the Court of Appeal in ***Seventh Day Adventist Church (EA) Ltd v Minister for Education & 3 Others [2017] eKLR***.
- 55 The Applicants submitted that they proposed a constitutionally compliant counter-offer by invoking Article 22.7 of the Union's Constitution to reschedule the elections to an alternative date within the Registrar approved window, which proposal constituted the least restrictive means of accommodating their rights under Article 24 of the Constitution, however, the Respondents arbitrarily declined this proposal.
- 56 It was submitted that some of the Applicants are nominated candidates in the impugned elections and that holding the elections on the Sabbath would exclude them not only from voting but from meaningful participation in union leadership, thereby infringing Articles 38 and 41 of the Constitution relating to political participation and fair labour practices.
- 57 The Applicants submitted that the Respondents' insistence on conducting the elections on 17th January 2026, despite the existence of a three-month election window and internal mechanisms for rescheduling, renders the

decision arbitrary, irrational and unreasonable in violation of Article 47 of the Constitution and the Fair Administrative Action Act.

- 58 It is the Applicants' submissions that administrative discretion must be exercised reasonably, proportionately and responsively, and that where lawful alternatives exist and are ignored, the decision fails the reasonableness test, as held in ***Suchan Investment Ltd v Ministry of National Heritage [2016] eKLR*** and ***Mumo Matemu v Trusted Society of Human Rights Alliance [2014] eKLR***.
- 59 The Applicants submitted that the Respondents neither consulted the affected members nor provided reasons for rejecting the proposed rescheduling, contrary to the requirements of procedural fairness under Article 47 and as affirmed in ***Okiya Omtatah Okoiti v CAK & 8 Others [2018] eKLR***.
- 60 The Applicants submitted that compelling Sabbath-observing members to participate in elections on a Saturday constitutes a direct interference with religious observance, which interference is entirely avoidable given the wide statutory election window.
- 61 It was submitted that under Article 24 of the Constitution, limitation of religious freedom must be prescribed by law, reasonable, justifiable and achieved through the least restrictive means, which threshold the Respondents have failed to meet.

- 62 The Applicants relied on ***Seventh Day Adventist Church (EA) Ltd v Minister for Education (supra)***, where the Court of Appeal held that failure to reasonably accommodate religious observance where accommodation is possible amounts to a violation of Article 32 of the Constitution.
- 63 The Applicants submitted that the Respondents' repeated characterisation of them as a negligible or inconvenient minority reveals a constitutionally impermissible reliance on numerical superiority.
- 64 It is the Applicants' submissions that Article 27 of the Constitution protects minorities from indirect discrimination, and that a facially neutral decision which disproportionately burdens a protected group is discriminatory in effect, as held in ***Satrose Ayuma & 11 Others v Kenya Railways Corporation [2013] eKLR*** and ***CORD v Republic [2015] eKLR***.
- 65 The Applicants submitted that exclusion from union elections is not minimal or incidental, but a substantive denial of equality and democratic participation.
- 66 The Applicants submitted that union elections are subject to constitutional scrutiny and that excluding members and candidates on religious grounds undermines internal union democracy and fair labour practices protected under Article 41 of the Constitution. Reliance was placed on ***Kenya Plantation & Agricultural Workers Union v Kericho County Government [2014] eKLR***, where the

Court held that trade unions must adhere to constitutional standards of fairness, inclusivity and accountability.

- 67 The Applicants submitted that the impugned decision fails all limbs of the proportionality test under Article 24 of the Constitution, in that it is not prescribed by law, is not reasonable or justifiable, ignores proportionality, and disregards readily available less restrictive means. They relied on ***Okiya Omtatah Okiiti v CAK (supra)*** for the principle that administrative convenience must yield to constitutional compliance.
- 68 It is the Applicants' submissions that public interest in labour relations lies not in speed or numbers but in legitimate, inclusive and constitutionally compliant processes, as articulated by the Supreme Court in ***Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR***.
- 69 The Applicants submitted that proceeding with elections in violation of constitutional rights risks delegitimising union leadership and fomenting future industrial unrest.
- 70 The Applicants submitted that at the conservatory stage, the threshold is not proof, but the demonstration of an arguable constitutional case, as set out by the Supreme Court in ***Gatirau Peter Munya (supra)***. A prima facie case is established where: identifiable constitutional rights are implicated; there is credible evidence of infringement or threat thereof; and the violation is not frivolous or speculative.

- 71 The Applicants submitted that they have established a *prima facie* case by demonstrating that: their Article 32 rights are directly burdened by compulsory participation on the Sabbath; the burden is avoidable, given the Registrar's three-month election window; the Respondents declined to consider lawful alternatives; minority rights were openly trivialised in the Replying Affidavit; and some Petitioners face exclusion as nominated candidates, not merely as voters.
- 72 They submitted that the Respondents' justifications comprising cost, convenience, and majority preference do not negate arguability; they underscore the constitutional conflict requiring judicial intervention. Therefore, absent conservatory orders, the Petition would be rendered nugatory once elections are conducted.
- 73 It is the Applicants' submissions that their immediate response to the Respondents' letter of 14th January 2026 demonstrates reasonableness and willingness to compromise. Their counter-offer to invoke Article 22.7 of the Union Constitution within the Registrar's election window represents a constitutionally compliant, institutionally sanctioned, and least restrictive means of resolving the dispute. The Respondents' refusal to adopt that option renders their decision arbitrary and disproportionate.
- 74 The Applicants submitted that the impugned decision therefore fails the Article 24 proportionality test. The Respondents have not shown that limiting the Petitioners' rights serves a pressing purpose, nor that it is necessary

or the least restrictive means available. The existence of a three-month statutory window and an express internal mechanism for alternative dates defeats any claim of inevitability.

- 75 It is the Applicant's submission that denial of the orders sought will render the Petition nugatory. Once elections are conducted on the Sabbath, the violation will be complete and irreversible, and no subsequent compensation or declaratory relief can restore the Petitioners' freedom of conscience.

Respondents' Submissions

- 76 The Respondents' submitted on two issues: Whether the Petitioners have proved their entitlement to the grant of conservatory orders in the interim suspending, staying, and/or quashing the 1st Respondent's decision to fix its branch elections on 17th January 2026, or to the grant of an order of prohibition restraining the 1st Respondent from proceeding with the said elections; and Whether the Petitioners herein have satisfactorily proved the violation of their Constitutional rights under Articles 27, 32, 38, and 41 of the Constitution by the Respondents herein.
- 77 The Respondents submitted that the Petitioners' application and Petition are misconceived, unmeritorious, and fail to meet the constitutional and jurisprudential threshold for the grant of conservatory or prohibitory orders.

- 78 It is the Respondents' submissions that the gravamen of the Petitioners' claim is that the 1st Respondent's branch elections scheduled for Saturday, 17th January 2026 allegedly conflict with their religious observance as Seventh Day Adventists, thereby allegedly violating Articles 27, 32, 38, and 41 of the Constitution.
- 79 The Respondents submitted that the impugned election date was lawfully, procedurally, and constitutionally determined by the competent organs of the 1st Respondent, namely the Central Administration Board (CAB) and the Elections Committee, pursuant to the mandate conferred upon them under Article 26.6 of the Union Constitution and within the timeframe authorised by the Registrar of Trade Unions under the Labour Relations Act, 2007.
- 80 On the first issue, the Respondents submitted that the principles governing the grant of conservatory orders are well settled by the Supreme Court decision in ***Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR***, where the Court held that conservatory orders are public law remedies granted on the inherent merit of a case, taking into account public interest, constitutional values, proportionality, and the need to preserve the authority of the Court.
- 81 It was submitted that the Supreme Court in ***Gatirau Peter Munya (supra)***, as read together ***with Board of Management of Uhuru Secondary School v City***

County Director of Education & 2 Others [2015] eKLR and **Wilson Kaberia Nkunja v Magistrates and Judges Vetting Board & Others [2016] eKLR**, established that an applicant must demonstrate a prima facie case, imminent prejudice, risk of the petition being rendered nugatory, and that public interest favours the grant of conservatory relief.

- 82 The Respondents submitted that the Petitioners have failed to meet this threshold, as the grant of conservatory orders at this interlocutory stage would effectively determine the substantive issues raised in the Petition, thereby offending the caution against granting final relief at an interim stage. Reliance was placed on **Law Society of Kenya v Attorney General & Another [2020] eKLR** and **Muslim for Human Rights (MUHURI) & 2 Others v Attorney General & 2 Others [2011] eKLR** for the principle that courts must exercise restraint to avoid conclusivity and finality when determining applications for conservatory orders.
- 83 The Respondents further submitted that even if conservatory orders are declined, the Petition would not be rendered nugatory, as the Court retains jurisdiction under Article 23(3) of the Constitution to grant appropriate reliefs, including declarations, annulment of elections, or compensation, should a violation be established upon full hearing.

- 84 The Respondents submitted that public interest strongly militates against the grant of conservatory orders, noting that the impugned elections involve over 8,000 registered union members, and that the 1st Respondent has already incurred substantial financial, logistical, and administrative costs in preparation for the elections, including securing the venue and printing ballot papers.
- 85 It is the Respondents' submissions that postponement or rescheduling of the elections at such an advanced stage would occasion significant prejudice not only to the 1st Respondent but also to the wider membership and the public interest in orderly and timely conduct of union elections.
- 86 The Respondents submitted that the dispute herein requires the Court to strike a delicate balance between the individual religious rights of four Petitioners and the collective rights and expectations of thousands of other union members, arguing that administrative efficiency and orderly governance should not be lightly disrupted.
- 87 The Respondents submitted that the decision to hold the branch elections on 17th January 2026 was arrived at lawfully and rationally through a resolution of the Central Administration Board, as evidenced by the minutes annexed to the replying affidavit, and in compliance with Article 26.6 of the Union Constitution.

- 88 It was submitted that the CAB considered various factors in selecting Saturday as the election day, including employer neutrality, workday status, voter turnout, religious access, and operational efficiency.
- 89 The Respondents submitted that the Petitioners have not demonstrated illegality, irrationality, or procedural impropriety so as to warrant the grant of an order of prohibition, noting that judicial review remedies issue only where such defects are established.
- 90 On the second issue, the Respondents submitted that the Petitioners have failed to demonstrate with precision how their constitutional rights have been violated, contending that the decision to hold elections on a Saturday is facially neutral and was not intended to discriminate against any member or group.
- 91 It is the Respondents' submissions that reasonable accommodation was offered to the Petitioners, including priority voting early in the morning of the election day to enable them to vote and thereafter proceed with their religious observance. They cited ***Seventh Day Adventist Church (East Africa) Ltd v Minister for Education & 3 Others [2017] eKLR*** for the proposition that reasonable accommodation is a recognised constitutional mechanism for balancing competing rights, and contended that the proposed priority voting constituted sufficient accommodation in the circumstances.

- 92 The Respondents submitted that the Petitioners instituted the proceedings in their individual capacity and did not demonstrate that other union members would be similarly disenfranchised, noting that the elections are held once every five years and that the majority of members are willing to participate on the scheduled date.
- 93 The Respondents submitted that other major unions, including KNUT and KUPPET, conducted their elections on Saturdays without constitutional challenge, including from members who are Seventh Day Adventists. There were no challenges on the same from any of their members, including the thousands of them who are also SDA adherents, on grounds of alleged disenfranchisement and discrimination based on religious faith or being compelled to choose between religious observance and participation in union elections.
- 94 The Respondents submitted that there is no evidence of differential treatment or indirect discrimination against the Petitioners under Article 27 of the Constitution, and that holding elections on a Saturday does not single out or marginalise the Petitioners.
- 95 They submitted that the Petitioners' rights have been balanced against the rights of the larger membership through reasonable accommodation, and that the Constitution does not require absolute uniformity where practical adjustments have been made.

96 It is the Respondents' submissions that the Petitioners have failed to establish a prima facie case, imminent prejudice, or violation of constitutional rights so as to justify the grant of conservatory or prohibitory orders.

97 I have considered the averments and submissions of the parties herein. The applicants sought orders of this court to stop the proceeding of the union elections scheduled for 17th January 2026 on the ground that they are of the SDA Christin faith and ordinarily conduct their worship on Saturdays as such would be prejudiced if

the elections were allowed to proceed on 17th January 2026 a Saturday

98 Whereas the applicants may have had a good case they approached this court late in time and the orders they seek have since been overtaken by events. Given that the 17th January 2026 is now past, it would be futile to grant any orders which would be of no effect. In the circumstances I find the orders prayed for are not tenable. The application is found overtaken by events and is thus dismissed accordingly. There shall be no order of costs.

Dated, Signed and Delivered Virtually at Nairobi this 19th Day of January, 2026.

HELLEN WASILWA

JUDGE