

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. ELRC PET/E013/2026

IN THE MATTER OF: ARTICLES 2(5), 2(6), 10, 19, 20, 21, 22, 23, 24, 27, 32, 36, 41, 47, 50, 258, AND 259 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE ALLEGED VIOLATION AND THREATENED VIOLATION OF THE PETITIONER’S FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE NAIROBI COUNTY BRANCH ELECTIONS OF THE KENYA UNION OF POST PRIMARY EDUCATION TEACHERS (KUPPET) SCHEDULED FOR 31ST JANUARY 2026, WHICH ARE ALLEGED TO INFRINGE THE PETITIONER’S CONSTITUTIONAL RIGHTS.

**BETWEEN KEVIN OGARO
BOSIRE.....PETITIONER**

VERSUS

**KENYA UNION OF POST PRIMARY EDUCATION
TEACHERS (KUPPET)...1ST RESPONDENT**

**THE SECRETARY GENERAL, KUPPET.....2ND
RESPONDENT**

THE EXECUTIVE SECRETARY, KUPPET

NAIROBI COUNTY BRANCH.....3RD RESPONDENT

**THE COUNTY LABOUR OFFICER, NAIROBI COUNTY.....4TH
RESPONDENT**

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The applicant, a teacher employed by the Teachers Service Commission and a member of KUPPET, is aggrieved with the classification of his membership as agency thus disbarred from voting in the upcoming Nairobi County KUPPET Branch elections scheduled for 31 January 2026. Further being a member of the Seventh Day Adventist church is aggrieved with decision to hold elections on a Saturday being his worship day. The Applicant filed a petition dated 15th January 2026 together with an application by way of a Notice of Motion dated 15th January 2026 seeking for the following orders-
 - a. That the Petition raises a real and imminent threat of irreparable harm to the Petitioner's constitutional rights, including his rights to freedom of religion, equality, fair labour practices, and fair administrative action, arising from the Nairobi County Branch elections of KUPPET scheduled for Saturday, 31st January 2026.
 - b. That the elections are scheduled to take place within a very short period, leaving insufficient time for ordinary notice or standard court procedures to adequately protect the Petitioner's rights.
 - c. That the Petitioner, together with other members of KUPPET who are faithful Seventh-day Adventists, will be denied meaningful participation in union governance if the elections proceed on the scheduled date, thereby causing irreparable injury that cannot be adequately compensated by damages.
 - d. That the Respondents have also misclassified certain bona fide members as "Agency" members and bungled the voters' register, thereby wrongfully excluding members from voting and contesting, which exacerbates the urgency of the matter.

- e. That there is no other equally effective and expeditious remedy available to the Petitioner to prevent the immediate violation of his constitutional rights.
 - f. That the circumstances of this case justify the issuance of orders on an urgent basis, including an interim injunction restraining the Respondents from conducting the elections, pending the determination of Petition.
2. The application was supported by the affidavit of the Petitioner dated 15th January 2026 where he annexed copies of identification documents of affected KUPPET members, notice of the elections and list of members of KUPPET classified as agency members.
 3. The application was opposed by the Respondents through replying affidavit of Akelo Misori the Secretary General of KUPPET sworn on the 26th January 2026. The gist of the response as related to agency was that there was no evidence to show any bonafide member had been left out of voter register. That no evidence to show the applicants had been deducted membership dues from their salaries for consecutive 13 weeks in line with Article 13(a) (vii) of the KUPPET Constitution which provides thus “only such members of the union not in arrears for more than 13 weeks with their subscriptions have be eligible to vote in the elections of the union.” AM3 was the union constitution which the court perused.
 4. On right to worship, the Respondent relied on negotiation with Teachers Service Commission the employer clause 4.7 which stipulates learning should not be interfered with during learning hours. That election could either be had on Saturday and Sunday. The Applicant was of SDA faith have issue with elections being conducted on Saturday. On the 28th February 2026 the court having heard the parties found the decision to hold

election on a Saturday was founded on the recognition agreement and in the best interest of the child to learn. The Applicant was accommodated as he would attend worship and still vote as voting was 6.00 a.m. to 6 p.m. That issue was dispensed.

5. The court invoked section 20 of Employment & Labour Relations Court Act that the dispute would not be determined on technicality and allowed the teachers to place before court continuous membership dues deduction in the material period of 13 weeks.
6. The Applicant filed reply to replying affidavit to effect that they were wrongly reclassified and demonstrated the same by stating that in 2019 while as being member under agency they were not deducted Benevolent Benefit Fund (BBF) and in 2026 while categorized as agency the BBF was deducted.
7. The Secretary General Misori filed a further replying affidavit dated 29th January 2026 to effect that only a teacher can choose whether to be a member or relinquish membership of the union by a click of button on the confidential platform private to each teacher, the Tpay online portal of TSC. Misori relied on section 49 of the Employment Act on agency fee.
8. Misori also annexed as AM9 the deduction of agency fees. The question which the Secretary General did not answer is when the full membership of the Applicant ceased. There was evidence of membership deduction all through and the changes happened with the 13 weeks of election.

9. The Applicant produced payslips of Teacher Nyamache Douglas Ochako. The 13 weeks cut off is November 2025. Before the court are payslips of Ochako for August 2025 to January 2026.
10. In November 2025 teacher Ochako was deducted union dues of KShs.703.25 making total deduction reflected in payslip of November for sum of KShs. 4205.45. The payslip of December 2025 indicated KShs. 703.26 as total deduction which in January reduced total was now 1,440.43.
11. The Respondent relied on the payslip to declassify the teacher as agency. There was no evidence before the court of resignation of the teacher as a member of the union. The Labour Relations Act Section 33 states that no person shall be a voting member of a registered trade union on employers' organization if that person's subscriptions are more than thirteen weeks in arrears. The Applicant placed before court union deductions in compliance with the 13 weeks period.
12. Section 48 of Labour Relations Act is on trade union dues where trade union dues is defined to mean "a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership". For the deduction to be effected by employer the union issues instruction for deduction to employer which takes effect the following month.
13. Section 48(8) of the Labour Relations Act provides for employer to issue resignation notice of member to union as a pre-condition to stop deduction. There is no evidence placed by Respondent before court of the Applicant have resigned under section 48 (8).

14. The payslip is a document by the employer as per section 20 of the Employment Act. The employee does not generate the payslip and has no input. Section 20 (1) states “an employer shall give a written statement to an employee at or before the time at which any payment of wages or salary is made by employee.”
15. The respondent indeed produced the check off form envisaged under section 48 as “AM7”. Consequently, the court finds that the Applicant have proved on prima facie basis that they had been continuous members of the KUPPET having been deducted union dues and were thus arbitrarily deprived of the right to vote vide unjustified changes in payslip within the material time of 13 weeks of qualification to vote.
16. The employees having paid trade union and in compliance with section 33 have unqualified right to vote in the election scheduled on 31st January 2025 in exercise of their democratic rights protected under Article 41 of the Constitution.
17. In the upshot the Application dated 15th January 2026 is allowed as follows:
- (1) The court declares that it is not a violation of the right worship of the Applicant for the respondent union to hold election on a Saturday 31st January, 2026 as the union has accommodated the Applicant by allowing adequate voting time of 6 a.m. to 6 p.m. Further the right to worship in the instant case is balanced with the right to education of the child, the applicant being a teacher.
 - (2) Order 3 is allowed. That this Honourable court is pleased to issue an order compelling the Respondents to forthwith reinstate all bona fide members of KUPPET who were irregularly, unlawfully, and arbitrarily reclassified as “Agency” members

to full and substantive membership of the Union, with all attendant rights and privileges, including the right to vote and to vie in the Nairobi County Branch elections.

(3) Cost of the Application to the Applicant.

(4) Mention on 9th March, 2026 for direction in the petition.

(5) It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS
30TH JANUARY, 2026.**

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Applicant - Okundi

Respondent- Ms Akello

