

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
PETITION NUMBER E001 OF 2026**

BETWEEN

1. DR. MAGARE – GIKENYI B
2. PHILEMON ABUGA NYAKUNDI
3. DISHON KEROTI MOGIRE
4. DAVID NGATIA NJUGUNAPETITIONERS

VERSUS

1. KENYA UNION OF POST PRIMARY TEACHERS [KUPPET]
2. MAURICE AKELO T. MISORI, SG KUPPET
3. REGISTRAR OF TRADE UNIONS
4. HON ATTORNEY-GENERALRESPONDENTS

RULING

1. The Petitioners filed an application dated 1st January 2026, seeking a raft of conservatory orders, pending hearing and determination of the application and the petition.
2. In a summary the Court is prayed to grant orders suspending the 1st Respondent's 2026 branch elections, scheduled to be conducted between 10th January 2026, and 28th February 2026, and on any other date. Peripheral to this, is that the Registrar of Trade Unions is barred from registering any persons elected from the scheduled elections, and that the petition is processed and disposed of on an accelerated basis.
3. The application is founded on the affidavit of the 1st Petitioner, sworn on 1st January 2026.

4. He explains that the 1st Respondent has scheduled its branch elections between 10th January 2026 and 28th January 2026.
5. Scheduling is discriminatory to some Teachers, as elections fall on weekends. Some Teachers worship on Saturdays and others, on Sundays. Their freedom of conscience, religion, belief and opinion under Article 32 of the Constitution, have been violated, or is likely to be violated.
6. Other elections are scheduled on weekdays, and would violate the right of Children, under Article 53, which includes the right to free and basic education, and the right to be protected from abuse and neglect, among others. The Petitioners invoke Article 53[2], which demands that a Child's best interest is paramount, in every matter concerning the Child.
7. The application is opposed through the affidavit of Akelo T. Misori, the 2nd Respondent herein, sworn on 17th January 2026.
8. Misori submits that the 1st Respondent Union, is mindful of the rights of the Child, and is at the forefront of protection of those rights, in accordance with Article 53 of the Constitution of Kenya.
9. The 1st Respondent issued a time-table for branch elections on 26th November 2025. The Petitioners waited, until 1st January 2026, to file the application seeking to stop elections which are underway, and already concluded in some branches.

10. The Petition violates the doctrine of constitutional avoidance, and discloses no cause of action.
11. The Petitioners state that the Respondents are wrong in scheduling elections on weekends because it interferes with the right of worship. In the same breath, they fault the scheduling of elections on weekdays, because they would interfere with Children's right to learning. Is the 1st Respondent not to conduct its elections at all, because their conduct on weekends and weekdays, is alleged to violate the constitutional rights of the Children and their Teachers?
12. The election cycle is regulated in law by the Registrar of Trade Union. The Registrar issued circular dated 25th September 2025, requiring that branch elections are held between 5th January 2026 and 31st March 2026; national elections between 1st April 2026 and 30th June 2026; and the elections for trade union centres COTU and TUC, held by 30th August 2026.
13. The 1st and 2nd Respondent are guided by the circular issued by the Registrar, and also by clause 4.7. of the Recognition Agreement, concluded with the Teachers Service Commission [TSC], which stipulates that learning must not be interrupted.
14. The time-table issued by the 1st Respondent, schedules all branch elections on weekends, except the one scheduled for Friday, 27th February 2026, which falls on school midterm break.

15. Branch elections have already taken place in Machakos, Kiambu, Uasin Gishu, Vihiga, Migori, Homabay, Narok and Kisumu Counties.
16. Dr. Magare Gikenyi the 1st Petitioner herein, and Counsel instructed by the 1st and 2nd Respondents Ms. Akelo, made brief oral submissions on 15th January 2026, underscoring their respective positions. The 3rd and 4th Respondents did not participate in the hearing of the application.

The Court Finds: -

17. The Petitioners raise valid concerns on freedom of worship under Article 32 of the Constitution, and the rights of a Child, and the paramountcy of the Child's rights, under Article 53 of the Constitution.
18. However, the affidavit filed in response to the application, clearly establishes that these concerns, have adequately been addressed.
19. There are no elections scheduled to be conducted on a weekday, except one scheduled for Friday 27th February 2026, when Children will be away from schools on midterm.
20. The schedule has taken into account the best interest of the Child under Article 53 of the Constitution, and is consistent with clause 4.7. of the Recognition Agreement executed between the 1st Respondent and TSC.
21. It is clear that the majority of elections are scheduled on weekends. It is submitted by the Petitioners that this too, violates the constitutional

rights of some Teachers, because they worship on weekends. Their right of worship, under Article 32 has been violated, or is threatened with violation.

22. This violation is not likely to have taken place, or to take place, as apprehended by the Petitioners. Worship on Saturdays and Sundays does not take the whole day. Teachers can still worship and ballot. Balloting, like worship, does not take the whole day.
23. The Petitioners suggestion, that the branch elections are pushed to April when the schools are on holiday, is unrealistic.
24. Branch elections countrywide, are scheduled to be held between January and March 2026. April 2026 is the time national elections commence countrywide. August 2026, the second school vacation, heralds the end of the 5-year electoral cycle, with the elections of the trade union centres. By December 2026, the last period of school vacation, elections are expected to be done and dusted, probably with many losers trooping to the Court, to contest the results.
25. The electoral cycle runs on strict statutory timelines. ILO Convention 87, and Article 41 of the Constitution guarantee trade unions freedom of association, which includes the right to elect representatives, with minimal state interference.
26. Conservatory orders sought, are based on concerns that have been addressed by the Respondents and their social partners. The orders if

granted, would severely disrupt a countrywide statutory process, which is founded on Section 34 of the Labour Relations Act. The orders would unduly, inhibit the 1st Respondent and its members, in exercise of their Article 41 rights and freedoms.

IT IS ORDERED: -

- a. The application filed by the Petitioners dated 1st January 2026 is declined.***

- b. No order on the costs.***

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, this 30th day of January 2026.

James Rika
Judge

