



Masika & 2 others v Registrar of Trade Unions & 3 others; Transport Workers Union (Interested Party) (Civil Appeal E207 of 2025) [2026] KEELRC 144 (KLR) (28 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 144 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL E207 OF 2025**

**DKN MARETE, J
JANUARY 28, 2026**

BETWEEN

**STEPHEN M. MASIKA 1ST APPELLANT
DAN MIHADI 2ND APPELLANT
JAMES NJIHIA 3RD APPELLANT**

AND

**REGISTRAR OF TRADE UNIONS 1ST RESPONDENT
WATSON BUTIKO 2ND RESPONDENT
NICHOLAS OTIENO OGOLA 3RD RESPONDENT
JONNES MUTUKU 4TH RESPONDENT**

AND

THE TRANSPORT WORKERS UNION INTERESTED PARTY

JUDGMENT

1. This matter originated by way of Memorandum of Appeal dated 27th June, 2025. It comes out as follows;
 1. The 1st, 2nd and 3rd Appellants herein were elected in 2021 as the interested Party's National chairperson, Secretary General and Treasurer respectively for a term of 5 years in line with the interested Party's constitution.
 2. That in June, 2025 the 1st Respondent issued a decision through the extract dated 16th June, 2025 indicating changes in the offices of the chairperson, Secretary General and Treasurer.



3. That the 2nd, 3rd and 4th Respondents had illegally, unprocedurally and unconstitutionally removed the Appellants and taken over the positions of Chairperson, Secretary General and Treasurer respectively.
4. The 1st Respondent erred in law and in fact by failing to adhere to the interested party's constitution which provides that the officials are elected for a term of 5 years but if they were to be removed before the lapse of 5 years then the process should be done in conformity with the provisions of *the constitution*.
5. The 1st Respondent erred in law and in fact by failing to find that the purported meetings leading to the changes in the office of the union's chairperson, Secretary General and treasurer did not meet the constitutional threshold and thus were null and void for the following reasons;
 - a. The Meeting allegedly requisitioned by the 3rd Respondent vide the letter dated 7th April, 2025 did not meet the requirements of rule 11 (c) of the Interested Party's constitution. Rule 11 (c) of the interested party's constitution provides that a general secretary shall not be required to act on requisition for a meeting from members unless and until a sum of Kenya shillings ix Hundred Thousand (Kshs. 600,000) is deposited on the unions designated accounts by the members requisitioning.
 - b. No such amount was deposited on the unions accounts and as such the requisition was incompetent and unconstitutional and any meeting convened after the requisition was invalid and unconstitutional.
 - c. It is alleged that 10 members of the central council voted for the removal of the removal of the Appellants from their positions. This is below the threshold provided for by *the constitution*.
 - d. Rule 11 (a) of *the constitution* provides for the composition of the central council as follows;
 - i. National Chairman
 - ii. Two vice National Chairman
 - iii. General secretary
 - iv. Deputy General secretary
 - v. Two Assistants General secretaries
 - vi. National treasurer
 - vii. Assistant national treasurer
 - viii. Three trustees
 - ix. Every branch secretary of the union (The union has 7 branches)
 - e. The total composition of the central council as per *the constitution* is thus 19 members. Unfortunately, one member is deceased and thus the membership of the central council stands at 18 members.
 - f. Rule 11 (d) of *the constitution* provides that Any member of the council may be removed from membership thereof by two-thirds (2/3) majority of all members entitled to attend and vote thereat.



- g. Two-thirds of the 18 members is 12.
 - h. Therefore, the purported removal of the Appellants from their positions did not meet the constitutional threshold and thus the 1st Respondent erred in law by endorsing the unconstitutional change of officials.
6. Some of the members of the central council who are alleged to have attended the meeting and voted have sworn affidavits to the 1st Respondent refuting claims of their participation therefore the whole process is marred with irregularities and forgery.
 7. The 1st Respondent erred in law and in fact by disregarding the interested party's constitution.
 8. The 1st Respondent erred in law and in fact by registering un-procedural and unconstitutional change of officials in the interested party's register.
2. The Appellant prays for orders thus;
 1. This appeal be allowed.
 2. The decision of the registrar of trade unions issued through the extract dated 16th June, 2025 be and is hereby set aside.
 3. An order be and is hereby issued compelling the Registrar of trade unions to reinstate Stephen M. Masika, Dan Mihadi and James Njihia to the position of National Chairman, General secretary and Treasurer respectively.
 4. This Honourable Court be pleased to make any other orders it deems fit and just to grant.
 5. Costs of the Appeal.
 3. The Appellants' case is that they are the duly elected national officials of the Interested Party, the Transport Workers Union, having been elected in the year 2021 to serve a five-year term. This is due to lapse in 2026. They then went on to serve the Union without incident until June 2025, when the 1st Respondent issued an extract dated 16th June 2025 purporting to alter the offices of Chairperson, General Secretary and Treasurer. It is their case that the said extract was issued unlawfully, un-procedurally and in violation of the Union's Constitution. It was subsequently relied upon by the 2nd, 3rd and 4th Respondents to illegally take over the affairs of the Union.
 4. The Appellants' further case is that no Central Council meeting was lawfully convened for purposes of their removal and that they were never notified of any such meeting. The alleged requisition for a meeting through a letter dated 7th April 2025 failed to comply with Rule 11(c) of the Union's Constitution as the mandatory deposit of Kshs.600,000 into the Union's designated bank accounts was never made. The requisition was therefore incompetent and unconstitutional, rendering any meeting convened pursuant thereto null and void.
 5. It is the Appellants' case that even assuming, without conceding, that a Central Council meeting was held, the alleged vote by ten members did not meet the two-thirds majority required under Rule 11(d) of *the Constitution*, the Central Council having eighteen eligible members at the material time. They state that affidavits sworn by some individuals alleged to have participated in the vote deny attendance or participation, thereby further undermining the legality of the purported meeting.
 6. The Appellants avers that they never received any notices of the alleged meetings and that the notices annexed by the Respondents bear no proof of service. It is their case that the purported meeting of 26th May, 2025 was therefore unconstitutional for want of notice and due process.



7. Again, the appointment of the 3rd Respondent, a Trustee, as Acting General Secretary was contrary to Rule 15(d) of the Union's Constitution, which prescribes a clear hierarchy of succession. It is their case that all actions undertaken by the 3rd Respondent, including convening the alleged meeting of 12th June 2025, were null and void.
8. The Appellants also posit that the 3rd Respondent misled the Court by alleging the existence of a pending suit on the same subject matter, whereas ELRC JR E036 of 2025 concerned only the suspension of the 2nd Appellant and had been struck out on 30th June 2025 prior to the filing of the present Appeal.
9. In the penultimate, the Appellants state that upon the alleged creation of more than three vacancies in national offices, Rule 14(h) of the Union's Constitution required the convening of a Special Conference in accordance with Rule 10, which was never done. The 1st Respondent failed to conduct due diligence or accord them an opportunity to be heard before endorsing the impugned changes. The purported removal was unconstitutional and they pray that the extract dated 16th June 2025 be struck out and the lawfully elected officials reinstated pending determination of this Appeal.
10. The 1st Respondent's case is that their office is established under law and mandated to register, regulate and supervise trade unions, employers' organizations and federations.
11. It is the 1st Respondent's further case any change of officials within a trade union is governed by Section 35 of the *Labour Relations Act*, 2007 as read with the relevant provisions of the union's Constitution. These provisions, it emphasizes are mandatory and must be strictly complied with. Section 35 requires that notice of any change of officials be submitted to the Registrar in the prescribed form, to wit, Form Q within fourteen days, accompanied by the requisite fee. This provision of law further empowers the Registrar to demand evidence of the change and in any event decline registration where he is not satisfied as to the validity or propriety of the process.
12. In this regard, the 1st Respondent avers that the Transport Workers' Union submitted a duly completed Form Q dated 23rd May, 2025 together with minutes of a Central Council meeting held on 22nd May, 2025. Upon receipt, the Registrar's office examined the documents against the *Labour Relations Act*, 2007 and the Union Constitution, particularly Rule 14(f), which permits removal of a national official by a two-thirds majority of members entitled to attend and vote at the Central Council and allows the Council to appoint a replacement. Having conducted this verification, the Registrar was satisfied that due process had been followed in the suspension of the then Secretary General. Consequently, the changes were effected in the official records on 23rd May, 2025 and an extract issued to reflecting this position.
13. It was stated that on 13th June, 2025, the Registrar's office received a further notification relating to a Central Council meeting held on 12th June, 2025, accompanied by minutes, a list of attendees and another Form Q. The minutes of that meeting indicated that the 2nd, 3rd and 4th Respondents were elected as Chairperson, Secretary General and Treasurer respectively. Once again, the Registrar's office cross-checked the documents against the Union Constitution and statutory requirements, found them compliant and issued a fresh extract reflecting the newly elected officials.
14. Addressing concerns raised by the Appellants regarding quorum, the 1st Respondent states that the minutes reflected attendance by ten Central Council members. This constituted sufficient quorum under Rule 14(g) of the Union Constitution which sets quorum at one-third of eligible members. The Registrar further notes that one member was deceased, another was unwell, and that the then Secretary General could not reasonably have been expected to attend a meeting convened to deliberate on matters directly concerning him.



15. The 1st Respondent answers the allegations that some members denied attending the meeting of 12th June, 2025, in that no such affidavits have been received by her office and puts the Appellants to strict proof. There is no evidence on this, or at all.
16. It is the 1st Respondent's further case, conclusion and averment that the elections of the 2nd, 3rd and 4th Respondents were lawful, having been conducted pursuant to proper notices, with sufficient quorum and in full compliance with the Union Constitution and the *Labour Relations Act, 2007*. Accordingly, the Registrar maintains that the removal of the Appellants and the subsequent registration of new officials were procedurally sound, lawful, and within the mandate of his office.
17. The 2nd – 4th Respondents' case comes out as set out in the Replying Affidavit sworn by the 3rd Respondent on his own behalf and on behalf of the 2nd and 4th Respondents. This is to the extent that the appeal is devoid of merit, premised on non-disclosure of material facts and constitutes an abuse of the process of court.
18. The 2nd – 4th Respondents posit and submit that the application challenges the implementation of a decision of the Registrar of Trade Unions communicated through an extract dated 16th June 2025. They maintain that the said extract lawfully recognized them as the legitimate office holders of the Transport Workers Union (Kenya) following due compliance with the Union Constitution and the applicable statutory framework.
19. According to the Respondents, the events leading to the impugned extract commenced with a requisition for a Central Council meeting pursuant to Rule 11(c) of the Union Constitution. By a letter dated 7th April 2025 and upon payment of Kshs.600,000.00 a requisition was made for the convening of a Central Council meeting. The 2nd Appellant, who was then serving as the General Secretary, was requested to convene the meeting but failed or refused to do so.
20. Following that failure, the Respondents avers that a Central Council meeting was duly convened and held on 22nd May 2025 at Sandford Community School in Nairobi. Notices were issued to all members of the Central Council, including the Appellants, who elected not to attend. The meeting nonetheless proceeded, attained the requisite quorum as prescribed under Rule 11(g) of the Union Constitution, being one-third of the members entitled to attend and vote, and conducted its business.
21. Again, at that meeting of 22nd May 2025 the Central Council resolved that the 2nd Appellant was culpable on all six charges preferred against him. The minutes of the meeting were produced and marked as OON7. A vote was taken and ten members voted in favour of his removal from office. An extract dated 26th May 2025 was thereafter issued to that effect and annexed as OON8(a).
22. The Respondents further contend that following the said meeting, the 1st and 2nd Appellants coerced members of the Central Council who had attended the meeting into writing letters and swearing affidavits disowning the proceedings. The same members later issued clarification letters and affidavits, annexed as OON9, stating that their earlier renunciations had been made under coercion and threats to their employment.
23. Arising from the extract of 26th May 2025, the 3rd Respondent, acting as the Acting General Secretary, convened a further Central Council meeting through an extract dated 3rd June 2025. The meeting was scheduled for 12th June 2025 and carried a stipulated agenda. Invitations were sent to all Central Council members, including the Appellants, who again failed to attend, as demonstrated by the invitations annexed as OON11.
24. The meeting of 12th June 2025 proceeded, attained the constitutionally required quorum and conducted its business. The minutes of that meeting were annexed as OON12. The Central Council



- resolved to confirm the Acting General Secretary to the substantive office of General Secretary and elected new officials to fill the offices of National Chairman and National Treasurer. An extract dated 16th June 2025 confirming these elections was issued and annexed as OON13.
25. The Respondents assert that no objections were lodged with the Registrar of Trade Unions in respect of either the extract dated 26th May 2025 or the extract dated 16th June 2025, nor against any of the proceedings that culminated in those extracts. They contend that the failure by the Appellants to invoke the statutory objection mechanism, coupled with the fact that the Union has since been operational under the new leadership, demonstrates acquiescence to the leadership changes.
 26. It is the Respondent's further case that by the time the Appellants filed their application dated 27th June 2025, the substantive offices of National Chairman and National Treasurer had already been filled following the elections of 12th June 2025 and the requisite Form S had been duly filed with the Registrar. The union's banks had been notified of the changes and the Union had commenced operations under the new leadership structure.
 27. The Respondents maintain that the 2nd Appellant was lawfully removed from office through the extract dated 26th May 2025 and consequently ceased to hold any position within the Union. On that basis, they contend that he lacks the locus standi to challenge the implementation of the extract dated 16th June 2025 and that his continued participation in the proceedings amounts to an abuse of the court process.
 28. They further submit that the Appellants have engaged in conduct calculated to destabilize the Union, including causing destruction and chaos at the Union offices following their refusal to accept the lawful changes in leadership. A Police Occurrence Book report relating to the alleged destruction was annexed as OON14. According to the Respondents, such conduct is prejudicial to the smooth administration of the Union and contrary to the interests of its members.
 29. Besides, the Respondents state that the Union is a registered trade union under the laws of Kenya and that following the elections confirmed by the extracts dated 26th May 2025 and 16th June 2025, the Registrar of Trade Unions formally recognized the 3rd Respondent as General Secretary, the 2nd Respondent as National Chairman and the 4th Respondent as National Treasurer. Those extracts, they reiterate, remain unchallenged.
 30. They further rely on the order of this Court issued on 28th July 2025 directing that the status quo be maintained pending the determination of the substantive appeal. In their view, the status quo entails continued recognition of the Respondents as the legitimate office holders as recognized by the Registrar of Trade Unions. In spite of this order, the Respondents contend that Absa Bank Kenya Limited, where the Union maintains Account No. 0942830238, has refused to grant them access to the Union's banking facilities.
 31. The Respondents further observe that, through their advocates, Carolyne Wavinya & Co., they wrote to Absa Bank Kenya Limited on 29th July 2025 notifying the bank of the court order and seeking compliance, but no response was forthcoming. As a consequence, the Union has been unable to pay staff salaries for May, June, and July 2025, remit statutory deductions to NSSF, NHIF and KRA, or meet its operational expenses. They state that the Union employs fifteen full-time staff members who have suffered hardship as a result.
 32. In conclusion, the Respondents contend that the Appellants approached the Court without clean hands, having failed to disclose material facts, engaged in coercion of Union members, and attempted to forum shop by litigating the same issues in different courts. They urge that, in the circumstances, it is just and equitable that the appeal be dismissed with costs.



33. It is the Appellants' submission that the entire process which purportedly led to the change of leadership in the Union was conducted in flagrant violation of the Union Constitution, established labour relations principles and settled judicial authority. It was submitted that the extracts issued by the Registrar on 26th May 2025 and 16th June 2025 were therefore founded on unconstitutional acts and ought to be set aside.
34. As to whether the alleged requisition for a Central Council meeting met the constitutional threshold, it was submitted that the Respondents' assertion that a valid requisition had been made pursuant to Rule 11(c) of the Union Constitution is false. The Appellants relied on Rule 11(c), which expressly provides that a requisition by one-third of Central Council members only crystallizes upon the deposit of Kshs600,000 into the Union's designated bank account for purposes of defraying the cost of convening the meeting. It was submitted that *the Constitution* not only mandates such payment but restrains the General Secretary from acting on any requisition unless and until the amount is deposited.
35. The Appellants' further submits that the handwritten receipt produced by the Respondents bore neither the Union's official stamp nor the name of the recipient and therefore did not constitute an official Union receipt. Reliance was placed on the Union's bank statements for the entire month of April 2025, which, it was submitted, conclusively demonstrate that no deposit of Kshs.600,000 was ever made. It was submitted that, on this basis, the constitutional preconditions for requisitioning a Central Council meeting were never satisfied, rendering the purported meeting unconstitutional ab initio, together with all resolutions flowing therefrom.
36. Regarding whether the 3rd Respondent was constitutionally elected as Acting General Secretary, it was submitted that the Union Constitution does not recognize such an office. Rule 15(d) sets out a clear hierarchy to ensure continuity of leadership, vesting the powers of the General Secretary and, in his absence, first in the Deputy General Secretary and, failing whom, in the senior-most Assistant General Secretary. It was submitted that this provision was deliberately crafted to avoid any leadership vacuum.
37. It was submitted that the 3rd Respondent unlawfully imposed himself as Acting General Secretary through the extract dated 26th May 2025, not pursuant to any constitutional election or delegation, but as a ploy to convene meetings aimed at removing the Appellants from office. It was submitted that such an office is unknown to the Union Constitution and is therefore void. In support of this submission, reliance was placed on the decision of Justice Monica Mbaru in *Stephen Mutwiwa Masika & 3 others v Titus W. Khaemba & another* [2015] eKLR, where the Court held that *the Constitution* did not provide for an Acting General Secretary and emphasized the necessity of a substantive officeholder elected in accordance with *the Constitution*. It was submitted that at the material time there were two Assistant General Secretaries, Bill Mutoro and Sammy Kinyua, thereby negating any justification for the creation of an "acting" position.
38. As to whether the Appellants were constitutionally removed from their positions as National Chairman, General Secretary, and Treasurer, it is submitted that the alleged removals were effected in gross violation of the Union Constitution. It is further submitted that the 3rd Respondent lacked authority to convene the Central Council meeting of 12th June 2025, his purported role as Acting General Secretary being non-existent, and therefore the meeting and all resolutions emanating therefrom were null and void.
39. It was further submitted that, even assuming the meeting was lawfully convened, it failed to meet the constitutional threshold for removal of Central Council members. Rule 11(d) provides that removal of a Central Council member requires a two-thirds majority of all members entitled to attend and vote. The Central Council comprises nineteen members, meaning that at least twelve members must vote in favour for a valid removal. According to the Respondents' own minutes (annexed as OON12),



- only ten members were present and voted, therefore, reliance on Rule 11(g), which sets a quorum of one-third for ordinary meetings, was misplaced, as the higher voting threshold under Rule 11(d) for removal cannot be bypassed. Consequently, the purported removals were unconstitutional.
40. On the question of whether the 2nd, 3rd, and 4th Respondents were constitutionally elected as National Chairman, General Secretary, and Treasurer, it was submitted that the elections were fundamentally flawed. The Respondents unlawfully created three vacancies by purporting to remove the Appellants, in addition to an existing vacancy in the office of Deputy General Secretary due to death, resulting in a total of four vacancies. By electing Central Council members to fill those vacancies, the Respondents created additional vacancies within the Council, ultimately purporting to fill seven positions in total.
 41. The Appellants' further submit that Rule 14(b) of *the Constitution* mandates that where more than three national officials cease to hold office during their term, a special conference must be convened under Rule 10 to elect replacements. Rule 10(a) requires a requisition by at least one-tenth of fully paid-up Union members nationwide and the prior deposit of Kshs.1,000,000 into the Union's designated bank account. None of these mandatory steps were taken and that the elections conducted by ten Central Council members were therefore unconstitutional and void.
 42. In finality they submit that the Respondents' actions were consistently and fundamentally at odds with the Union Constitution, rendering the Registrar's extracts vulnerable. Reliance was placed on Justice Abuodha's decision in *Kenya Union of Water and Sewerage Employees v Registrar of Trade Unions; Olwalo (Interested Party)* (Judicial Review E008 of 2023) where the Court refused to sanction changes in union leadership that did not comply with the Union Constitution. Applying that reasoning, the officials elected on 20th February 2021 and registered by the Registrar through the extract of 26th February 2021 remain the bona fide officials of the Union, clothed with full authority to discharge their functions, including operating the Union's bank accounts, until removed strictly in accordance with the Union Constitution and the *Labour Relations Act*, 2007.
 43. The 1st Respondent's submission is that the Appeal is devoid of merit and ought to be dismissed, as the Registrar of Trade Unions acted lawfully, procedurally, and strictly within the mandate conferred by statute and the Union's Constitution.
 44. It is submitted that the central issue for determination is whether the Registrar erred in law or fact in registering the 2nd, 3rd, and 4th Respondents as the Chairperson, Secretary General, and Treasurer of the Transport Workers Union. The Registrar maintains that no such error occurred.
 45. The 1st Respondent submitted that its decision communicated through the extract dated 16th June 2025 was reached after full compliance with Section 35 of the *Labour Relations Act* and the relevant provisions of the Union Constitution. It is further submitted that the Registrar's statutory mandate is to regulate and register trade unions and their officials, and in exercising this mandate, the Registrar is guided by the law and the documents presented by the Union.
 46. It is submitted that on 23rd May 2025, the Union submitted a Notice of Change of Officials (Form Q), accompanied by minutes of the Central Council meeting held on 22nd May 2025. Upon cross-checking the documentation and satisfying herself that due process had been followed in the suspension and removal of the 2nd Appellant, the Registrar lawfully effected the changes and issued the requisite extract.
 47. The 1st Respondent submitted that its office received a subsequent notification dated 13th June 2025 relating to a Central Council meeting held on 12th June 2025, together with minutes, attendance lists, and Form Q. At this meeting, the 2nd, 3rd, and 4th Respondents were elected to their respective



- offices. Having verified compliance with the Union Constitution, including Rules 11(g) and 14(f), the Registrar lawfully effected the changes and issued a fresh extract on 16th June 2025. Again, the attendance of ten (10) Central Council members satisfied the constitutional threshold of one-third of eligible members. No affidavits were received from the listed attendees disputing their participation, thus, the Appellants' allegations regarding attendance remain unproven and misleading.
48. It is further submitted that the Registrar was satisfied as to the validity of the appointments and the propriety of the corrections made to the register, as contemplated under Section 35(4) of the Labour Relations Act. Reliance was placed on the decision in Jophinus Musundi & 6 others v Registrar of Trade Unions & another [2017] eKLR, where the Court affirmed that once the Registrar is satisfied with the validity of appointments, the Court ought not to interfere.
 49. The 1st Respondent submitted that the Appellants failed to discharge their burden of proof under Section 11 of the Labour Relations Act, 2007 and no evidence has been placed before the Court to demonstrate that the Registrar acted unlawfully or in breach of the Union Constitution.
 50. It is submitted that the Appeal is unsubstantiated, amounts to forum shopping, and constitutes an abuse of court process, having been filed during the pendency of ELRC JR E036 of 2025. The Appellants approached the Court without clean hands thereby disentitling themselves to equitable relief, as reinforced by the decision in Mwangi v Banking Insurance & Finance Union (Kenya) [2025] eKLR.
 51. It is therefore submitted that there was no breach of the law or the Union Constitution, that the Registrar exercised her discretion judiciously and that the Court lacks jurisdiction to interfere with such a lawful decision, as held in David Mwendu & Others v Registrar of Trade Unions [1999] eKLR. The Appeal should therefore be dismissed with costs to the 1st Respondent.
 52. The 2nd, 3rd and 4th Respondents submitted that the Appeal constitutes an abuse of the Court process. It is submitted that at the time of filing the Appeal on 27th June 2025, there existed a parallel dispute, namely ELRC JR E036 of 2025, Dan Mihadi and Stephen Mutwiwa Masika & another v Nicholas Otieno Ogolla v Registrar of Trade Unions in which orders had already been issued on the same subject matter touching on the leadership of the Union. The filing of the present Appeal during the pendency of that matter was a deliberate attempt by the Appellants to procure favourable orders from different courts, contrary to the principles of judicial comity and the orderly administration of justice.
 53. It is submitted that the Appellants deliberately failed to disclose material facts, including the existence of the parallel proceedings, the fact that they were lawfully removed from office through constitutionally sanctioned processes, that new officials had been elected, and that the Union was operating normally and effectively under the new leadership. Such suppression of material facts disentitles the Appellants to any equitable relief.
 54. The Respondents submitted that the Appeal was brought with unclean hands. The Appellants are accused of coercing Central Council members to disown legitimate meetings, conduct which those members later explained through letters and affidavits. The Appellants caused destruction and chaos at the Union offices and unlawfully removed Union documents, computers, and equipment. Courts do not grant relief to litigants who approach the seat of justice with unclean hands, and reliance is placed on established equitable principles to support this submission.
 55. The Respondents submitted that the requisition for a Central Council meeting fully complied with Rule 11(c) of the Union Constitution. A formal requisition letter dated 7th April 2025 and paid the requisite sum of Kshs.600,000.00 which was intended to defray the costs of convening the meeting.



- The receipt annexed as OON3 evidences this payment, thus, the allegation of forgery is unsupported by any affidavit evidence.
56. It is the Respondents' submission that the Union Constitution does not restrict payment of the requisition fee to a bank deposit alone and that cash payments to Union officials are a common and acceptable practice. The funds were deposited with the Union's accountant and subsequently used to facilitate the Central Council meeting held on 22nd May 2025. Rule 11(c) exists precisely to prevent an individual officeholder from frustrating the democratic will of members, and once the 2nd Appellant declined to convene the meeting, *the Constitution* entitled the requisitioning members to nominate a person to convene it. The requisition was therefore constitutionally sound.
 57. On the question of whether the 3rd Respondent was constitutionally elected as Acting General Secretary, it is submitted that the Appellants' insistence on the absence of an express provision for an "acting" office is misplaced. The 2nd Appellant was lawfully removed from office at the Central Council meeting of 22nd May 2025, as reflected in the minutes annexed as OON7. The Deputy General Secretary was deceased and that the two Assistant General Secretaries were present in the meetings and endorsed the 3rd Respondent to act pending ratification. The Union Constitution provides mechanisms to ensure continuity of leadership, and the actions taken were within those constitutional parameters.
 58. The Respondents further submits that the meeting of 12th June 2025, convened through invitations copied to the Registrar of Trade Unions with a clearly specified agenda, formally confirmed the 3rd Respondent as General Secretary. Further, the decision in *Stephen Mutwiwa Masika & 3 others v Titus W. Khaemba & another* [2015] eKLR arose in materially different circumstances and does not override the processes followed in the present case.
 59. With all due respect to the removal of the Appellants from office, it is submitted that the removals were lawful and constitutionally executed. The Central Council meeting of 22nd May 2025 was duly convened at Sandford Community School in Nairobi, with proper notices issued to all members, including the Appellants, who chose not to attend and did not tender apologies. The meeting attained the quorum prescribed under Rule 11(g), being one-third of members entitled to attend and vote, and resolved that the 2nd Appellant was liable on all six charges preferred against him. Ten members voted in favour of his removal, and the resulting minutes were forwarded to the Registrar, who issued an extract dated 26th May 2025, which remains unchallenged.
 60. The Respondents submitted that a further Central Council meeting was convened on 12th June 2025, at which ten members attended and resolved to remove the 1st and 3rd Appellants from office, as reflected in the minutes annexed as OON12. Rule 11(d) must be read together with Rule 11(g), with quorum for meetings and the voting threshold for removal interpreted as requiring a two-thirds majority of members present and voting once quorum has been achieved; the removals were therefore constitutional.
 61. On the election of the 2nd, 3rd, and 4th Respondents, it is submitted that the elections were lawfully conducted following proper constitutional procedures. Following the lawful removals, three vacancies existed, namely National Chairman, General Secretary, and Treasurer. Proper notices were issued, quorum was achieved, and elections were conducted at the meeting of 12th June 2025 whereby the 2nd and 4th Respondents were elected as National Chairman and Treasurer respectively, while the 3rd Respondent was confirmed as General Secretary. The Registrar of Trade Unions was duly notified, and an extract dated 16th June 2025 was issued.
 62. It is submitted in response to the Appellants' reliance on Rule 14(b) regarding a special conference that the provision is triggered only where more than three national officials cease to hold office. Only three



positions were affected, and consequently the requirement for a special conference under Rule 10 did not arise, therefore, the Central Council had authority to conduct the elections.

63. The Respondents further submitted that the Appellants' conduct demonstrates acquiescence to the new leadership, including the absence of objections lodged with the Registrar against the extracts of 26th May 2025 and 16th June 2025, the implementation of the leadership changes, and the continued operation of the Union. The Appeal was only filed after the new leadership had been firmly established and after demands were made for the handover of Union property.
64. It is the Respondents' submission that the 2nd Appellant lacks locus standi to challenge the implementation of the extract dated 16th June 2025, having been lawfully removed from office on 26th May 2025. The authority of *Kenya Union of Water and Sewerage Employees v Registrar of Trade Unions*, cited by the Appellants is distinguishable as the present matter involved full constitutional compliance. No breach of the Union Constitution has been demonstrated, that all procedures for requisitioning meetings, removing officials, and conducting elections were properly followed, and that the Appellants approached the Court with unclean hands. Therefore, the Appeal ought to be dismissed with costs.
65. The Interested Party submits that this Court ought not to interfere with the internal affairs of a trade union, particularly where the dispute concerns the outcome of democratically conducted elections carried out in accordance with the Union's Constitution.
66. It is the Interested Party's submission that courts only intervene when there is a clear breach of the Union Constitution or the law. Without such a breach, courts should respect the Union's democratic process. It cited *Francis Wanderi & Others v Albert Njeru & Registrar of Trade Unions* [2017] eKLR and *Jophinus Musundi & Others v Kenya National Union of Nurses & Another* [2016] eKLR, where the courts declined to interfere with union elections or internal matters. Similarly, in the authority of *George Ondiege & Others v Albert Obed Njeru/Kudheihwa Workers & Others* [2017] eKLR, the court refused to reopen elections that had already been held.
67. The Interested Party submitted that the Court should only step in if there is a clear violation of *the Constitution* or the law, citing *George Okoth & Others v Kenya Petroleum Workers Union & Registrar of Trade Unions* [2016] eKLR. Minor or technical objections do not justify interference.
68. The Interested Party submitted that the principle of balance of convenience supports leaving the Union elections as they are, as held in *Joseph Muthusi & 2 Others v William Gathogo & 2 Others* [1988] eKLR.
69. It is submitted that the Appellants have not shown any serious violation of *the Constitution* or law. Elections were conducted properly, and the Appellants' objections are only technical. Granting the Appeal would interfere unfairly with Union governance and set a bad precedent.
70. It is the Interested Party's penultimate submission that the Appeal has no merit, the Court should respect the Union's democratic choices, and thereby dismiss the appeal with costs.
71. The Registrar of Trade Union's mandate is derived from Section 35 of the *Labour Relations Act*, 2007 provides the legal framework within which changes of trade union officials may be effected. Section 35(3) and (4) of the *Labour Relations Act* above provides thus;

“(3) The Registrar may require any person who is a member or official of a trade union to produce evidence in relation to the change of officials. (4) If



the Registrar is not satisfied that the change of officials complies with the constitution of the trade union, the Registrar may refuse to register the change.”

72. The law allows the Registrar to examine documents presented, such as minutes and attendance lists, and to satisfy herself that the process was lawful. However, the Registrar does not have power to cure or legitimize an unconstitutional process. Where the underlying process is flawed or disputed, the Registrar is expected to act cautiously and decline to register the change until the dispute is properly resolved.
73. The Registrar’s role is administrative, not judicial and does not include a determination contested facts conclusively, nor does it she replace the Constitution of the Union with its own assessment of convenience or practicality. In *Luvayi & 2 others v Kivuvi & another; Kenya Union of Commercial Food and Allied Workers & another (Interested Parties)* [2025] KEELRC 2814 (KLR), the Court held as follows;
- “The Registrar has explained that its actions are administrative and not quasi-judicial. That the office considered the provisions of the Act and the union constitution before registering the changes. The Labour Relations Act also provides for appeal to this court against the decisions of the Registrar at section 34(4).”
74. The Constitution of a trade union governs how that union is run. It binds all members, officials, and organs of the union, including the Central Council and the Registrar. Where the Constitution sets out how meetings are to be called, how officials are removed, and how elections are conducted, those provisions must be followed strictly.
75. Any action taken in violation of the union’s constitution is unlawful and ultra vires regardless of whether a majority of members support it or whether the Registrar later registers it. In *Kenya National Union of Nurses v Registrar of Trade Unions & 8 others* [2016] KEELRC 140 (KLR), it was held that;
- “..... every Union has a right to determine its own administration programmes and activities and elections are such programmes and activities. In Cause No. 1650 of 2011 – *Aloise A. Otiende vs. Boniface M. Munyao* (supra) the Learned Judge Rika stated that:-“..... the Court has not seen anything in the Union Constitution and the Labour Relations Act, that calls for the mandatory joinder of the Registrar or his designates, in trade union disputes. Their omission is not fatal to the Claim. Public Authorities attend to trade union elections at the invitation of the trade unions. The presiding role of the Ministry of Labour officials in such elections is good practice, but not the law. The Trade union is at liberty to invite Church Ministers, Public Servants and any other persons to preside over its electoral processes. This is the essence of freedom of association. The role of the Registrar of Trade Unions under Section 31 of the Labour Institutions Act No. 12 of 2007, and Section 34 of the Labour Relations Act is to register and regulate trade unions and to conduct their elections or determine their electoral disputes.”
76. Rule 11(c) of this Union’s Constitution clearly provides that where members wish to requisition a Central Council meeting, they must first deposit Kshs.600,000.00 into the Union’s designated bank accounts. The Secretary General is thus barred from acting on a requisition unless and until this deposit is made.
77. In this case, the Appellants produced bank statements showing that no such deposit was made into the Union’s accounts in April 2025. The Respondents relied on a handwritten receipt and asserted that



- the money was paid in cash to the Union’s accountant. However, the Union’s Constitution does not provide for cash payment to individuals but provides for deposit into the Union’s designated accounts.
78. The Court finds that the union’s constitutional condition for requisitioning the meeting was not met. As a result, the meeting that followed was founded on an invalid requisition and therefore void ab initio.
79. The Respondents’ case largely rests on the actions of the 3rd Respondent as “Acting General Secretary.” However, the Union Constitution does not recognize such an office. Instead, Rule 15(d) provides a clear line of succession where if the General Secretary is absent, moves on to the Deputy General Secretary and then the Assistant General Secretaries.
80. The creation of an Acting General Secretary outside this framework was not supported by the Union’s Constitution. In the authority of *Stephen Mutwiwa Masika & 3 others v Titus W Khaemba & another* [2014] eKLR, involving the same Union, the court held observed as follows;
- “There is therefore an order of things under rule 15(e) where the deputy General Secretary and the two assistant General Secretaries assist the General Secretary. The operative word here is ‘and’ to connote both the deputy and the two assistants assist or contribute to the work of the General Secretary. However, where the General Secretary is absent the deputy General Secretary shall exercise all the rights and powers of the General Secretary. This rule does not stop at that, it goes on to add, the senior most assistant General Secretary shall act in the absence of the General Secretary General and the deputy General Secretary General.
- Was this to follow cause or to add to the other? Why did the drafters of the Union Constitution stop at granting the deputy General Secretary the rights and powers of the General Secretary? I can only surmise there was a reason as to why the most senior assistant General Secretary shall act in the absence of the General Secretary and the deputy General secretary. Had these drafters and the delegates conference intended the roles to flow so as when the General Secretary is absent to have the deputy General Secretary act as such and when the deputy is absent for the most senior assistant Secretary General to act as such, this would have been the easiest thing for them to do. But they chose otherwise. I do not see any ambiguity. *The Constitution* is concrete. If there is any such ambiguity, the implications are for the Union to address. However, the affairs of the Union shall not stop simply because the General Secretary is absent. There is the Central Council, the financial committee, the deputy General Secretary and the two assistant General Secretaries who are to run the Union even in the absence of the General Secretary.”
81. On this premises, it is clear that the Union’s constitution provides a clear method for continuity of the General Secretary office in his absence, therefore, it is not open to members or officials to invent new offices. Any meetings convened or decisions taken by a person acting without constitutional authority are therefore invalid.
82. *The Constitution* provides a very high threshold for the removal of Central Council members. Rule 11(d) requires a two-thirds majority of all members entitled to attend and vote. This means two-thirds of the entire Central Council, not merely those present at a meeting. At the material time, the Central Council had eighteen eligible members. Two-thirds of eighteen is twelve. The Respondents’ own minutes show that only ten members voted in favour of the removals. This shrouds the legitimacy of this removal from office of the General Secretary.
83. The Respondents attempted to rely on quorum provisions, which allow meetings to proceed if one-third of members are present. However, quorum for holding a meeting is not the same as the voting



threshold required to remove an elected official. The Court therefore finds that the removals of the Appellants did not abide to the Union's Constitution and was thus unlawful.

84. Following the purported removals, elections were conducted to fill the offices of National Chairman, General Secretary, and Treasurer. Rule 14(b) of *the Constitution* mandates that where more than three national officials cease to hold office, a Special Conference must be convened under Rule 10. Rule 10(a) requires:

“A requisition by not less than one-tenth of fully paid-up members nationwide and the deposit of Kenya Shillings One Million (Kshs.1,000,000.00) into the Union's designated account.”

85. Therefore, a Special Conference requires a nationwide membership requisition and a deposit of Kshs.1,000,000.00 into the Union's designated accounts. None of these requirements were met. Instead, elections were conducted by a small group of Central Council members.

86. The Appellants' through and through brings out a case of an invalid and unconstitutional exercise of removal of the officer of the General Secretary and other elections held to elect and replace the other officials of the union. These were all conducted in violation of the union constitution and therefore cannot stand. Besides, no amount of registration of the resolutions of this meeting would come out to legitimize the same. They become illegal from day one. This court therefore finds that these elections were conducted in clear violation of the Union Constitution and cannot stand.

87. I am therefore inclined to allow the appeal and order as follows;

- i. The decision of the registrar of trade unions issued through the extract dated 16th June, 2025 be and is hereby set aside.
- ii. An order be and is hereby issued compelling the Registrar of trade unions to reinstate Stephen M. Masika, Dan Mihadi and James Njihia to the position of National Chairman, General secretary and Treasurer respectively.
- iii. That the order on reinstatement of union officials (the Appellants) at to (ii) above shall take into account the prevailing situation in the ground pertaining to the union.
- iv. All actions and activities by the 1st Respondent and any union member or official shall all times bear in mind the principality and paramountcy of the interests of the union.
- v. Each party shall bear the costs of this appeal.

DELIVERED, DATED AND SIGNED THIS 28TH DAY OF JANUARY 2026.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Adoli instructed by Adoli & Company Advocates LLP for the Appellant.

M/s Jepkemei instructed by State Law Office for the 1st Respondent.

Mr. Onenga instructed by OCO Law & Company Advocates for the 2nd – 4th Respondent.

Mr Oduor instructed by Oduor I. A & Company Advocates of the Interested Party.

