



Mutsembi v Kenya National Union of Teachers (KNUT) Kakamega South Branch & another (Petition 029 of 2025) [2026] KEHC 392 (KLR) (26 January 2026) (Ruling)

Neutral citation: [2026] KEHC 392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

PETITION 029 OF 2025

S MBUNGI, J

JANUARY 26, 2026

IN THE MATTER OF ARTICLES

2,19,20,21,23,27,28,38,41,47,50,159,160,165 AND 259

OF THE CONSTITUTION OF KENYA,2010

AND

THE FAIR ADMINISTRATIVE ACTION ACT NO.4 OF 2015

AND

THE PRINCIPLES OF FAIRNESS AND LEGITIMATE EXPECTATION

AND

**THE KENYA NATIONAL UNION OF TEACHERS CONSTITUTION AND ALL
OTHER ENABLING AND RELEVANT PROVISIONS OF LAW**

BETWEEN

KEVIN MUTSEMBI PETITIONER

AND

**THE KENYA NATIONAL UNION OF TEACHERS (KNUT) KAKAMEGA
SOUTH BRANCH 1ST RESPONDENT**

GEOFFREY MULINYA MUSIDIA 2ND RESPONDENT

RULING

1. The petitioner, through his counsel, filed a notice of motion application under certificate of urgency dated 23rd December 2025 seeking the following orders;
 - a. That this Application be certified as urgent and be heard ex parte in the first instance.



- b. That this Honourable Court be pleased to grant leave for the matter to be heard and determined during the High Court vacation.
 - c. That the costs of this application be in the cause.
2. The application was premised on the ground and supporting affidavit of the applicant's counsel who asserts that the petitioner was the duly elected KNUT Kakamega south Branch chairperson when he was served with a letter suspending him from office and that the suspension was effected without any prior notice, hearing or opportunity of him to be heard which is a violation of his constitutional rights.
 3. According to counsel, the 2nd Respondent acted unilaterally and had used the letterhead and instruments of the Kakamega East Branch to effect the decision of the Kakamega South Branch office, which was illegal and void.
 4. He avers that the decision by the 2nd Respondent was calculated as it was to bar the petitioner from voting and participating in the KNUT branch General election, which was scheduled for January 2026, and prayed that the matter be heard urgently to avoid the petitioner from being prejudiced and losing his office, dignity and constitutional rights.
 5. In his supporting affidavit dated 23rd December 2025, the petitioner avers that he was the chairperson of the KNUT Kakamega South Branch and seeks conservatory orders to safeguard his constitutional rights.
 6. He contends that he was duly elected as the chairperson and since then he had been conducting his duties faithfully, only for him to receive a letter dated 27th May 2025 from the Respondent informing him that he had been suspended from his office as branch chairperson without any reason or allowing him to be heard and without informing him when the suspension would be lifted.
 7. The petitioner claims that the suspension letter signed by the respondent was in the letter head and instrument by the Kakamega east office which was illegal and further the fact that he was not allowed to be heard was a violation of his constitutional rights under Article 47 on the right to fair administration as well as Article 50 (1) on the right to fair hearing.
 8. He avers that the suspension was calculated and unfair as it was scheduled when the KNUT general election was set to take place and a violation of his human rights under Article 28 and an infringement of his political rights to participate in a free, fair and regular election under Article 38 and under Article 10 of the *constitution*.
 9. He contends that he will be prejudiced if the conservatory orders are not granted to protect his constitutional rights and that the respondent will suffer no prejudice if the conservatory orders are granted.
 10. The respondent filed a replying affidavit dated 9th January 2026, sworn by the Secretary General of KNUT, where they aver that the suspension was procedural, lawful and constitutional and in accordance with the KNUT Constitution, as there was negligence of duty, dishonesty, incompetence and failure to obey the decision of the union and the branch.
 11. They aver that the suspension was a procedural administrative measure designed to preserve institutional order and denied the allegation that the Applicant was condemned unheard, as he was aware of the constitutional provisions and the remedy available to him and the internal mechanisms under the KNUT constitution.



12. He acknowledged that the applicant sent a letter dated 5th June 2025 apologizing for the mistakes and pleaded guilty to the charges. He was invited together with the executive secretary and branch treasurer for a consultative meeting at the KNUT head office on 14th October 2025 which found that the applicant was in breach of Article XIV (5) and Article XIV (1) and (4) of the KNUT constitution where he was advised to lodge an appeal with the national Executive Council (NEC) which he failed to and on 1st December 2025 when the National Executive Council sat, the applicant's appeal could not be heard as he had not filed his appeal.
13. They claim that the appellant submitted a letter dated 4th December 2025 to the NEC, where he requested to be pardoned, admitting his mistakes, and the suspension lifted. The respondent aver that the applicant is attempting to mislead the court.
14. They claim that the KNUT general election was constitutionally mandated and time-bound, and the broad membership cannot be subordinated by the personal interest of the Applicant, and the suspension arose from the applicant's conduct and failure to invoke the internal remedies, and as such, he cannot claim that he was unfairly treated.
15. They further claim that the court lacks jurisdiction in the application and the petition as the applicant had failed to exhaust the internal dispute resolution mechanisms provided by the KNUT Constitution contrary to Article 159 (2) (c) of the *constitution*, the Fair Administrative Act and the exhaustion of internal remedies as he had admitted wrongdoing and concealed material facts to the court.
16. They pray that the application and the petition be dismissed as it is premature and incompetent and undermines the lawful union governance structures.
17. The application was canvassed by way of written submissions.

Applicant's submissions

18. On their submissions dated 15th January 2026, the applicant asserts that they had met the conditions for conservatory orders. They quoted the case of Gatirau Peter Munya vs. Dickson Mwenda Kithinji & others (2014) eKLR.
19. It's their submission that they had established a prima facie case of illegal and unprocedural suspension and aver that he would be locked out of the election process if the orders are not granted. As he was not granted the right to fair administration under Article 47 of the *constitution* and Section 4 (3) of the *Fair Administrative Action Act*.
20. The applicant avers that the suspension letter was conclusive and did not give him a disciplinary notice to defend his case, and quoted the case of Judicial Service Commission Vs. Mbalu Mutava & Another (2015) Eklr on fair administrative action and affirms the right to be heard by an administrative body as a rule of natural justice.
21. He claims that he had been suspended for over six months with no hearing, charges and no timeline for resolution and claims that he was never allowed to be heard.
22. He claimed that the suspension letter was signed using the letterhead of Kakamega East to suspend an official of Kakamega South Branch.
23. They opine that if the conservatory orders are not granted, they will suffer irreparable harm, denying him an opportunity to contest in the January election under Article 38 of the *constitution* of Kenya, and quoted the case of Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 others (2013) eKLR.



24. He claims that the suspension was unlawful without hearing his evidence, with an indefinite period excluding him from the electoral process as a candidate and as a voter.

Analysis and Determination

25. I have carefully considered the application, the affidavits in support and opposition, and the parties' submissions. In my view, the following issues arise for determination at this interlocutory stage;
- a) Whether this Court has jurisdiction in light of the doctrine of exhaustion of internal dispute resolution mechanisms;
 - b) Whether the Petitioner has established the threshold for the grant of conservatory orders; and
 - c) What orders should be issued in the circumstances
26. The respondent in their replying affidavit has raised an important issue that needs to be addressed, which is on Jurisdiction. They contend that this court lacks jurisdiction on account that the petitioner has failed to exhaust the available internal dispute resolution mechanisms that have been provided for under the KNUT Constitution.
27. Article 159(2)(c) of the [constitution](#) promotes alternative forms of dispute resolution, and is codified in Section 9(2) of the [Fair Administrative Action Act](#).
28. The doctrine of exhaustion is now firmly entrenched in our constitutional jurisprudence. In *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, the Court of Appeal held:
- “Where there is a clear procedure for the redress of any particular grievance prescribed by the [constitution](#) or an Act of Parliament, that procedure should be strictly followed.
29. In *Hadullo & another v Registrar of Trade Unions & 3 others* [2025] KEELRC 489 (KLR), the Employment and Labour Relations Court struck out a petition for failure to exhaust internal union dispute resolution mechanisms, emphasising that courts should not be the first port of call. Similarly, in *Moffat & 14 others v Nthurima & 3 others* [2025] KEELRC 2144 (KLR), the court affirmed that the doctrine is both constitutional and statutory, and petitions bypassing internal remedies are premature.
30. However, exceptions exist where the internal process is ineffective, biased, or where fundamental rights are at imminent risk. In *Musyoka v Kenya Union of Post-Primary Teachers Machakos Branch* [2025] KEELRC 2949 (KLR), the court held that a petition alleging constitutional violations cannot fail solely for want of exhaustion if the violations are grave and the internal process inadequate.
31. The Petitioner contends that the alleged violation of constitutional rights is why he moved to the high court as a recourse to the violations. The mere invocation of constitutional provisions does not, of itself, oust the exhaustion requirement.
32. The evidence produced by the respondent indicates that the KNUT union conducted a special BEC meeting on 27th May 2025, among the issues discussed was the conduct of the petitioner. Which led to his suspension. The petitioner wrote a letter to the Secretary General of KNUT dated 5th July 2025 apologizing for his conduct, after which he was invited for a consultative meeting through a letter dated 14th October 2025.
33. The record shows that he attended the said meeting at the KNUT house on 22nd October 2025, where the committee found that the petitioner was guilty of the allegations of misconduct against him and



- allowed him to appeal the decision at the National Executive Council (NEC); however, he failed to appeal. He, however, wrote a letter dated 4th December 2025 apologizing.
34. The evidence on record by the respondents has indicated that the Petitioner was well aware of the charges. There was evidence that the petitioner apologized in writing, attended a consultative meeting, and was advised to appeal to the NEC, but failed to do so formally. His subsequent letter requesting a pardon does not substitute for a proper appeal under the KNUT Constitution. The Petitioner has not demonstrated exceptional circumstances warranting bypass of the internal mechanisms, such as futility or irreparable harm beyond what the remedies could address. The suspension, while lengthy, stems from his own inaction in pursuing appeals.
 35. The Respondents have demonstrated, through affidavit evidence, that the KNUT Constitution provides for disciplinary procedures and an appellate mechanism to the National Executive Council (NEC). It is not disputed that the Petitioner was advised to appeal to the NEC and that he did not do so within the prescribed framework.
 36. In *William Odhiambo Ramogi & 2 others v Attorney General & 6 others* [2018] eKLR, the Court held that exhaustion may only be bypassed in exceptional circumstances, including where the internal mechanism is shown to be ineffective, biased, or incapable of providing an appropriate remedy.
 37. From the material before the Court, I am not persuaded that such exceptional circumstances have been demonstrated. On the contrary, the evidence discloses engagement with the union structures, including correspondence, consultative meetings, and an admission of wrongdoing by the Petitioner, culminating in advice to lodge a formal appeal, which was not pursued.
 38. I therefore find that, prima facie, the Petition and the present application are inhibited by the doctrine of exhaustion. It is a clear procedure for redress prescribed by internal Constitutions; it must be followed.
 39. Notwithstanding the above finding, I consider it prudent to examine whether the Applicant has met the threshold for conservatory orders. The threshold for conservatory orders under Article 23(3) of the [constitution](#) requires a prima facie case, irreparable harm, and a balance of convenience favouring the applicant, as articulated in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR.
 40. The Petitioner alleges a violation of Articles 47 and 50 of the [constitution](#) on account of suspension without a hearing. The right to fair administrative action is indeed a constitutional imperative. In *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR, the Court of Appeal held that administrative bodies are bound by Article 47 and must act fairly, lawfully, and reasonably.
 40. The evidence before the Court indicates that the suspension complained of was an interim administrative measure grounded in the KNUT Constitution, that the Petitioner was aware of the allegations, issued correspondence acknowledging fault, attended consultative engagements, and was advised on the appellate process.
 41. At this interlocutory stage, and without delving into the merits of the Petition, I am not satisfied that the Petitioner has demonstrated a clear prima facie case of constitutional violation, as opposed to a grievance arising from an internal disciplinary process.
 42. The Petitioner further argues that he will be locked out of the January 2026 KNUT elections, thereby violating his political rights under Article 38 of the [constitution](#). While Article 38 protects political rights, it must be appreciated that trade unions are voluntary associations governed by their constitutions. Participation in union elections is subject to compliance with internal rules.



43. In *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, the Court warned that courts must exercise restraint and avoid undue interference in the internal affairs of institutions unless a clear constitutional breach is shown.
44. Any prejudice alleged by the Petitioner is, at this stage, speculative and largely self-inflicted by failure to exhaust available remedies. It does not rise to the level of irreparable harm warranting conservatory relief.
45. On the issue of whether granting the orders serves the best for public interest, the Respondents have demonstrated that the KNUT general elections are time-bound, constitutionally mandated, and implicate the rights of thousands of members.
46. In *Centre for Rights Education and Awareness (CREAW) v Attorney General* [2011] eKLR, the Court observed that public interest may outweigh private interests where institutional stability and orderly governance are at stake.
47. I find that granting the orders sought would unduly disrupt lawful union processes and undermine internal governance structures, contrary to the public interest.
48. In light of the foregoing, I find and hold that:
 - a. The Petitioner has not exhausted the internal dispute resolution mechanisms provided under the KNUT Constitution;
 - b. The threshold for the grant of conservatory orders has not been met; and
 - c. The application is premature and an abuse of the Court process.
 - d. The Notice of Motion dated 23rd December 2025 is hereby dismissed.
 - e. The Petitioner is at liberty, should he so wish, to first exhaust the internal mechanisms provided under the KNUT Constitution before approaching this Court.
 - f. Given the nature of the dispute, each party shall bear its own costs.
 - g. Right of Appeal 30 Days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA 26TH DAY OF JANUARY, 2026.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Mr. Ajeck Njok for the Respondent present online.

Mr M. Nekesa for the petitioner/Applicant present online.

