

REPUBLIC OF KENYA

IN EMPLOYMENT AND LABOUR RELATIONS COURT AT

ELDORET

ELRC NO. E070 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

TONY CHERUIYOT.....

CLAIMANT

VERSUS

INDEPENDENT ELECTORAL COMMITTEE (IEC)

KENYA MEDICAL PRACTITIONERS,

PHARMACISTS AND DENTISTS’

UNION (KMPDU) 1ST

RESPONDENT

KENYA MEDICAL PRACTITIONERS,

PHARMACISTS AND DENTISTS’

UNION (KMPDU) 2ND

RESPONDENT

JUDGMENT

1. The Claimant is a medical doctor and a member of the 2nd Respondent.
2. The 1st Respondent is a Committee established pursuant to Article IX of the 2nd Respondent’s Constitution and is mandated to manage the elections of the 2nd Respondent.

3. The 2nd Respondent is a trade union registered under the Labour Relations Act.
4. The Claimant avers that on 25th September 2025, the Registrar of Trade Unions issued a Notification of Trade Union Elections for the 2026 cycle, directing all trade unions, organisations and federations to conduct elections within the following timelines:
 - a. Branch elections between 5th January 2026 and 31st March 2026
 - b. National elections between 1st April 2026 and 30th June 2026, in readiness for the Central Organization of Trade Unions (COTU) and Trade Union Congress (TUC) elections scheduled for 30th August 2026.
5. The Claimant contends that the 2nd Respondent was duly served with the said notification. That on 3rd October 2025, its National Executive Committee deliberated on the forthcoming 2026 election cycle and resolved that the current Independent Elections Committee would remain in office.
6. Relying on Section 34(1) of the Labour Relations Act, 2007, which requires that elections of officials of a trade union be conducted in accordance with its registered constitution, the Claimant contends that the 2nd Respondent, and in particular its

National Executive Committee, failed to comply with the Union's Constitution.

7. The Claimant contends that since the current union officials were elected on 6th May 2021, fresh elections ought to be held in April 2026 in compliance with the Labour Relations Act, 2007.
8. The Claimant further avers that in its meeting held on 3rd October 2025 the National Executive Committee resolved, pursuant to Article IX of the Union's Constitution, that the current Independent Elections Committee would conduct the elections without consulting the union members.
9. It is the Claimant's case that the National Executive Committee failed to convene a Special Delegates Conference to deliberate on the selection of the Independent Electoral Committee, thereby curtailing his rights under Articles 36 and 41 of the Constitution of Kenya, 2010, by denying him the opportunity to participate in the selection process.
10. The Claimant contends that the decision to retain the current Independent Electoral Committee was made in bad faith and should be annulled as it undermines the integrity of the electoral process.

11. It is the Claimant's case that the current composition of the Independent Elections Committee casts doubt on the credibility of the election process and outcome and constitutes a breach of the law.
12. The Claimant particularized the alleged breaches of the law as follows:
 - i. That the 2nd Respondent denied him the opportunity to participate in the selection of the Independent Elections Committee through a Special Delegates Conference
 - ii. That the 2nd Respondent breached Section 34(1) of the Labour Relations Act, 2007, by failing to adhere to its registered Constitution and retaining the current Independent Elections Committee to conduct the 2026 elections.
13. In the Statement of Claim dated 9th December 2025, the Claimant seeks the following reliefs: -
 - a. A Declaratory Order that the 2nd Respondent infringed on the rights and fundamental freedoms of the Claimant in contravention of Article 27(1) and (2) and Article 41(2)(c) of the Constitution of Kenya, 2010.

- b. An Order that the 1st Respondent as currently constituted be and is hereby disbanded and a fresh Independent Elections Committee be constituted within 30 days of this Judgment.
- c. An order for payment of costs of this claim
- d. The Honourable Court do make these and further orders that it deems fit to meet the ends of justice.

- 14. The Respondents filed a Response to the Statement of Claim dated 16th January 2026, asserting that the 2nd Respondent has fully complied with its registered Constitution and the Labour Relations Act.
- 15. The Respondents aver that pursuant to Article IV(D) of the Union's Constitution, the National Executive Committee has the sole mandate to appoint members to various committees, including the Independent Electoral Committee and to oversee their functioning.
- 16. The Respondents state that in exercise of that mandate, the National Executive Committee, as constituted on 17th January 2021, properly appointed members of the current Independent Electoral Committee to discharge its functions under Article IX.
- 17. The Respondents aver that under Article V(A)(2) of the Union's Constitution, the Delegates Conference (Annual or Special) is

the supreme authority of the Union and its decisions are final and binding on all members.

18. It is contended that Articles V(B) and (C) of the 2nd Respondent's Constitution provide that each delegate attending an Annual Delegates Conference or Special Delegates Conference represents twenty bona fide members eligible to vote. It is further contended that Article V(D)(6) provides that one of the functions of the Annual Delegates Conference and Special Delegates Conference is to approve members appointed by the National Executive Committee to various committees.
19. The Respondents assert that the Independent Elections Committee members appointed by the National Executive Committee on 17th January 2021 were presented to a Special Delegates Conference on 13th February 2021 and duly ratified by the Union's highest decision-making organ. On this basis, the Respondents contend that the National Executive Committee cannot independently vary or terminate appointments ratified by the Special Delegates Conference as the Independent Elections Committee, once ratified, enjoys an indefinite tenure unless lawfully removed.

20. The Respondents assert that any proposal to terminate the tenure of Independent Elections Committee members on grounds of bias or lack of independence must first be deliberated upon and approved at an Annual Delegates Conference or Special Delegates Conference, after which the National Executive Committee may make fresh appointments subject to ratification.
21. The Respondents pray that the Court declare that the 1st Respondent as constituted and ratified on 13th February 2021 is properly established under the Union's Constitution to conduct the 2026 election cycle pursuant to the Registrar's notification of 25th September 2025.
22. The Respondents assert that the Claimant's suit lacks merit and urged the court to dismiss it with costs.
23. Pursuant to directions issued on 19th January 2026, the suit was disposed of by way of written submissions. Both parties filed their submissions

The Claimant's submissions

24. In his submissions dated 23rd January 2026, the Claimant identified the main issue for determination as whether the Independent Electoral Committee was properly recruited and

appointed by the National Executive Committee in accordance with the Union's Constitution.

25. Relying on Section 34 of the Labour Relations Act, 2007, the Claimant submitted that the National Executive Committee ought to have convened a Special Delegates Conference pursuant to Article V(A)(1) of the Union's Constitution to deliberate on the selection of the Independent Elections Committee for the 2026 election cycle.
26. The Claimant submitted that the failure to convene such a conference curtailed his rights under Article 36 of the Constitution, which guarantees freedom of association, including the right to participate in the activities of an association.
27. The Claimant further submitted that, as a union member, he was entitled to participate in the process of selecting Independent Elections Committee members prior to their appointment and confirmation.
28. The Claimant therefore prayed for judgment against the Respondents, including an order disbanding the current Independent Elections Committee and directing the constitution of a fresh Committee within 30 days.
29. The Claimant also prayed for an order for the costs of this suit.

The Respondents' submissions

30. In their submissions dated 16th January 2026, the Respondents framed the following issues:

- i. Whether the Independent Electoral Committee was properly appointed under Articles IV(D) and IX of the Union's Constitution.
- ii. Whether the ratification of the Independent Electoral Committee by the Special Delegates Conference on 13th February 2021 was valid and binding under Articles V(A)(2) and V(D)(6).
- iii. Whether the current composition of the Independent Electoral Committee violates the Constitution of the Union or the Labour Relations Act.
- iv. Whether the NEC may independently vary or terminate the tenure of Independent Electoral Committee members once ratified by the Special Delegates Conference /ADC.
- v. Who should bear the costs of the suit.

31. The Respondents submitted that under Article V(A)(2) of the 2nd Respondent's Constitution, the Delegates Conference is the

supreme authority of the Union and that its decisions are binding on all members unless shown to violate the law.

32. The Respondents submitted that the 2nd Respondent fully complied with its constitutional provisions to wit: -
- i. The National Executive Committee lawfully exercised its appointment power under Article IV(D)
 - ii. The current Independent Electoral Committee members were formally ratified by the Special Delegates Conference on 13th February 2021
 - iii. The ratification was undertaken through a representative and democratic process.
33. The Respondents argued that where a union acts within its constitution and prescribed procedures, there is no basis for judicial intervention. They further submitted that interference at this stage would disrupt the 2026 election cycle and impede compliance with statutory timelines set by the Registrar of Trade Unions.
34. On costs, the Respondents contended that the suit is frivolous and that costs should follow the event.
35. In conclusion, the Respondents urged the Court to dismiss the Claim and to declare that the Independent Electoral

Committee, as constituted and ratified on 13th February 2021, is properly established to conduct the 2026 elections

Analysis and Determination

36. Having considered the pleadings and submissions, the issues that fall for this court's determination are: -

- i. Whether the Independent Electoral Committee was properly appointed and ratified in accordance with the 2nd Respondent's Constitution
- ii. Whether the National Executive Committee was required to convene a fresh Special Delegates Conference prior to the 2026 election cycle
- iii. Whether the retention of the current IEC violates Section 34(1) of the Labour Relations Act, 2007 or the Constitution of Kenya, 2010.
- iv. *What orders should issue?*

Whether the Independent Electoral Committee was properly appointed and ratified in accordance with the 2nd Respondent's Constitution

37. Section 34(1) of the Labour Relations Act, 2007 provides that elections of officials of a trade union shall be conducted in accordance with the union's registered constitution.
38. Article IV(D) of the 2nd Respondent's Constitution vests in the National Executive Committee with the mandate to appoint members to the various standing committees.
39. The composition and appointment of the Independent Elections Committee is provided for in Article IX as follows:
1. Five bona fide union members who will not be eligible to run for an elected office and cannot co-opt.
 2. Criteria for appointment
 - i. Member of the Union sufficiently literate in Kiswahili and English or either
 - ii. Registered member of the Union and Medical board
 - iii. Two (2) years post internship
 - iv. No record of criminal conviction
 - v. Shall have paid dues for at least 12 months
40. Article VIII provides for the Union Standing Committees but does not mention the Independent Elections Committee as one of the Union Standing Committees. However, by its nature and as stated at paragraph 7 of the Respondents' Replying affidavit

and Witness Statement, under Article IV(D) the National Executive Committee has the role and mandate to appoint members' of various committees including the Independent Elections Committee.

41. This therefore means that the Independent Elections Committee is one of the standing committees of the 2nd Respondent even though it is not specifically mentioned in Article VIII of the Constitution.

42. Article VIII (4) and (5) provide for tenure of the Standing Committees as follows:

(4) The committees shall serve five-year renewable terms.

(5) In the event of a vacancy in a committee by resignation, dismissal or death, the National Executive Council shall appoint a new member to fill the gap.

43. There is thus an anomaly, vacuum or ambiguity with respect to the tenure and manner of appointment of members to the Independent Elections Committee as there is no specific reference to tenure of the Committee in the Union Constitution. At the same time there is no mention of the committee being permanent or an indication that it was the intention in Article IX to make it a permanent committee.

44. There is further no provision for the National Executive Committee to constitute or extend the tenure of the Independent Elections Committee as was done by the National Executive Committee on 17th January 2021.
45. In view of the fact that there is a vacuum in the Union Constitution on the tenure of office of the Independent Elections Committee, it would not be correct to state that the extension of the term of the Committee by the National Executive Committee was in violation of the Union Constitution.
46. It is also not practical to convene the Delegates Conference to deal with the issue before the elections of the union which according to Article XIV are to be held in the month of April of every election year. Further, Article V (A) (1) of the Union Constitution provides for the convening of the Annual Delegates Conference in the month of May.
47. In the circumstances the court recommends that the term of office of the Independent Elections Committee be discussed and resolved at the next Annual Delegates Conference to be held May, 2026.
48. In view of the fact that Article IV (D) of the Union Constitution mandates to the National Executive Council the role of appointing members to various committees and overseeing the

functioning of the committees, and further, in view of the ambiguity in the Union Constitution provisions on the tenure of office of the Independent Elections Committee, the Court finds no basis to fault the decision of the National Executive Council to extend the term of office of the Independent Elections Committee at the meeting of the National Executive Council held on 3rd October, 2025.

Whether the National Executive Committee was required to convene a fresh Special Delegates Conference prior to the 2026 election cycle

49. The gravamen of the Claimant's case is that the National Executive Council ought to have convened a fresh Special Delegates Conference to deliberate on the selection or reconstitution of the Independent Elections Committee for purposes of the 2026 election cycle.
50. The Claimant has not pointed out any specific provision of the Union's Constitution requiring that the Independent Elections Committee be reappointed or re-ratified by the Delegates Conference prior to every election cycle. As I have already stated above, the tenure of office of the Independent Elections Committee is not provided for in the Union Constitution. It

therefore means that the extension of the tenure of the Committee by the National Executive Council cannot be faulted as it did not infringe any provision of the Union Constitution.

51. In the absence of an express constitutional requirement for periodic reconstitution of the Independent Elections Committee, the Court finds no basis for holding that the National Executive Committee was obligated to convene a fresh Special Delegates Conference for the purpose of reconstitution of the Independent Elections Committee.

Whether the retention of the current Independent Elections Committee violates Section 34(1) of the Labour Relations Act, 2007 or the Constitution of Kenya, 2010.

52. Section 34(1) of the Labour Relations Act requires that union elections be conducted in accordance with the union's registered constitution. As already found, the constitution of the union does not make any specific provision for the tenure of office of the Independent Electoral Committee or the reconstitution of the Independent Elections Committee before every election. I therefore have no basis to find that there was breach of the Union's Constitution.

53. The Claimant further alleges violation of Articles 27, 36 and 41 of the Constitution of Kenya, 2010. Article 36 guarantees the right to freedom of association, including participation of members in the activities of an association. The participation of members in trade union activities is exercised within the governance structure established by its constitution.
54. In the instant case the appointment of the Independent Elections Committee is done by the Annual Delegates Conference. The Petitioner has not demonstrated that he was denied an opportunity to participate at any such delegates conference. He has not even indicated that he is a delegate at the Delegates Conference. I therefore find no proof of breach of the Petitioner's right to freedom of association under Article 36 of the Constitution of Kenya.
55. The allegation of discrimination under Article 27 has not been substantiated by evidence demonstrating differential or unequal treatment of the Petitioner by the Respondents. Similarly, no material has been presented to the court to establish a violation of the Petitioner's rights to fair labour practices under Article 41(2) of the Constitution of Kenya.
56. The allegations made by the Claimant that the continued tenure of the Independent Elections Committee undermines

credibility of elections has not been supported by evidence. As pointed out by the Respondents, no motion or complaint has been raised over the partiality or other misconduct or ground for removal of the members of the Independent Elections Committee.

57. The Court therefore finds no evidence to support the averments of violation of the Petitioner's constitutional rights under the mentioned provisions of the Constitution of Kenya.

What orders should issue?

58. It is a well-established principle that courts should be slow to interfere with the internal affairs of voluntary associations, including trade unions, where such bodies act within their constitutional mandate and the law. The role of the Court is supervisory, to ensure compliance with statutory and constitutional requirements.
59. In the present case, no violation of the Labour Relations Act or the Union's Constitution has been established. Judicial intervention would therefore be unwarranted.
60. In the upshot, the Court finds that the Independent Electoral Committee as appointed on 17th January 2021 and ratified on 13th February 2021 is properly constituted under the 2nd

Respondent's Constitution as currently framed. Further, that the extension of the term of office of the Committee at the meeting of the National Executive Council of 3rd October, 2025 was not in violation of any provision of the Union Constitution.

61. Accordingly, the Claim is dismissed. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THIS 12TH DAY OF FEBRUARY, 2026.**

**M. ONYANGO
JUDGE**