

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MALINDI**

CAUSE NO. E019 OF 2025

CIDIN KIRIAGO CLAIMANT

VERSUS

CALEB MOGIRE,

EXECUTIVE SECRETARY, KUPPET KILIFI BRANCH 1ST RESPONDENT

AKELLO MISORI

SECRETARY GENERAL, KUPPET (KENYA) 2ND RESPONDENT

RULING

The claimant, Cidin Kiriago, filed an application dated 22 December 2025 under the provisions of Articles 1, 22, 36, 41, 47 and 50 of the Constitution and section 12 of the Employment and Labour Relations Court Act, seeking the following orders:

1. Spent.
2. Spent.
3. Suspension and staying the implementation and enforcement of the increased nomination fees for KUPPET elective positions as contained in the Notice and Regulations dated 26 November 2025, and or any other related instructions issued by the respondents.
4. Restraining the respondents, their agents and or servants from conducting or causing to be conducted KUPPET Kilifi Branch elections scheduled for 14 February 2026 or on any other date based on the said impugned nomination fees and regulations.

The claimant filed his Supporting Affidavit in support of the application. He avers that respondents unilaterally increased nomination fees without the members' effective participation and approval. They have therefore exercised union power in a manner that is inconsistent with Article 1 of the Constitution and the democratic character required of trade unions.

There is a violation of participation and fair labour rights through the sharp increase in nomination fees from Ksh. 10,000 to Ksh. 200,000 for the executive secretary and Ksh. 10,000 to Ksh. 100,000 and Ksh. 50,000 for other positions. This creates unreasonable and discriminatory financial barriers that deny ordinary members the right to contest for union leadership, contrary to Articles 36 and 41 of the Constitution and the Labour Relations Act.

The claimant avers that there was a lack of consultation and due process because there was no proper notice, agenda, minutes, or resolutions showing that members of KUPPET Kilifi Branch were involved in the changes. There is nothing to show that the duly convened national organs approved the new nomination fee structure, contrary to the KUPPET constitution and the principles of fair administrative action under Article 47 of the constitution.

There is a comparative unreasonableness of KUPPET fees. The statutory IEBC nomination fees for public elective positions are far lower. For example, President Ksh. 200,000, Governor Ksh. 50,000, Senator Ksh. 50,000, a woman's representative and member of parliament, Ksh. 20,000 and a member of the country assembly, Ksh. 5,000. Professional bodies, such as the Law Society of Kenya, conduct elections for national leaders with little or no nomination fees and yet manage to run credible and accountable elections.

The respondents' increase is arbitrary and in bad faith. The increase was communicated near the deadline of 9 January 2026 and ahead of the election on 14 February 2026. This suggests an intention to ambush and exclude aspirants who cannot raise the funds in time. No financial or operational justification has been disclosed for multiplying the fees several-fold beyond teachers' financial capacity.

The claimant avers that, if the elections proceed under the impugned regime, an illegitimate leadership will be installed and any attempt to undermine the process will be disruptive, costly, and impractical, thereby rendering his claim nugatory.

The claimant further avers that he is a teacher and registered member of KUPPET Kilifi Branch. He intends to vie for the position of executive secretary, Kilifi Branch, in the upcoming elections scheduled for 14 February 2026 at Barani Secondary School, Malindi. Before the impugned changes, the nomination fee for the executive secretary was Ksh. 50,000, while the nomination fee for other elective positions was Ksh. 10,000. However, the respondents have issued a notice and election regulations increasing the nomination fee for the executive secretary to Ksh. 200,000, with the payment deadline on 9 January 2026.

Unless the orders sought are issued, he will suffer irreparable loss and damage, and his claim will be rendered nugatory.

In reply, the respondents filed the Replying Affidavit of Akello Misori, the Secretary General and opposed the application and orders sought. He avers that the application should be struck out as scandalous and frivolous because the claimant confirms that KUPPET communicated the changes to the nomination fees by notice dated 26 November 2025, yet fails to appreciate that its 2025 constitution governs KUPPET elections. Under Article 13, the mandate to organise elections is vested in the national executive board (NEB). The nomination fees are codified under Article 14.0 of the constitution, thus not arbitrary or unprocedural as alleged. The notice for elections is developed under article 13(a) (xiv) of the KUPPET constitution by the NEB in consultation with the national governing council (NGC). The NGC is made up of all branch secretaries, including the KUPPET Kilifi Branch and its members.

Misori avers that the fees prescribed by the constitution were communicated in the Notice. This is in accordance with the union constitution and is therefore not arbitrary. The claim has failed to demonstrate the principle necessary for the grant of the orders sought. There is no material to establish a prima facie case or the irreparable injury to be suffered if the orders sought are not granted. There is no proof of a case on the balance of probabilities. No right has been infringed as alleged.

The claimant does not demonstrate any variance between the nomination fees set out in the notice dated 26 November 2025 and those in the KUPPET constitution. The allegations that there was no public participation are misleading the court. The nomination fees were determined through a lengthy constitutional amendment process in accordance with Article 25 of the Constitution. The shift was conducted in line with applicable national and union laws and regulations. The procedures leading to the registration of the KUPPET constitution, 2025, were subject to **Nairobi ELRC Petition N. E095 of 2025 – Kinyua v KUPPET**, and the court held that the amendment process was done properly in terms of constitutional and statutory provisions. Thus, the nomination fees are valid and constitutional. On this basis, the claimant has no prima facie case.

Misori avers that the claimant will not suffer any irreparable loss or damage if the orders sought are not granted. Under section 12(3) (viii) of the Employment and Labour Relations Court Act, the court is allowed to grant orders as deemed fit and just. The court has the power to annul elections founded on unconstitutional premises. The counterargument is that the

orders sought to disrupt the election process, which is based on the KUPPET constitution, will be costly and thus cause irreparable loss and damage to the respondents.

On a balance of probabilities, public interest, and the balancing of interests, stopping the scheduled elections will preclude a process that has been meticulously planned, with funds already disbursed and resources expended on nominations and campaigns by aspirants. This will deny the members of KUPPET Kilifi Branch the ability to mobilise and defend their rights to fair labour practices under Article 41(2) (c) of the Constitution. The essence of the orders sought is to prevent the nationwide KUPPET elections from proceeding, in the event that they would cause nationwide industrial action. Under article 13(a) (viii), office holders are required to vacate office on the expiry of 5 years. The orders suspending the elections will leave branch members in a power vacuum and unable to organise.

The claimant has already been locked out of the nomination process that closed on 9 January 2026. He has no prospects of being elected due to failure to meet the deadline set under the notice dated 26 November 2025. Other candidates have since paid the nomination fees, and as the sole applicant herein, to allow the orders sought would impede the rights of the KUPPET members who have the right to be served by officials of their choice. In the interests of justice, the orders sought should not be issued, and the application should be dismissed.

The parties attended and addressed their submissions on the instant application. These are analysed, and the issues which emerge for determination are twofold:

Whether the court should suspend and stay the implementation of the increased nomination fees for KUPPET elective positions as contained in the notice dated 26 November 2025.

Whether the court should restrain the respondents or their agents from conducting KUPPET Kilifi Branch elections scheduled for 14 February 2026.

An interlocutory order suspending and restraining a party will only issue to facilitate the orderly functioning of an entity. This is to prevent prospects of irreparable harm occurring during the pendency of a case that has a high probability of success. Such an order should thus only be granted on the inherent merit of a case, bearing in mind the constitutional values, the proportionate magnitudes, and the priority levels attributable to the relevant causes. See **Kimani & 2 others v Kenya Airports Authority & 3 others [2021] KESC 43 (KLR)**

The guiding principles in addressing a case of interim orders are established in **Giella v Cassman Brown**. These are –

- a. An Applicant must show a prima facie case with a probability of success;*
- b. if the temporary injunction is not granted, the Applicant stands to suffer irreparable harm for which damages would not be an adequate remedy;*
- c. If the Court is in doubt as to whether the Applicant stands to suffer irreparability, then it will determine the application on the balance of convenience.*

In this case, the claimant asserts that the respondents issued a notice dated 26 November 2025 calling for elections and payment of a nomination fee that is excessively high. The sharp increase in nomination fees from Ksh. 50,000 to Ksh. 200,000 for the executive secretary, Ksh.10, 000 to Ksh. 100,000 and Ksh. 50,000 for the other positions creates unreasonable and discriminatory financial barriers that deny ordinary members the right to vie for union leadership, thereby contravening sections 36 and 41 of the Constitution and the Labour Relations Act (LRA). That the respondents should be ordered to revert to the previous nomination fees for the executive secretary at Ksh. 50,000 and other branch posts Ksh. 10,000.

Article 4 of the LRA gives every employee and member of a trade union the right to participate in the lawful activities of their trade union. Such activities must comply with the union constitution. The constitution must be the document submitted and registered with the legal agency mandated under the LRA, the Registrar of Trade Unions.

Thus, under section 4(2) of the LRA, the court, in defining and interpreting a union member's rights, is the primary document of reference. In this case, the KUPPET Constitution, 2025, is in force. The process leading to the constitution of 2025 was subject to the Nairobi ELRC Petition E095 of 2025.

Thus, in any union elections, section 34 of the LRA is imperative to refer to. Section 34(1) requires that:

34. Election of officials

(1) The election of officials of a trade union, employers' organisation or federation shall be conducted in accordance with their registered constitutions.

In the Notice dated 26 November 2025, the 2nd respondent, as the Secretary General of KUPPET, announced upcoming branch elections, including those for KUPPET Kilifi Branch. Reference was made to articles 13 and 14 of the KUPPET constitution.

The schedule of nomination fees is attached to the Notice calling for branch elections.

Misori, under his Replying Affidavit dated 22 January 2026, attached the KUPPET Constitution, 2025. Under Article 13, the union elections are set out in detail, including branch elections such as the KUPPET Kilifi Branch elections.

Article 14 of the KUPPET constitution comprises the schedule of nomination fees. Under Article 14(o), the nomination fees for branch executive secretaries are Ksh. 200,000.

As the primary governing document for KUPPET, the respondents are bound by it. They can only enforce and implement its provisions. The court can only direct or depart from these documents under exceptional circumstances, which must be demonstrated by the claimant.

His case is that the nomination fees violate fair labour rights and that the sharp increase is unreasonable. There was a lack of consultation and due process. Fundamentally, the claimant contends that a comparison with other agencies, including the IEBC and the Law Society of Kenya, demonstrates the unreasonableness of the KUPPET nomination fee. And hence the changes are arbitrary and in bad faith. However, the process of constitutional making is not a single event for the respondents. It is a collective duty, addressed by the court in Nairobi, in ELRC Petition No. E095 of 2025. The court reviewed the procedures undertaken in relation to the KUPPET constitution-making and held that they were constitutional and hence valid.

Thus, in **Kinyua v Secretary General, Kenya Union of Post Primary Education Teachers (KUPPET) & another [2025] KEELRC 3753 (KLR)**, the court emphasised that;

... the 1st Respondent [KUPPET] did not violate its own constitution, any statutory provision or any constitutional provision in amending the KUPPET constitution.

...

The 2nd Respondent [Registrar of Trade Unions], therefore, lawfully approved and registered the proposed changes to the KUPPET constitution.

...

Attention has been drawn to the court to the several suits filed in different ELRC courts on the same subject matter by different parties.

This judgment serves as a test guide to Nairobi Petition 059 of 2025, the parties having consented in that respect. Accordingly, this judgment shall guide the outcome in Nairobi Petition 059 of 2025.

Furthermore, to avoid issuing of contradictory decisions by courts of equal status on the same subject matter, which if done may result in diminution of the dignity of the court by way of embarrassment, the attention of this judgment is drawn to all the

courts of equal status that may be handling suits arising from the same cause of action to be aware of it as they proceed to handle those matters in ways, they deem appropriate and just.

The claimant, as a member of KUPPET Kilifi Branch, is represented at the NGC by the branch officials, including the 1st respondent. That representation has sufficed since the last elections, which are due for renewal, following the notice calling for elections dated 26 November 2025.

Although the claimant moved the court on 22 December 2025, before the nomination period lapsed on 6 January 2026, he is bound by the union constitution. He has not challenged the invalidity of articles 13 and 14 of the KUPPET constitution as held in **Magare Gikenyi J. Benjamin v Independent Electoral Committee (IEC) & 18 others; Kahura Mundia & 17 others (Interested Parties) [2021] KEELRC 1443 (KLR)**

Therefore, under section 4(2) of the Labour Relations Act, 2007, a trade union, such as KUPPET, is required to conduct elections for its officials and representatives, subject to its constitution. The law requires that;

(2) Every member of a trade union has the right, subject to the constitution of that trade union to—

a) Participate in its lawful activities;

b) Participate in the election of its officials and representatives;

c) Stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and

d) Stand for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the provisions of this Act or a collective agreement.

This is the gist of section 34(1) of the LRA:

34. Election of officials

1. The election of officials of a trade union, employers' organisation or federation shall be conducted in accordance with their registered constitutions.

The orders sought in the instant application are largely similar to the main orders sought by the claimant in the Memorandum of Claim. Therefore, to grant the orders sought at this instance, reverting the nomination fees to the former constitution and suspending the elections due on 14 February 2026 for the KUPPET Kilifi Branch, would negate the registered constitution. It will not achieve the convenience envisaged for the grant of such orders, as held in **Muchiri v Board of Management of Kenya Hospital Association & 2 others [2025] KECA 2315 (KLR)**.

Suspension and staying the implementation and enforcement of the increased nomination fees for KUPPET elective positions as contained in the Notice and Regulations dated 26 November 2025, and or any other related instructions issued by the respondents will cause great injustice to the collective of KUPPET members and the KUPPET Kilifi Branch. The claimant is not locked out. He has the opportunity to elect his preferred union officials. These will be his representative(s).

Accordingly, the application dated 22 December 2025 is without merit and is hereby dismissed. The 2nd Respondent is at liberty to hold elections as scheduled per notice dated 26 November 2025 pursuant to the Union Constitution. The claimant is acting in person and shall not pay costs.

Delivered electronically at Mombasa, this 13th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and

