

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU

PETITION NO. E001 OF 2026

(Before Hon. Justice Dr. Jacob Gakeri)

**IN THE MATTER OF ARTICLES 2, 3, 20, 21, 22, 23,
32, 35, 41, 258 AND 259 OF THE CONSTITUTION OF
KENYA**

AND

**IN THE MATTER OF THE PROVISIONS OF SECTIONS
4 AND 34 OF THE LABOUR RELATIONS ACT, 2007**

AND

**IN THE MATTER OF THE KENYA NATIONAL UNION
OF TEACHERS (RULES AND REGULATIONS) AS
REVISED IN 2022**

BETWEEN

PIUS OUKO OBONDI.....1ST
PETITIONER

JUSTUS OBIERO ONYANCHA.....2ND
RESPONDENT

VERSUS

KENYA NATIONAL UNION OF TEACHERS.....
RESPONDENT

RULING

Before the court for determination is the applicants' Notice of Motion dated 31st December 2025 filed under Certificate of Urgency on 2nd January 2026 seeking Orders that:-

1. *Spent.*
2. *Pending the hearing and final determination of the Petition a Conservatory Order be issued in the nature of prohibition prohibiting the respondent from conducting its Branch and/or National elections in terms of the schedule released on 17th December 2025 and/or any other schedule.*
3. *The Honourable Court be pleased to give any direction and or writs as deems appropriate for the quick dispensation of the main Petition.*
4. *Costs do abide the outcome of the main Petition.*

The Notice of Motion was expressed under Rules 3, 4, 19 and 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and based on the grounds set out on its face and the Supporting Affidavit of the Applicant/Petitioner.

The applicant's case is that the respondent had scheduled union elections countrywide effective January 10th 2026 as per a schedule released on 17th December

2025 and all branch elections were scheduled on Saturday and Sundays which are worship days for majority of members of the union and thus the elections would interfere with their right of worship in breach of their fundamental right and the days were thus intended to deny union members the right to participate in the said elections and thus deny them the right to vote.

That the scheduling of nomination for Gucha Branch on 10th January 2026 on the eve of the elections for the Branch raised the question of whether ballot materials would be ready and the outgoing officials appeared to be the ones arranging for the elections.

That there was a danger of the elections not being free, fair and transparent necessitating intervention.

Respondent's case

By a Replying Affidavit sworn by the Secretary General of the union on 15th January 2026, the affiant deponed that the respondents affairs were governed by its constitution and the respondent notified all Branch Executive Committees and the Labour Office the respondents General election -26 cycle on 13th October 2025 in compliance with the directives of the Registrar of Trade

Unions and thus complied with the provisions of the Labour Relations Act and the applicant's allegations were false and misleading.

The affiant deposed that the purpose of scheduling elections over the weekend was to ensure that teaching and learning was not interfered with consistent with core mandate of the respondent's members and doing otherwise would be in conflict with the interests of learners as it would disrupt learning.

That the elections scheduled for Sunday 11th January 2026 related to regions with a significant population of Seventh Day Adventist (SDA) members whose primary day of worship is Saturday.

That religion diversity of membership of the respondent was taken into consideration and nothing prevented a member from worshipping and voting thereafter and conducting elections during the weekend had crystalized into a custom and usage and was thus rational and reasonable.

The affiant deponed that nomination timelines were constitutional and the reliefs sought by the applicants would halt and destabilize national wide elections.

The affiant further deposed that the applicant's were agitating for a new branch within Gucha and the instant application was intended to delay elections pending that process, which required compliance with several constitutional factors including membership and financial viability.

That a Petition to the National Executive Committee to split Gucha Brach was discussed on 29th August 2025 and rejected by 92% of those present and voting and in any case whenever a new branch was approved, the respondent's constitution provided for by-elections.

That the appellants had not proved a *prima facie* violation of their constitutional rights.

Applicant's submissions

Counsel contended that the respondent failed to comply with the directives of the Registrar of Trade Unions issued under Section 34 of the Labour Relations Act and the

letter dated 13th October 2025 was an internal memo since it was addressed to officials of the union.

That schedules of Branch and national elections and venues to the respective persons was not done within the prescribed time lines and there was no evidence of compliance and the Registrar of Trade Unions notice was ignored.

Counsel submitted that the document on record on schedule of branch elections was not compliant with the Registrar's notice.

On conduct of branch elections on Saturday and Sunday, counsel submitted that Article 32 of the Constitution of Kenya guaranteed the right of worship to all and sundry and religious beliefs had to be respected and upheld.

On splitting of the Gucha Branch, counsel contended that the minutes mentioned by the affiant did not mention the issue of splitting the branch and the purported rejection of the proposal had no basis and the respondent's constitution had an elaborate process of establishment of a new branch and Mr. Oyuu's deposition that the meeting held on 29th August 2025 discussed the issue lacked

supportive evidence and no reason for rejection was offered.

That although the NEC determined venues and dates of elections no minutes of the NEC were provided.

Respondent's submissions

As to whether the Petitioners had met the threshold for grant of an injunction reliance was placed on the test in **Giella V Cassman Brown Co. Ltd** [1973] EA 358 as well as the decision in **Nguruman Ltd V Jan Bonde Nielsen & 2 Others** [2014] KECA 606 (KLR) and **Mrao Ltd V First American Bank of Kenya Ltd & 2 Others** [2003] KLR 125 on the duty of the applicant/Petitioner to establish the three elements in **Giellas Case** (supra) and urge that the Applicant was required to prove that the respondent had violated the Constitution by failing to split Gucha Branch or that it had been split and they were not allowed to participate in elections of the respondent.

Counsel submitted that the applicants had no sustainable reason for conservatory Orders even if the National Executive Council of the respondent had determined or not determined their Petition to split Gucha Branch and the Petitioners had not demonstrated breach of the

respondents Constitution, the Labour Relations Act or the Constitution of Kenya.

Reliance was placed on the sentiments of Nderi J (as he then was) **Kinyua V Secretary General Kenya Union of Post Primary Education Teachers (KUPPET) & another** ELRC Petition No. E095 of 2025 [2025] KEELRC 3753 (KLR) on the failure of the Petitioner in that case to prove his case against the respondent.

Counsel submitted that the Applicant's Petition to split Gucha Branch was considered by the NEC on 29th August 2025 and rejected as per the minutes of the meeting.

On scheduling of elections on weekends counsel submitted that it was intended to ensure non-interference with teaching and learning during the school week since all members of the respondent were teachers and was a custom or practice and also addresses religious diversity in the protection of freedom of religion and sundry elections takes care of those whose day of worship was Saturday.

That the applicants had not shown how the failure to split Gucha Branch affected them or any other form of

irreparable harm and had not been barred from participating in the Gucha Branch elections.

Finally, counsel submitted that the balance of convenience was not in favour of stopping a national wide election and public interest in labour stability democratic governance and continuity of education outweighed the applicant's narrow interests and would be disproportionate.

As to whether the application offended the doctrine of mootness counsel submitted that the substratum of the application had been overtaken by events since the elections were conducted on 11th January 2026 and new officials elected in many branches and other branches will have concluded theirs by 19th February 2026.

Reliance was placed on the decision in **Daniel Kaminja & 3 Others (suing as Westland Environmental Caretaker Group) V County Government of Nairobi** [2019] KEHC 2059 (KLR) on mootness of a case as were the sentiments of the court in **Okoti & 2 Others V Attorney General & 7 Others** [2020] KECA 589 (KLR) to urge that prohibiting the respondent from conducting Branch elections pursuant to the schedule dated 17th December 2025 had been overtaken by events.

On exhaustion of internal dispute resolution mechanisms, counsel submitted that the respondent's constitution was its governance handbook and the applicants had not exhausted the internal processes in the establishment of a new branch.

Reliance was placed on the decisions in **Speaker of the National Assembly V James Njenga Karume** [1992] eKLR, **Ochieng V Ishaq & 2 Others Union of Kenya Civil Servants Interested Party** [2025] KEELRC 2045 (KLR), **Mokori Beatrice Kwamboka V Kenya Airways Ltd PLC** [2021] eKLR, **Geoffrey Muthinja Kabiru & 2 Others V Samuel Munga Henry & 1756 Others** [2015] eKLR, **Dedan Kimathi University of Technology Ex Parte Muia Stephen Mutuku** KEHC 358 (KLR) and **United Millers Ltd V Kenya Bureau of Standards Director, Directorate of Criminal Investigations & 5 Others** [2021] eKLR among others to submit that the court should defer to the respondents internal institutions and the instant Petition should be struck out.

As regards the 60 days notice of the 2026 elections cycle, reliance was placed on the provisions of Section 34 of the

Labour Relations Act to submit that after the Registrar of Trade Unions gave notice the respondent gave a notice on 13th October 2025 to all Branch Executive Committees and the Labour Office and the respondent complied with the Guidelines of the Registrar of Trade Unions and its notice was lawful.

Counsel urged that the Branch elections had to take place from 5th January 2026 to 31st March 2026 while national elections from 1st April 2026 to 30th June 2026.

Counsel submitted that the application should be declined and the Petition dismissed.

Analysis and determination

It is common ground that the applicants are members of the respondent union and their case for the prohibition of branch and national elections was premised on three (3) grounds namely:

- (i) Non-compliance with the directives of the Registrar of Trade unions dated 25th September 2025.*
- (ii) Scheduling of branch elections on Saturday and Sunday.*
- (iii) Splitting of Gucha Branch.*

Concerning the first issue, Section 34 of the Labour Relations Act provides

- (1) The election of officials of a trade union, employers' organisation or federation shall be conducted in accordance with their registered constitutions.**
- (2) ...
- (3) ...
- (4) ...
- (5) The Registrar may issue directions to a trade union, employers' organisation or federation to ensure that elections are conducted in accordance with this section and their respective constitutions.**

It is clear that the Registrar's directives vide letter dated 25th September 2025 were issued pursuant to the provisions of Section 34(5) of the Labour Relations Act.

The notice identified seven (7) pre-election requirements. The applicants isolated the following;

- (i) Only fully registered paid up members are entitled to vote. Non-members who merely pay agency fees were not entitled to vote.*

- (ii) *Schedules of Branch and National elections must be submitted to the Registrar and Commissioner for Labour as well as County Labour officers at least sixty (60) days before the elections to facilitate adequate planning.*
- (iii) *The venues of the elections must also be communicated to the Registrar and other supervising officers at least thirty (30) day before elections.*

The notice further provided for post-election requirements.

According to the applicants, the foregoing directives were not complied with.

To buttress their case, the applicants provided a copy of the Registrar's letter dated 25th September 2025 under reference: Notification of Trade Union elections - 2026 Cycle.

The notice prescribed the timelines for both Branch and National elections, 5th January 2026 - 31st March 2026 and 1st April 2026 - 30th June 2026 respectively and insisted

on compliance with the provisions of registered constitutions.

The applicants did not fault the respondents compliance with its constitution on this issue but the directives by the Registrar of Trade Unions.

Also attached to the letter was a list of various branches of the respondent, with no other detail.

A further document was the Gucha Branch Executive Secretary letter dated 22nd December 2025 to all members informing them about the election date of 11th January 2026 (Sunday), copies of the applicant's pay slips for December 2025 from the Teachers Service Commission and a Petition to split the Gucha Branch attached to a letter dated 25th April 2025.

The respondent on the other hand provided a copy of a letter dated 13th October 2025 addressed to all Executive Secretaries on the Registrar's notification on the 2026 Election cycle to commence preparations for elections, a copy of a Recognition Agreement between the union and the Teachers Service Commission (TSC) dated 11th August 2021 and minutes of the 22nd National Executive Council meeting held on 1st December 2025.

No doubt the respondents letter dated 13th October 2025 to all Executive Secretaries of the respondent was issued within the sixty days before the election in that the last date on which Branch elections could take place was 31st March 2026 which is yet to pass.

Notably, the schedule of elections according to the Registrar of Trade Unions letter were to be forwarded to the Registrar of Trade Unions, Commissioner for Labour and County Labour Officers. The letter made no reference to members of the union or the Branch Executive Committee and the applicants attached no affidavit by any of these officers to deposing that the notification to the offices was not effected within 60 days.

Equally, the venues of the elections were to be communicated to the Registrar of Trade Unions and those supervising the election within 30 days prior to the election and the applicants attached no verifiable evidence to show that the venues were not communicated to these persons within 30 days before the elections.

Relatedly, the opening paragraph of the Executive Secretary Gucha Branch letter dated 22nd December 2025 addressed to all members of the union stated:

“Following the Ministry of Labour’s Circular dated 25th September 2025 and a further circular from KNUT Head Office dated 17th December 2025 notice is hereby given of KNUT Gucha General Election to be held on 11th January 2026 as from 8:00am on the morning up to 4:00pm on the evening”.

It is trite that a person who alleges that a particular fact or set of facts exist or existed is required by law to demonstrate the allegation.

Under Section 107 of the Evidence Act,

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existed of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Under Section 108

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

See in this regard **Ignatius Makau Mutisya V Reuben Musyoki Muli** [2015] KECA 612 (KLR).

In this instance it was incumbent upon the applicants to demonstrate that the notifications sent to the Registrar, Commissioner for Labour and the County Labour Officers or any of the officers was not issued within 60 days prior to the election and/or the venues of election were not sent to the Registrar of Trade Unions and supervising officers at least 30 days before the elections.

Any form of indication from any of these persons to show that the Registrar's timelines were not complied with would have established that fact.

From the foregoing, it is the finding of the court that the applicants have failed to substantiated their contention, that the timelines prescribed by the Registrar of Trade Unions were not complied with.

As to whether the respondent infringed upon the applicant's right of worship, by scheduling elections during the weekends, other than stating that many members of the respondent would be denied the right of worship the applicants availed no evidence to prove that they subscribed to any faith and exercised their right of worship on Saturday or Sunday at any place or how their constitutional right would be interfered with, bearing in mind that elections were scheduled to take place from 8:00am until 4:00pm, which would accommodate members who worshiped in the morning and those who did so in the afternoon.

Noteworthy, the applicants did not controvert the respondents deposition that conducting of elections on weekends had indeed crystalized into a usage or custom.

More significantly, it would, in the court's view be practically impossible to accord each member or group of the union the day or time the election would be most convenient for him/her or themselves and conducting union elections on a school day would invariably interfere with learning as teachers are employed to instruct pupils and students in class five days a week as deponed by Mr. Oyuu.

Puzzlingly, the applicants did not suggest which day(s) would have been convenient for them to participate in a union election or how the union had been doing it in the past to reinforce their instant case.

Article 32 of the Constitution of Kenya guarantees the fundamental freedom of conscience, religion, belief and opinion thus:

- (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.**
- (2) Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.**
- (3) A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.**
- (4) A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion.**

These provisions lay it bare that the applicants have the right to observe their day of worship.

However, the right to religion, worship, belief, conscience and opinion is not one of the non-derogable rights or fundamental freedoms under Article 25 of the Constitution of Kenya.

Equally, Article 8 of the Constitution is emphatic that there shall be no state religion.

In **Republic V The Head Teacher Kenya High School & another** High Court JR No. 318 of 2010 Githua J stated:-

“It is important to bear in mind that the Republic of Kenya is a secular state. This has been pronounced boldly and in no uncertain terms by Article 8 of the Constitution. This in effect means that no religion is superior than the other in the eyes of the law...”

In the court’s view prohibiting union elections on the ground of the right of worship would be tantamount to treating the applicants specially on account of their

religion which could amount to discriminatory treatment of other religions or beliefs.

Significantly, under Article 41(4) of the Constitution of Kenya, every trade union and every employers organization has the right-

- (a) to determine its own administration programmes and activities;*
- (b) to organise; and*
- (c) to form and join a federation.*

This article confer upon trade unions and employers' organizations the mandate to organize themselves and their activities in accordance with their constitutions and the law and after the Registrar of Trade Unions has determined the timelines within which elections ought to be conducted, the actual dates are left to the unions to determine.

Finally, the applicants did not depose or allege that it would be impracticable to honour their day of worship in the morning and vote in the afternoon.

The assertion that they were acting at the behest of other members was not substantiated as there was no Letter of

Authority or List of those other members. The court is not persuaded that the applicants demonstrated a *prima facie* case of violation of the rights to religion, opinion or belief.

It is also discernible that the Petitioners did not engage their Branch before filing the instant suit.

This was necessary because the grievances being litigated by the applicants can be resolved internally.

Finally, as regards the Petition to split Gucha Branch the Applicants filed a copy of the undated Petition purportedly signed by about 478 persons. The Applicants did not disclose whether the number met the threshold.

Although the respondent admitted having received the Petition and discussed it, it provided no evidence as to how it was disposed of and the originators of the Petition notified for purposes of closure or other options.

Minutes of the NEC meeting allegedly held on 29th August 2025 were not annexed to the Supporting Affidavit.

Based on the documents filed by the parties, it is unclear as to whether the Petition was considered by the respondent and what the outcome was bearing in mind that the respondent's witness availed no evidence to reinforce his deposition that the Petition was considered and dismissed by the NEC meeting of 29th August 2025.

Evidence of feedback to the Petitioners would have demonstrated that the respondent acted diligently.

From the evidence on record, it is decipherable that the issue of splitting Gucha Branch was relied upon as a peripheral issue to support the non-compliance with the Registrar's timelines.

The court's finding is that the issue was insufficiently canvassed for the court to rely on it in support of the main grounds upon which the Notice of Motion was grounded.

Even assuming that the issue was still pending, it would not have been a sufficient ground to warrant the grant of conservatory Orders.

Contrary to the respondent's submissions, that the applicant was not seeking an injunction but conservatory Orders.

The two are not synonymous.

In **Judicial Service Commission V Speaker of National Assembly & Another** [2013] eKLR the court stated:

“Conservatory Orders are in my view not ordinary civil law remedies but are remedies provided under the Constitution, the supreme law of the land. They are not remedies between one individual against another, but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in persona. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive Orders which only attach a particular person”.

The Supreme Court of Kenya expressed similar sentiments in **Gitirau Peter Munya V Dickson Mwenda Kithinji & 2 Others**[2014] eKLR that:

“Conservatory Orders bear a more decided public law connotation: for these are Orders to facilitate ordered

functioning within public agencies as well as uphold the adjudicatory authority of the court, in the public interest. Conservatory Orders, therefore, are not unlike interlocutory injunctions linked to such private party issues lie “the prospects of irreparable harm” occurring during pendency of a case; or “high probability of success” in the applicants case for Orders of stay.

A conservatory Order ought to be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes...”

Finally, in **Alfred N. Mutua V Ethics and Anti-Corruption Commission (EACC) & 4 Others** [2016] KECA 596 (KLR) the Court of Appeal stated:

“The Supreme Court further expressed that in an application for conservatory Orders and any other interlocutory relief, public interest is a factor to be taken into account and public interest is a condition dictated by the expanded scope of the Bill of Rights and the public-spiritedness that run through the Constitution”.

Clearly none of the parties alluded to the issue of public interest nor whether the instant application had met the threshold for the grant of conservatory Orders.

The upshot of the foregoing is that the court is not satisfied that the applicants placed sufficient material before the court to merit conservatory Orders.

Consequently, the applicant's Notice of Motion dated 31st December 2025 is unmerited and it is dismissed with no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 19TH DAY OF FEBRUARY 2026.**

**DR. JACOB GAKERI
JUDGE**

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this

course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI
JUDGE