

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

PETITION NO. E003 OF 2026

**IN THE MATTER OF ARTICLES 2,3,10,19,20,21, 22, 23,
24, 27, 33,36, 38, 41, 47, 48,50,51,159,165 AND 258 OF
THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF THE LABOUR RELATIONS ACT, 2007

AND

**IN THE MATTER OF THE CONSTITUTION KENYA NATIONAL
UNION OF NURSES AND MIDWIVES**

BETWEEN

KIBII KOECH SIMON
PETITIONER

VERSUS

KENYA NATIONAL UNION OF NURSES

AND MIDWIVES 1ST
RESPONDENT

SETH PANYAKO 2ND
RESPONDENT

AND

**THE REGISTRAR OF TRADE UNION 1ST INTERESTED
PARTY**

RULING

1. Vide an application dated 29th January, 2026 and filed under Articles 22, 23, 41, 47, 48, 50 and 258 of the Constitution of Kenya 2010; section 4, 31, 33, 34 and 35 of the Labour Relations Act; Rule 45 of the Employment and the Labour Relations Court (Procedure) Rules, 2024, the Petitioner/Applicant seeks the following orders:
 - a. That this Application be certified urgent and heard ex-parte in the first instance owing to the imminent union elections scheduled for 6th February 2026.
 - b. That pending inter partes hearing of the application herein this Honourable Court be pleased to issue conservatory orders suspending and staying the implementation, enforcement and operationalization of the Constitution of the Kenya National Union of Nurses and Midwives adopted on

16th December 2022 and registered on 28th August, 2024.

- c. That pending inter partes hearing of the application herein this Honourable Court be pleased to issue a temporary order suspending the Union election notice dated 20th November 2025 issued by the 2nd Respondent.
- d. That pending inter partes hearing, this Honourable Court be pleased to issue a temporary order suspending the national and branch elections scheduled for 6th February 2026.
- e. That pending the hearing and determination of the Petition, this Honourable Court be pleased to issue conservatory orders suspending the union elections scheduled for 6th February 2026.
- f. that pending the hearing and determination of the Petition, the Respondents be restrained from implementing, enforcing or relying upon the impugned Constitution of the Kenya National Union of Nurses and Midwives adopted on 16th December 2022 and registered on 28th August, 2024.

- g. That pending hearing and determination of the Petition, the Respondents be prohibited from:
 - i. Receiving or processing nomination papers;
 - ii. Publishing candidate lists;
 - iii. Conducting campaigns;
 - iv. Gazetting or declaring election results;
 - v. Inaugurating or swearing-in any officials.

h. That this Honourable Court be pleased to direct the Respondents to issue fresh election notices with adequate national circulation, reasonable timelines and full compliance with the Constitution of Kenya and the Labour Relations Act, 2007.

- i. That the costs of this Application be in the cause.

2. The application is supported by the grounds at the foot thereof as follows:

- a) The Constitution of the Kenya National Union of Nurses and Midwives adopted on 16th December 2022 and registered on 28th August, 2024 was enacted without a members'

referendum contrary to Chapter XXII Sections 1-3 of the repealed Union Constitution.

- b) The adoption process violated Articles 10 and 41 of the Constitution for lack of public participation, transparency and democratic governance.
- c) Several provisions of the impugned Constitution unlawfully restrict eligibility to contest union elections and are inconsistent with:
 - d) Articles 27, 33,36, 38 and 41 of the Constitution; and b. Sections 4, 31, 33 and 34 of the Labour Relations Act, 2007.
- e) The election notice dated 20th November 2025 was not circulated nationally and was deliberately concealed from members.
- f) The nomination timelines lapsed before the Petitioner and thousands of members became aware of the elections.
- g) The Union Constitution lacks any provision for extension of time, thereby permanently locking out eligible members.

- h) The National Executive Board appoints the Independent National Electoral Commission, creating a direct conflict of interest.
- i) Election disputes are unlawfully vested in INEC contrary to Section 34(4) of the Labour Relations Act which vests jurisdiction exclusively in court.
- j) The continued implementation of the impugned Constitution threatens to entrench illegality and produce union officials devoid of constitutional legitimacy.
- k) If the elections proceed, the Petition shall be rendered nugatory and the Court's jurisdiction defeated.
- l) The Petitioner has established a prima facie case with overwhelming chances of success.
- m) The balance of convenience tilts heavily in favour of preserving the status quo.
- n) It is in the public interest that trade union governance complies with the Constitution, statute and democratic principles.

3. The application is further supported by the affidavit of KIBII KOECH SIMON, the Petitioner/Applicant in which by and large he reiterates the grounds on the face of the application.
4. According to his petition which is also dated 29th January, 2026, the Petitioner is a Kenyan citizen, a qualified nurse, and a fully paid-up subscribing member of Kenya National Union of Nurses and Midwives, currently employed by the Uasin Gishu County Government.
5. The 1st Respondent is a registered national trade union established under the Labour Relations Act and mandated to represent nurses and midwives across the Republic of Kenya.
6. The 2nd Respondent is the Secretary General and Chief Executive Officer of the 1st Respondent and is responsible for the day-to-day administration, governance and implementation of the 1st Respondent.
7. The 1st Interested Party is the Registrar of Trade Unions, a statutory public office established under the Labour Relations Act, 2007, mandated to regulate, supervise and

ensure compliance of trade unions with the Constitution and statute.

8. The 2nd Interested Party, the Honourable Attorney-General, is joined pursuant to Article 156 of the Constitution as the principal legal adviser to the Government and the defender of public offices including the Registrar of Trade Unions.
9. The petition is opposed. The 1st Respondent filed a replying affidavit of SETH PANYAKO, the 2nd Respondent herein sworn on 3rd February, 2026, in which he deposes that the application is premised on material misrepresentation of facts, selective disclosure, and incorrect interpretation of the 1st Respondent's constitution and the Labour Relations Act.
10. The 2nd Respondent further deposes that the Petition as filed does not satisfy the requirements of an election petition under the Trade Unions Elections Petition Rules, 2014, which mandates that the petitioner deposits security for the payment of costs that may become payable within 10 days of presenting the petition under the rules.

11. The 2nd Respondent denies the averments by the Petitioner that there was no notice for the elections scheduled for 6th February 2026. He deposes that notice was duly issued, widely circulated, and published on the official website of the 1st Respondent, which is the union's recognized communication platform. It is further deposed by the 2nd Respondent that the notice was further published on 22nd November, 2025 on the 1st Respondent's Facebook page ***KNUNM-The Voice of a Kenyan*** which has over 14,000 followers.
12. That the publications on the official Union website and its social media pages are accepted, accessible, and transparent modes of communication to all members nationwide.
13. It is deposed that the Petitioner has not demonstrated that he, or any member, was denied access to the notice or prevented from participating in the upcoming electoral process.
14. Regarding the validity of the current constitution of the 1st Respondent Union the 2nd Respondent deposes that the same is lawfully registered by the Registrar of Trade

Unions and the registration is prima facie evidence of legality. It is deposed that the allegation that the constitution was amended or adopted without a referendum is false, misleading and intended to deceive the court as prior to its registration a referendum was conducted and approved by the relevant organs of the union.

15. It is deposed that the issue of amendment of the 1st Respondent's constitution was canvassed and conclusively determined in **ELRC CAUSE No. E681 of 2020 Agnes Wangeci & others v Seth Panyako & others**. That no court order has been issued declaring the 1st Respondent's constitution invalid, unlawful or unconstitutional.
16. It is deposed by the affiant that under section 30 of the Labour Relations Act any party aggrieved by a decision of the Registrar of Trade Unions, including the registration of a trade union constitution or amendments thereto has a specific statutory right of appeal to this court. That the Petitioner has not appealed against the decision of the Registrar of Trade Unions to register the 1st Respondent's constitution.

17. It is the affiant's position that the petitioner has not demonstrated that he will suffer irreparable harm if the orders sought are not granted, and neither has he demonstrated that the nature of harm he may suffer cannot be adequately remedied through lawful post-election mechanisms; that the Petitioner has recourse to statutory appeals, internal resolution mechanisms or judicial review after elections as provided in the Labour Relations Act; that the petitioner has not demonstrated that such remedies would be unavailable, ineffective or futile.
18. It is the affiant's deposition that stopping elections would result in leadership paralysis, disruption of union operations, uncertainty in representation of members' interests and erosion of members' constitutional rights to participate in union governance. That the balance of convenience and public interest therefore favour allowing elections to proceed as scheduled while preserving the Petitioner's right to pursue any lawful remedies after elections.

19. The 1st Respondent further filed a Notice of Preliminary Objection dated 3rd February, 2026 on the following grounds:

- i. The Petition offends the doctrine of exhaustion
 - a. The grievances raised by the Petitioner relate to the registration, amendment, and validity of the Constitution of the 1st Respondent, matters for which both the Labour Relations Act, 2007 and the Union Constitution provide specific internal and statutory dispute resolution mechanisms.
 - b. In particular, section 30 of the Labour Relations Act provides a clear statutory right of appeal to this Honourable Court for any person aggrieved by a decision of the Registrar of Trade Unions, including the registration of a trade union constitution or amendments thereto.
 - c. The Petitioner has neither exhausted the internal dispute resolution mechanisms provided under the Union Constitution nor invoked the statutory appellate procedure under section 30 of the Labour Relations Act.

- d. In the absence of exceptional circumstances (which have neither been pleaded nor demonstrated), the Petition is premature, incompetent, and an abuse of the court process.
- ii. The Petition is time-barred and statute-barred
 - a. Any grievance relating to the registration or amendment of a trade union constitution must be raised within thirty (30) days from the date of registration, as contemplated under the Labour Relations Act and the statutory framework governing decisions of the Registrar of Trade Unions.
 - b. The Petition challenges constitutional amendments and registration process that were completed and registered long before the filing of this Petition, yet no appeal or challenge was mounted within the prescribed statutory period.
 - c. Having failed to challenge the registration within the statutory timeframe, the Petitioner is barred in law from re-opening the issue through a constitutional petition.

d. Limitation goes to jurisdiction, and this Honourable Court therefore lacks jurisdiction to entertain a dispute that is statute-barred.

iii. The Petition is therefore incompetent and an abuse of the Court process ought to be struck out in limine with costs.

20. The application was argued before the court orally on 4th February, 2026. Mr. Kirwa appeared for the Petitioner while Mr. Malenya with Mr. Chimei appeared for the 1st Respondent. Mr. Seth Panyako, the 2nd Respondent appeared in person and Mr. Kwame appeared for the Interested Parties.
21. Mr. Kirwa submitted that the notice of union elections was brought to the Petitioner's attention on 26th January, 2026 through social media.
22. It was submitted that the notice of elections dated 20th October, 2025 inviting members of the union to apply for elective positions in the branches had a deadline of 4th December, 2025. That the notice was never circulated to all nurses in the Republic of Kenya.

23. It is submitted that according to the replying affidavit of Seth Panyako the 2nd Respondent, the notice was circulated through the website of the 1st Respondent. It is submitted that the website is not disclosed, that the website is not ordinarily the proper mode of communication for the members of the Respondent.
24. It is further submitted that the website is not adequate, reasonable, or accessible by all members of the 1st Respondent. That it is not consistent with the union constitution to communicate a notice of elections through the union website. That the reasonable means of communicating to members is through publication in newspapers of national circulation, or voluminous Short Messaging Services (SMS). It was further submitted that at the time of registration all members provided their email addresses which is another mode of effective communication with members.
25. It is submitted that an election notice, especially for branch elections, ought to have been directed through circulars to all the branches of the 1st Respondent. That

branch officials would have invited all members to bring the notice to their attention.

26. It was submitted that the Respondents did not demonstrate that there were letters to branches notifying members to apply for elective positions.
27. It is submitted that a website is not available to all members, some of whom work in far flung areas that have no network or internet connectivity. Further, that not all members have smart phones and technical know-how to access the website.
28. That the averment of the 2nd Respondent that the notice was posted on Facebook with 14,000 followers is not supported by an extract to confirm the number of followers or who those followers are. That communication through Facebook is not one of the communication channels recognized under the Respondent's constitution.
29. With respect to the constitution of the 1st Respondent, Mr. Kirwa submitted that the same was adopted on 16th December, 2022 and registered on 28th August, 2024. Counsel submitted that the constitution is

unconstitutional. That the petition raises issues that require court intervention by way of conservatory orders.

30. Counsel submitted that the National Electoral Commission is formed by 8 Executive Board members out of the more than 26,000 members of the 1st Respondent. That the members of the National Electoral Commission are appointed by candidates in the elections, thus creating a direct conflict of interest in violation of Article 38 of the Constitution of Kenya.
31. It was submitted that article 13 of the union constitution requires that all applicants must demonstrate prior union leadership. That out of more than 26,000 members not all would have had an opportunity to hold union leadership positions. That this provision is discriminatory and violates Article 41 of the Constitution of Kenya by denying members an opportunity to participate in union elections.
32. Mr. Kirwa submitted that articles 17.1.4 and 17.1.5 also require that candidates have prior union leadership experience thus are discriminatory and unconstitutional.
33. It was further the submission of Counsel Kirwa that the requirement at article 17.23 of the union constitution of

endorsement by at least 30% of branches violates Article 24 of Kenya's Constitution for requiring members to go beyond the branch, and is against the principle of opportunity test.

34. Counsel further submitted that article 17.25 of the union constitution disqualifies members undergoing disciplinary process and converts allegations into guilt and creates a fertile ground for abuse of office to eliminate potential opponents.
35. It was submitted that article 17.28 which vests union election disputes in the Independent National Electoral Commission is in conflict with section 34 of the Labour Relations Act as all disputes arising from union elections are vested in the court. It is submitted that jurisdiction is conferred by the Constitution or statute and not private instruments. That private instruments which limit the court's jurisdiction are null and void ab initio.
36. It is further the submission of Counsel that articles 20 and 21 of the union constitution are unconstitutional for violating freedom of association of members for prohibiting members of the 1st Respondent from

addressing the press or filing suit against the 1st Respondent without authorization.

37. Counsel submitted that the Petitioner had demonstrated that he has a prima face case justifying the grant of the orders sought. It was submitted that allowing elections to proceed would be a *fait accompli*, that the threat is real, immediate and irreversible. That the same cannot be cured by damages. That once elections are held the new officials will take office. Counsel prayed for grant of prayers 2, 3 and 4 in the interim.
38. Mr. Chimei for the 1st Respondent, while opposing the application, submitted that this court lacks jurisdiction to hear the petition herein for failure of the Petitioner to exhaust statutory remedies as provided in section 30 of the Labour Relations Act. He submitted that the Act provided an appellate mechanism against the decision of the Registrar of Trade Unions. Counsel submitted that the Petitioner had approached this court without demonstrating any attempt to follow the statutory process. He submitted that had the statutory process been

followed then the issues concerning elections would not have been before this court.

39. Counsel Chemei submitted that there was malice in conjoining matters of union elections together with matters of the constitution of the union in the instant petition, as the two should have been subjected to different suits.
40. On the issuance of election notice Mr. Chimei submitted that there is no such complaint from any member of the 1st Respondent and the court cannot issue orders on an issue where there is no complaint.
41. On the issue of adoption of union constitution Mr. Chimei submitted that there is no evidence before the court to prove that the 1st Respondents failed to comply with procedure for adoption of the amendments.
42. Counsel submitted that this court made a determination in a dispute which challenged the manner in which previous attempts to amend the constitution were done. That the Respondents went back to the drawing board and came up with the constitution that is again being contested.

43. Counsel submitted that once a constitution is registered there is an assumption of legality until the contrary is proved. Counsel submitted that there is no demonstration by the Petitioner that the 1st Respondent did not follow procedure.
44. It is submitted that the only allegation before the court is that the Petitioner did not receive notice of election and that the notice was not issued in the manner required by law.
45. Counsel submitted that it is the law that once a notice is published in the union website it is properly published. He submitted that there is no evidence that the Petitioner was prevented from accessing the notice from the website.
46. Counsel submitted that the election notice was further posted on the union Facebook page and the Petitioner had not proved that he was not a member of the page. It is further submitted that the Petitioner did not prove that he did not know about the publication of the notice or about the changes in the constitution since 2022.

47. On whether a prima facie case had been demonstrated Mr. Chimei submitted that that the evidence before the court did not satisfy the threshold for grant of the conservatory orders sought.
48. Mr. Chimei submitted that since 2022 the Petitioner had been actively participating in the matters of the 1st Respondent. That the Petitioner had not stated he was not aware about union activities.
49. Mr. Chimei submitted that the Petitioner was aware about the elections to be held on 6th February, 2026 but came to court a few days before the elections with the intention to upset the union elections. He submitted that granting those orders would be drastic not only to the 1st Respondent but also to the members. That resources had been mobilized and members carried out campaigns. That there is a clear path in both the old and new constitutions of the union and in the law and that the Petitioner has alternatives.
50. Mr. Malenya, adding to the submissions by Mr. Chimei, submitted that the elections are held once after 5 years in all counties and involves more than 20,000 members of

the 1st Respondent. He submitted that should the orders be granted the term of union officials will be extended and that this will lead to an illegality.

51. He added that the Petitioner was asking for orders based on apprehension that the constitution was illegal. That there is a chance that the court would find the constitution was legally amended. He submitted that elections are an expensive affair since vendors had been paid.
52. The 2nd Respondent Mr. Seth Panyako, on his own behalf, submitted that the constitution of the 1st Respondent was registered on 28th August, 2024. That based on this argument alone the petitioner ought to have filed an appeal within 30 days as provided in section 30 of the Labour Relations Act.
53. The 2nd Respondent added that the Registrar of Trade Unions had been wrongly joined to this petition as this is not an appeal.
54. He submitted that the Petitioner had acknowledged receiving the notice of elections schedule from the Registrar. That the Petitioner had about 6 months' notice from the date of the Registrars notice. He wondered why

the Petitioner did not come to court at the time of receiving the notice.

55. He submitted that union Election Rules under Legal Notice No. 64 of 2014 are clear, that this court is estopped from stopping union elections. He submitted that this court had no jurisdiction to entertain the allegations by the Petitioner. He added that a petition cannot be brought against elections which had not been done.
56. He submitted that the petition has nothing to do with union members. He submitted that Article 24 of the Constitution of Kenya provides for limitation of rights. Further, that internal dispute resolution mechanism is provided for in the union constitution.
57. Mr. Kwame for the 1st and 2nd Interested Parties stated that having not filed any response to the application and the petition, he would associate himself with the submissions of counsel for the 1st Respondent.
58. In a brief rejoinder, Mr. Kirwa submitted that section 30 of the Labour Relations Act does not limit jurisdiction of the court where constitutional issues are raised. He submitted that the trade union constitution is not excluded from

constitutional scrutiny. That the petition and application raise serious constitutional issues on violation of member rights under Articles 36, 41 and 47 of the Constitution and failure to adhere to national values and principles of governance under Article 10 of the Constitution of Kenya. That the Registrar of Trade Unions does not have jurisdiction to interpret the Constitution.

59. Mr. Kirwa further submitted that the petition is filed under Article 22 of the Constitution on behalf of all complaining nurses who did not receive the election notice. He referred the court to annexure “MK7” of the petition which contained complaints by other members of the 1st Respondent.

Analysis and Determination

60. Having considered the application, the replying affidavit and Notice of Preliminary Objection and having heard and considered the oral submissions of the parties, the following issues arise for determination:

- i. Whether this court has jurisdiction to hear and determine the petition herein on grounds of lack of exhaustion of remedies;
- ii. Whether the Petitioner's application raises a prima facie case; and,
- iii. Whether the Petitioner is entitled to the orders sought.

61. On the first issue whether the preliminary objection has merit and whether this court lacks jurisdiction to hear and determine the petition, the 1st Respondent states that both the Labour Relations Act and the Union constitution provide for specific internal and statutory dispute resolution mechanisms.

62. Mr. Kirwa for the Petitioner submitted that the Registrar of Trade Unions has no jurisdiction to interpret the Constitution and therefore this court is the correct forum to hear and determine the issues raised in the petition, which, according to him, raise grievous violations of the Constitution.

63. The doctrine of exhaustion was comprehensively dealt with in **Mombasa High Court Constitutional Petition No 159 of 2018 consolidated with Constitutional Petition No 201 of 2019 William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR**. The court observed as follows:

*"52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of the Constitution and was aptly elucidated by the High Court in **R vs Independent Electoral and Boundaries Commission (I.EBC) Ex Parte National Super***

Alliance (NASA) Kenya and 6 others [2017] eKLR,

where the Court opined thus:

*42. This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in **Speaker of National Assembly v Karume [1992] KLR 21** in the following oft-repeated words:*

43. Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

44. While this case was decided before the Constitution of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which

*provides the Constitutional rationale and basis for the doctrine. This is **Geoffrey Muthiga Kabiru & 2 others - vs- Samuel Munga Henry & 1756 others [2015] eKLR**, where the Court of Appeal stated that:*

45. It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution."

64. In the said decision the court also dealt with the exceptions to the doctrine of exhaustion. It expressed itself at paragraph 59 as follows: -

*"59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In **R vs Independent Electoral and Boundaries Commission (IEBC) & Others ex parte The National Super Alliance Kenya (NASA)** (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the exception...."*

65. In the case of **Olaly & another v Duba & 3 others; Registrar of Societies (Interested Party) (Constitutional Petition E434 of 2020) [2023] KEHC 1125 (KLR) (Constitutional and Human Rights) (23 February 2023) (Ruling)** Neutral citation: **[2023] KEHC 1125 (KLR)** the court observed that:

"while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved -

including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies.”

66. In the **Shikara Limited v Vej & 2 others (Civil Case E020 of 2023)** [2024] KEELC 8 (KLR) (17 January 2024) (Ruling), it was held that the Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it in circumstance like where a party pleads issues that verge on Constitutional interpretation. The same was held in **Moffat Kamau and 9 Others v Aelous (K) Ltd and 9 Others.)**
67. The principles as observed above are, first, that the Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it.
68. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack

adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively as was discussed by **Mativo J** (as he then was) in **Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018] eKLR**.

69. In the instant case, the Petitioner alleges violation of his fundamental rights to freedom of association under Article 36, fair labour rights under Article 41, fair hearing under article 47 and the derogation from national values and principles of governance under Article 10 of the Constitution by the Respondents.
70. The 1st Respondent submitted that its constitution provides for an internal mechanism for resolution of election disputes at Article 17.28 and 17.29. The provisions in the 1st Respondent's constitution are as follows: are as follows:

17.28. Any member disputing any election conducted under section 34 of the Labour Relations Act, 2007, shall raise the dispute to the Chairperson, Independent National Electoral Commission within seven days, detailing all the allegations and evidence to be relied on.

17.29. The INEC shall handle and determine the dispute as appropriate, in compliant with the rule of Natural Justice, The INEC may uphold the complaint and cancel the election or dismiss the dispute. Where the INEC cancels the election, it shall conduct fresh election within twenty-one days.

71. The Petitioner has contested the legality of the provisions of articles 17.28 and 17.29 of the union constitution. For this reason, until the issue whether the two impugned provisions are constitutional or not is determined, they

cannot form the basis for application of the exhaustion principle.

72. Further, the provisions appear to refer to a dispute over elections that have already been held, which is not the case herein. Again, these are provisions in a private document which cannot oust the right of a party to contest the violation of constitutional rights.

73. Section 30 of the Labour Relations Act which the 1st Respondent states the Petitioner bypassed provides:

30. Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial Court against that decision within thirty days of the decision

74. This section is under Part 111 of the Act which deals with establishment and registration of trade unions and employers' organisations. Union elections are provided for under Part IV which deals with officials and members of trade unions and employers organizations. Section 34(4) specifically provides that:

(4) Disputes arising from, or connected directly or indirectly to, elections held under this section may be referred to the Industrial Court

75. It is for these reasons that in my view the doctrine of exhaustion is not applicable to this petition. According the Labour Relations Act, the dispute is properly before this court.

76. The other grounds in the notice of preliminary objection are in my view matters that require evidence and which do not fit into the definition of a preliminary objection as defined in the celebrated case of **Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696**.

Whether the petitioner's application raises a prima facie case

77. The next issue is whether the Petitioner has demonstrated a prima facie case to justify the grant of orders sought.

78. The Petitioner submitted that he was not aware about elections of the Respondent as the union election notice dated 20th November, 2025 was not circulated nationally

and was deliberately concealed from members. Further, that the nomination timelines of 14 days lapsed before the Petitioner and thousands of other members became aware of the election notice.

79. The Petitioner deposed in his supporting affidavit that the notice was never circulated nationally, published in mainstream media, transmitted electronically to members, or communicated through official union channels and branches.

80. Further, that he became aware of the notice on 26th January, 2026 long after the application deadline had lapsed. The Petitioner attached a copy of a WhatsApp Group communication in a group by the name “NEW KNUN”.

81. The 1st Respondent did not deny the averments that the notice was not circulated to members through the regular channels. In his replying affidavit Mr. Seth Panyako, the 2nd Respondent states at paragraphs 5 and 6:

5. That the allegation that the elections scheduled for 6th February 2026 was to be held without notice is entirely false. The election

notice was duly issued, widely circulated, and published on the official 1st Respondent's website, which is the Union's recognized communication platform.

Annexed and marked as SP.2 is a copy of the notice of election published on the website

6. That additionally on 22nd November 2025, an election notice was also published on the 1st Respondent's Facebook page KNUNM-The Voice of a Kenyan Act with a following of over 14,000 followers.

7. That the publications on the official Union website and its social media pages are accepted, accessible, and transparent mode of communication for all members nationwide.

8. That the Petitioner has not demonstrated that he, or any member, was denied access to the notice or prevented from participating in the upcoming electoral process.

82. The constitution of the 1st Respondent does not contain any reference to the use of the website and Facebook as modes of communication to members. No evidence was adduced to show that members were alerted of the publication of the notice on the website and Facebook or that members were made aware that these were the official modes of communication for the union.
83. Further, at paragraph 6 of the replying affidavit the 2nd Respondent deposes that the Facebook page referred to has 14,000 followers. As pointed out by counsel for the Petitioner, the Respondent's did not adduce any evidence that the 14,000 Facebook followers were members of the Respondent and specifically that the Petitioner was among them.
84. Further, the Respondents submitted that they have over 20,000 members so 1st Respondent's Facebook page with 14,000 followers would obviously not reach the 20,000 members of the Respondent targeted in the election notice.
85. Again as pointed out by the Petitioner, not all members have access to internet to be able to access the website

and the Facebook page. Further not all members have smart phones that can access the 1st Respondent's website. There is further no certainty that all members with smart phones know how to access the website and Facebook page of the 1st Respondent.

86. To complicate the matter further, the notice gave interested members only 14 days within which to access the application forms and submit their applications.

87. The notice reads:

RE: NBI/KNUNM/EN.1/534/25

20th November 2025

To All KNUNM Members,

RE: ELECTION NOTICE.

The above subject matter refers.

Within the meaning of The Labour Relations Act 2007, the Constitution of Kenya Article 41 and the Union constitution Article XVII, I hereby GIVE NOTICE that the Union General Elections will be held on 6th February 2026.

TAKE NOTICE that those interested in contesting for any position should send his/her application to the chairperson, Independent National Electoral Commission on or before 4th December 2025 at 5:00pm, to enable the board prepare adequately for the elections.

Application forms can either be picked from the office, downloaded from the union website: knun.or.ke or sent via email upon request by the person wishing to Contest.

All applications/notifications to be sent to: elections@knunm.org

Yours faithfully,

Signed

Seth Panyako

General secretary

Cc:

The Registrar of Trade Unions

P.O Box 40326-00100

Nairobi

88. Copies of the application the form are attached to the Petitioner's affidavit at pages 83, 127, 144 and 149.
89. The application form is 13 pages. It is reproduced below for an appreciation of the contents.

FORM B

ELECTION APPLICATION FORM

Select (Tick or put an X) where appropriate

SECTION I. NATURE OF ELECTION

a) General Election b) By-Election

SECTION II. GUIDELINES

1. Read all the section carefully before filling areas relevant to you.
2. The form should be filled in own handwriting.
3. Filled forms should be scanned and send to the union head office through the email:
4. No hard copy shall be accepted.
5. Failure to return this form within seven (7) days shall constitute your automatic withdrawal from vying and disqualification.
6. Any applicant who gives false information SHALL automatically be disqualified and may face CRIMINAL charges.

SECTION III: MANDATORY REQUIREMENTS.

- a. Copies of pay slips for the last 6 months.
- b. Copies of academic/professional Certificates.
- c. Copies of NCK license.
- d. Copy of ID.

SECTION IV: PERSONAL DETAILS.

1. Name of applicant (in block letters, as it appears in the National Identification Card)

.....

2. Gender Age.....

3. National Identification Card No. (Attach copy)

4. Personal/Employment No.....

5. Work Station.....

6. County /Hospital/National Government

7. Telephone No.....

8. Mobile No

9. Email.....

SECTION V: ACADEMIC/PROFFESIONAL QUALIFICATION.

a. Primary School

i. Year of enrollment.....Year of completion.....

ii. Grade/Marks Attained

b. 'O' level

i. Year of enrollment.....Year of completion

ii. Grade/Marks Attained

c. University/ College Achievement

i. Certificate

Year of enrollment.....Year of completion.....

Award

ii. Diploma

Year of enrollment.Year of completion.....

Award.....

iii. Higher diploma

Year of enrollment.....Year of completion.....

Award.....

Bachelor's degree

Year of enrollment..... Year of completion.....

Award.....

v. Master's degree

Year of enrollment..... Year of completion.....

Award

vi. PHD

Year of enrollment..... Year of completion.....

Award

vii. Other qualification, include profession examinations done and date of completion;

.....

viii. Indicate your practice license number

ix. Is your practice license valid? YES NO

If yes, when was it renewed?

SECTION VI:

i. Position contesting for

ii. Amount paid (KSH) (Attach Bank slip/prove of payment) iii. What is the current position you are holding in your employment?

iv. What is the academic and professional requirement for position you are currently holding as in Section V above (e.g Diploma, Higher Diploma, Degree, Masters or Doctorate)?

v. Did you qualify for the current position you are as per the academic and professional experience required? YES NO

vi. If your answer in V above is NO how did you get the position?

.....

SECTION VII:

a. How many nurses are employed in your County / Hospital?

.....

b. Have you recruited more than 80% of nurses in your County facility/Hospital?

YES NO NOT APPLICABLE

c. How many are contributing members of the union?

.....

d. What role have you played to ensure nurses have fully participated in the Industrial action to fight for their rights?

.....

e. Are you an official of any other Trade Union?
YES NO

i. Name of Trade Union/Association

ii. Position

iii. Institution

f. Are you an official of an at National, Branch or Chapter level?

YES NO

g. Are you still holding the position in Section VII (D, (g)?

h. If no, kindly state when you resigned and attach a received copy of your resignation letter to the trade Union/Associations

.....

SECTION VIII:

1. Are you charged with any of the following duties?

a. Formulating, administering, coordinating, Supervising and or controlling disciplinary action over nurses.

YES NO

b. Executive chairperson, managing director or deputy /assistant director, functional head and or a deputy or assistant.

YES NO

c. Having authority to hire, transfer, appraise, suspend, promote, or recommend promotion, reward, discipline, and or handle grievances.

YES NO

d. Handling any matter of the employer categorized as confidential in nature.

YES NO

2. Have you ever served as a union official?

YES NO

a) If yes, are you still serving in the union.

YES NO

b) What was/is your position in the union?

c) If you served and left please state reasons why you left the union?

.....

d. What has changed that makes you want to run for this position in relations to paragraph c above?

.....

SECTION IX:

1. Have you ever been subjected to any disciplinary procedure of the union?

YES NO

a) If yes what was the allegations?

.....

b) Were you punished in any way?

YES NO

c) If yes in (b) has your punishment been lifted?

YES NO

d) If your answer (c) is yes when was it lifted?

.....

e) Have you stopped engaging in similar acts of indiscipline?

YES NO

2. Have you ever taken the union to court for any reason?

YES NO

a) If your response is yes in 2 above, did you exhaust Internal Dispute Resolution Mechanism?

.....

b) What was the outcome of the suit?

.....

c) Have you ever written to a government organ requesting for any favors against the union including removal of officials or and any organ of the union?

YES NO

d) If your response in 2 (c) above is yes, why did you not follow due process and how will you deal with the same government as an employer to represent the interest of nurses and you were technically colluding with it to undermine the union?

.....
.....

3. Have you ever used media including social media and mainstream media to issue statements against the union, her officials, members and or running any social cite without authority of the union?

YES NO

4. How has your actions above impacted on the union's ability to serve members?

.....

5. What new leadership knowledge, skills, attitude and experience will you bring to the union if you are successful?

.....
.....
6. Who drafted the application notification for you?

.....
7. Have you copied your notification to your branch?

YES NO

8. Have you copied to any other person?

YES NO

9. If yes in 8 above state the names of people or offices you copied to and the reasons why you opted to copy to them.

.....
.....
I (Name).....ID No hereby certify that all the information provided herein above is true according to my knowledge and understanding.

SECTION X: FOR OFFICIAL USE ONLY

(To be filled and signed by the Chair of Independent National Electoral Commission)

a) Briefly make summary observations in point form.

.....
.....

b). State whether the candidate is cleared to contest or not as per the Labour Relation Act 2007, Union Constitution, ILO Convention, Industrial Charter and By-Laws.

Cleared Disqualified

Signed by the Chairperson:

Name

Sign

Independent National Electoral Commission.

90. The form includes information that is not required by section 33 of the Act which at provides for voting members as follows:

33. No person shall be a voting member of-

(a) a trade union unless that person is employed in the sector for which the trade union is registered;

(b) an employers' organisation unless that person has a physical address or an office in Kenya; or

(c) a registered trade union or employer's organisation if that person's subscriptions are more than thirteen weeks in arrears

91. The Petitioner submitted that the requirements in the form were therefore intended to further exclude members from freely vying for elective positions in of the 1st Respondent, in violation of members' rights to fully participate in union elections.

92. From the foregoing, I am satisfied that the Petitioner has established a prima facie case justifying the grant of conservatory orders.
93. On whether the Petitioner will suffer irreparable harm, it is not contested that the election notice was only posted on the 1st Respondent's website and Facebook page and gave 14 days to aspirants to apply. As pointed out above, such notice did not reach the members of the 1st Respondent in good time or at all within those 14 days, the Petitioner being one of them.
94. An election based on a notice that has not been circulated to members is as good as an election held without notice to members. The 1st Respondent's constitution at article 16.2 require that union decisions are communicated through the Branch Secretary. The evidence on record, from the Respondents is that the election notice was not communicated to members through the branch offices. This therefore means that the Petitioner and other members of the 1st Respondent who were not aware of the notice would be locked out of the elections if allowed to proceed.

95. The Respondents addressed the court on the **Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions**. The Respondents submitted that according to the Practice Directions this court cannot stop union elections. The Respondents however relied on rules that have been repealed. The relevant rules were published under Gazette Notice No.18142 in the Kenya Gazette No. 258 of 11th December, 2025. The notice is dated 1st September, 2025.

96. The Practice Directions provide at paragraphs 5 and 6 as follows:

5. (1) An election petition shall expressly state that the petitioner is entitled to petition under section 34(4) of the Labour Relations Act which provides that disputes arising from election of trade union officials or connected directly or indirectly to the elections may be referred to the Court.

(2) In addition to provisions of the Rules on the title, a person filing the election petition shall title it as such by providing for the number and year of

filing at the top thus “Election Petition No. ... of ... (year)”.

(3) An election petition shall be—

(a) **filed within twenty one days from the date of declaration of the results of a trade union election;**

(b) served upon the respondent together with the affidavit and exhibits within not more than fifteen days of filing or such shorter time as the Court may direct; and,

(c) filed electronically at the relevant court’s registry or sub registry and on the payment of the prescribed filing fees.

6. (1) An election petition shall state—

(a) the name, physical and postal address, email address, telephone number and any other necessary particulars of the petitioner, respondent or the union official whose election is challenged;

(b) **the venue and date when the election in**

dispute was conducted;

(c) the results of the election, if any, and
however declared;

(d) the date of the declaration of the results
of the election;

(e) *the grounds of law or fact and particulars*
upon which the petition is presented; and

(f) *the relief the Court is requested to grant.*

(2) *The petition shall be divided into paragraphs,*
each of which shall be confined to a distinct
portion of the subject, and every paragraph shall
be numbered consecutively.

(3) *The petition shall conclude with a statement*
of particulars of the reliefs sought.

(4) *The petition shall—*

(a) *be signed by the petitioner or by the*
petitioner's advocate;

(b) *be supported by an affidavit sworn by the*
petitioner exhibiting all relevant documents
relied upon; and,

(c) *a list of the petitioner's witnesses, if any,*

together with the affidavit signed by such witness.

(5) Where more than one petition is presented relating to the same election, such petitions may be consolidated and dealt with together, so far as the consolidation makes the inquiry into the concerned election more convenient, efficient and complete.

[Emphasis added]

97. From the provisions cited above, it is clear that the election petitions anticipated in the Practice Directions are those filed after the union elections have been held and contesting the result of such elections. The instant petition is thus not covered under the Practice Directions.
98. I am satisfied that the Petitioner has established that the elections would not be valid for want of notice. The prayers sought in the application are therefore merited.
99. However, before I make the final orders I want to acknowledge that this court is cognizant of the fact that the Registrar of Trade Unions issued a circular dated 25th September, 2025 on the schedule of union elections for

2026. According to the circular trade union branch elections are to be held between 5th January and 31st March, 2026, national elections between 1st April and 30th June, 2026 and elections for the federations by 30th August, 2026.

100. According to article 7.4 of the 1st Respondent's constitution, the National Quinquennial Conference of the 1st Respondent is to be convened with 21 days' notice. The court further notes that according to the 1st Respondent's constitution at article 17.12 the Branch Elections are to be held at least 28 days before the National Quinquennial Conference.
101. Article 17.18 of the 1st Respondents constitution provides that a member shall not contest or hold two elective positions in the same elections meaning that a person can only contest one position in the elections, either at the branch or at national level. It therefore means that both the branch and national elections can be held on the same day.
102. It is thus still possible for the 1st Respondent to organize itself and hold both the branch and national elections by

30th April, 2026, within the timelines given in the circular by the Registrar of Trade Unions.

103. This court thus makes the following orders:

a. The election notice dated 20th November 2025 issued by the Secretary General, Kenya National Union of Nurses and Midwives, giving notice that the union General Elections will be held on 6th February, 2026 is hereby suspended.

b. The elections of the Kenya National Union of Nurses and Midwives scheduled for 6th February, 2026 are hereby suspended pending further orders of this court.

c. The following provisions of the constitution of the National Union of Nurses and Midwives dated 16th December 2022 and registered by the Registrar of Trade Unions on 28th August 2024 are suspended:

(i) Article VI clause **6.1.9(b)** and **6.2.3**

(ii) Article XVIII: Clause

17.9

17.13

17.14

17.15

17.16

17.25

17.28

17.29

- d. The secretary General shall issue a fresh notice for union elections in strict compliance with the union constitution and specifically Article XVII: Clause 17.12 and 17.13.
- e. In addition to publication on the union website and facebook page, the notice of elections shall be sent to all members through their personal addresses held by the union and through their respective Branch Secretaries and Shop Stewards. The Branch Secretaries shall ensure that the notice is widely publicized to reach all the members of the branch.
- f. Eligibility for all candidates vying for union elections shall be in strict compliance with the Union Constitution as read with section 31, 33 and 34 of the Labour Relations Act.

g. Vetting of members by the Independent National Electoral Commission of the Union (INEC) shall be guided by order 5 above.

h. The application /Nomination Forms referred to at Article XVII: Clause 17.7 is suspended and the INEC shall come up with a fresh Application/Nomination form in compliance with these orders to be approved by the Registrar of Trade Unions before use for the elections

104. The ruling herein is pursuant to the orders issued and published on 4th February 2026 where the court indicated that the ruling in respect of the said orders would be published within 7 days.

105. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THIS 11TH DAY OF FEBRUARY, 2026.**

**M. ONYANGO
JUDGE**

