



**University Academic Staff Union (UASU) & another v Registrar of
Trade Unions & another; Muga & 25 others (Interested Parties) (Cause
E782 of 2025) [2026] KEELRC 385 (KLR) (16 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 385 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E782 OF 2025
MN NDUMA, J
FEBRUARY 16, 2026**

BETWEEN

UNIVERSITY ACADEMIC STAFF UNION (UASU) 1ST APPELLANT

DR CONSTATINE WASONGA OPIYO 2ND APPELLANT

AND

REGISTRAR OF TRADE UNIONS 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

NAFTALY RUGARA MUGA INTERESTED PARTY

DOMINIC MURAGE INTERESTED PARTY

PROF NYANDEMO INTERESTED PARTY

DR JOSEPH SITUMA INTERESTED PARTY

DR RUGENDO CHANDI INTERESTED PARTY

PROF STANLEY NDWIGA INTERESTED PARTY

**DR MUMA OSAAJI & 19 OTHERS & 19 OTHERS & 19 OTHERS & 19
OTHERS & 19 OTHERS INTERESTED PARTY**

JUDGMENT

1. The Appellants filed memorandum of appeal dated 13/8/2025 challenging the decision of the 1st Respondent (Registrar of Trade Unions – RTU) contained in the letter dated 7/8/2025 which cancelled the amendments of *the constitution* of University Academic Staff Union (UASU).



2. The Appellants depose that UASU undertook a rigorous constitutional review over a period of five (5) years to align its constitution with the Constitution of Kenya 2010 and the Labour Relations Act, 2007 and other relevant laws.
3. That following the conclusion of the process the proposed changes were adopted and ratified at the 32nd National Delegates Conference (NDC) on 10th and 11th December 2024. The Appellants then communicated the proposed changes to the RTU. That the RTU initially refused to register the changes citing objections, despite not having issued the mandatory Gazette Notice to invite them to raise any objections.
4. That the Gazette Notice was published ultimately and all objections were rejected for lack of merit. However, the RTU directed that an urgent Special Delegates Conference (SDC) be held for fresh voting, a directive the Appellants complied with.
5. That the SDC was successfully and peacefully held on 5/8/2025 where the delegates overwhelmingly appeared and ratified the reviewed UASU constitution, 2024.
6. That on 6/8/2025 the RTU approved the constitutional changes and issued a Certificate of Alteration of Constitution. However, just one day later on 7/8/2025 the RTU unilaterally and arbitrarily decided to cancel the certificate and purported to revive the repealed constitution without any legal basis.
7. The Appellants depose that this decision has left the union without a constitution, a situation not contemplated by law.
8. The Appellants contend that the decision by RTU is ultravires, illegal and an affront to the labour rights of the union and its members.
9. That the decision by RTU was made without affording the Appellants an opportunity to be heard or to make representations thereby violating the rules of natural justice and the right to fair administrative action enshrined in Article 47 and 50 of the constitution and section 4(3) of the Fair Administrative Action Act 2015.
10. That RTU also did not follow the prescribed statutory procedure under sections 27 and 28 of the Labour Relations Act, 2007 (LRA).
11. That RTU upon issuing the Certificate of Alteration of the Constitution was functus officio and could not entertain objections raised after the fact, and thus acted ultra vires the jurisdiction of RTU's office.
12. The Appellants filed submissions in support of the appeal and largely emphasizing the matters raised by the Appellants in the memorandum of appeal and in the submissions.

Replying Affidavit by the 1st Respondent

13. The RTU filed a replying affidavit sworn to on 14/10/2023 in response to the notice of motion dated 13/8/2025 and memorandum of appeal dated 13/8/2025.
14. RTU deposes that Article 23 of the UASU constitution as read together with section 27 of LRA, 2007 provide an elaborate procedure for amendment of the union's constitution.

Article 23 of UASU Constitution provides;

“Alterations of/to the constitution rules shall only be made by a resolution voted upon by secret ballot and passed by two-thirds of members at an NDC or SDC. All proposals for amendment shall be submitted to the Secretary General not later than two weeks before



the date of such National or Special Delegates Conference or the date of calling the Special Delegates Conference.

The National chairman may appoint a committee to review *the Constitution*, Rules and Regulations by a resolution of a National Delegates Conference of Special Delegates Conference provided that such a committee submits the amendments to the national Executive Committee for adoption and onward submission to the National or Special Delegates Conference for approval and ratifications.”

Whereas section 27 of LRA provides as follows: -

“27(1) A trade union, employers’ organization or federation may resolve to: -

- a. change or replace its constitution
- b. change its name

15. That upon receipt of the notice of amendment of the UASU constitution, RTU began receiving objections to the amendments even before the process of gazettment was undertaken which objections included, lack of proper procedures as outlined in Article 23 of the union constitution.
16. RTU wrote to the secretary general of the union informing him of the objections and required the union to respond.
17. RTU noted also that from the minutes of the NDC the amendments were approved by “ratification/ acclamation as opposed to secret ballot” as is required under Article 23 of the union’s constitution.
18. The union responded to the letter by their letter dated 13/1/2025. The RTU upon receiving the response issued a Gazette Notice dated 5/2/2025 in terms of section 27(4) of LRA inviting the public to peruse and submit any objections against the proposed amendment within 21 days. The notice was published on 20/6/2025. All objections were similar in nature and no members visited the office to peruse *the constitution*.
19. The objections received were again forwarded to the union with a request to respond. The union wrote a further response dated 16/7/2025.
RTU wrote to the union on 22/7/2025 an opinion to the objections.
20. That pursuant to section 27(4)(c) of LRA, 2007 the RTU found that the process of amendment of *the constitution* as is provided in Article 23 was not adhered to as the “voting was not subjected to a secret ballot” and therefore the office referred back the proposed constitution to the union for the procedure under Article 23 to be followed.
21. Further the RTU by a letter dated 22/7/2025 demanded that the union hold a SDC within 14 days and the proposed amendments be subjected to proper vote vide secret ballot.
22. That the union issued a notice of a SDC dated 22/7/2025 addressed to all chapter secretaries and copied the RTU informing them of the SDC to be held at Nakuru Athletic Club on 5/8/2025. That by a letter dated 6/8/2025, the union informed the Registrar that they held a successful and peaceful SDC. By a letter dated 5/8/2025, the labour officer confirmed having attended the SDC and witnessed the voting and attached the vote tally results to the letter.
23. That on 6/8/2025, RTU issued the union with a Certificate of Alteration of Constitution (Form L) and a copy of the registered constitution



24. Subsequently, the office received more complaints from the delegates of the said meeting regarding the registration and subsequent issuance of a certificate of alteration of the union constitution. The RTU deposes that upon receiving the Labour Officer's report and the document submitted in support of the amendments following the NDC, it came to the attention of the RTU that the procedural requirements may not have been fully met at the time of registration of the alteration of the union constitution.

RTU deposes that under Article 23 of the union constitution

“Alteration of/to the constitution or Rules and Regulations shall only be made by resolution voted upon by a secret ballot and passed by two thirds of the members of the National or Special Delegates Conference.”

25. The RTU deposes that as per the Labour Officer's report, votes tallied showed that out of 449 votes cast 270 voted in favour of the alteration and 178 voted against the alteration of the constitution and there was only one spoilt vote.

26. The RTU deposes that the votes did not therefore meet the mandatory required threshold of two thirds of delegates attending as is required under Article 23 of the union's constitution.

27. The Secretary General of the union by a letter dated 6/8/2025 informed the RTU that the interpretation of Article 23 of the union's constitution was to the effect that paragraph 2 of the Article provided for a process of review/referendum which began with submissions made by the Constitution Review Committee and submitted to the National Committee for adoption. That for that process only a simple majority was required for approval of the amended constitution. The letter is marked “AK18”.

28. The RTU said that she had relied on that explanation to approve the amendment but however having reviewed the complaints and carefully examined Article 23 of the union constitution, the RTU was satisfied that the SDC did not meet the 2/3 majority requirement to approve alteration of the union constitution and hence cancelled the certificate of alteration on the union constitution issued on 5/2/2025. The RTU deposes that the initial registration of the alteration was based on material misrepresentation by the secretary general of the union.

29. The RTU deposes that she relied on the “Broad Corrective Principle” which is an inherent jurisdiction for public bodies to revisit previous decisions and it is not limited to correcting minor efforts which do not substantially affect the right of the parties.

30. The RTU relies on the decision by Mr. Justice Haddon – Cave in Dr. Anup Chandhuri versus General Medical Council [2015] EWHC 1247 (Admin) where the judge reiterated that public bodies must have the power to correct themselves instead of forcing parties to go to court.

31. The RTU also invokes the decision in the case of Ongere and 2 others versus Registrar of Trade Unions and another (Civil Appeal 461 of 2018) (9 February 2024) judgment, where the court held that: -

“In effect, the Registrar is conferred with discretion within the parameters of the Act, to accept or refuse to register a proposed trade union. It is a discretion which “is not wild and unaccountable discretion” but a discretion to be exercised on settled principles.”

That the appeal be dismissed for lack of merit.



Interested Parties

32. The 1st to 20th Interested parties in the response to the notice of motion dated 13/8/2025 and the memorandum of appeal stated that the appeal and the notice of motion were a non-starter for lack of merit. The interested parties referred the court to the case of *Selle versus Associated Motors Boat Co.* (1968) EA 123 that was cited with approval by the Court of Appeal in *Munyu Maina versus Hiram Gathitha Maina* [2013] eKLR to the effect that this is a first appeal from a decision of a quasi-judicial function. The court was therefore bound to evaluate; analyze and re-assess all the evidence on record and arrive at its own conclusion with a view to meet the ends of justice of the particular case.
33. The interested parties urged the court to bear in mind that there is a litany of pending cases emanating from the same dispute. The court was referred to ELRC JR No. E052 OF 2025; Nairobi ELRC No. E763 OF 2025 Nairobi, JR E008 OF 2025 which would be directly affected by the outcome of this appeal.
34. The interested parties urged the court to ignore the procedural technicalities raised by the Appellant with regard to the RTU having rescinded its earlier decision and lean in favour of substantive justice.
35. The court was also urged to ignore, the technicality on joinder of interested parties to this matter.
36. The 21st to 26th interested parties filed a replying affidavit sworn to by Dr. Dominic Murage in opposition to the notice of motion and the appeal. The interested parties reiterated the contents of the deposition and the submissions by the RTU that the amendment to the union constitution did not meet the mandatory threshold under Article 23 of the union constitution.
37. The interested parties depose that there is only one mandatory pathway of making any alterations to the union constitution as provided in the 1st paragraph of Article 23. That the word “shall” is used under Article 23 that alterations “shall only be made by resolution voted upon by secret ballot and passed by two thirds of the members at the National or Special Delegates Conference.”
38. The deponent states that though the National chairperson has a discretion to appoint a committee to review *the constitution*, the committee’s sole purpose is to originate proposals and any proposed alteration to the union constitution. Proposed issues are voted upon at an NDC by 2/3 majority of the members present.

That the appeal lacks merit and it be dismissed.

Determination

41. The court has considered the evidence placed before court by the 1st and 2nd Appellants in their memorandum of appeal, supporting affidavits and supplementary affidavits and submissions and the replying affidavit by the Respondents, interested parties and their submissions and has discerned the issues for determination to be as follows:
 - i. Whether the amendment to the UASU constitution considered at a Special Delegates Conference (SDC) held on 5/8/2025 met the threshold of Article 23 of the union constitution.
 - ii. Whether the Registrar of Trade Union acted within her powers to refuse registration of the proposed amendments.



42. This appeal turns on a simple matter emanating from the evidence on the voting process at the SDC held by the Appellants on 5/8/2025 presented by the labour officer (returning officer) which evidence has not been placed in dispute by any party in this appeal.

43. The Labour Officer reported thus as per paragraph 22 of the replying affidavit by the RTU which paragraph has not been traversed at all: -

“That the Labour Officer’s report indicated the votes had been tallied and out of the total of 449 votes cast 270 voted in favour of the alteration and 178 voted against the alteration of the constitution there was only one spoilt vote.”

The RTU concluded at paragraph 3 of the replying affidavit: -

“That in order for the alteration of the constitution to have been successful, the threshold majority vote ought to have been met and this means that at least a vote of 299 out of 499 should have been cast in favour of the alteration.”

44. Again, this authentic conclusion by the RTU has not been contested by way of presentation of any counter evidence by the Appellants in this matter.

45. The overwhelming evidence relied upon by the RTU clearly demonstrates that the amendment of the UASU constitution at the SDC held on 5/8/2025 did not satisfy the requirements of Article 23 of the union constitution fully reproduced in this judgment.

46. All the other issues raised in the appeal are subordinate to the democratic will of the union members represented at the SDC aforesaid. The RTU would have failed in her duties gravely had she failed to rectify the error of registration of the result she had earlier done courtesy of mis-representations to her by the Appellants, that a simple majority was sufficient under the committee path to change the union constitution.

47. The court finds that it was within the mandate and administrative discretion of the RTU to cancel the Certificate of Alteration of the Constitution she had erroneously issued on 6/8/2025 on 7/8/2025 a day later. The rectification of the error was based on the facts and law which overwhelmingly demonstrate that the decision of the RTU was correct and was necessary to meet the ends of justice.

48. The court only need to reiterate the decision by Justice Haddon-Cave in Dr. Anup Chandhuri versus General Medical Council [2015] EWHC 1247 (Admin) (supra), relied upon by RTU that public bodies must have power to correct themselves instead of forcing parties to go to court.

49. Accordingly, the court finds that the application and the appeal lack merit and are both dismissed.

50. Given the nature of the dispute, which is indeed a union family one aimed at arriving at a rational and just democratic outcome under the union constitution, the parties to meet their own costs of the suit.

DATED AT NAIROBI THIS 9TH DAY OF FEBRUARY 2026.

MATHEWS NDUMA

JUDGE

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF FEBRUARY 2026.

J. W. KELI



JUDGE

In the presence of:

Mr. Koceyo for 1st Appellant/Applicant

Ms. Kiminja for 2nd Appellant

Mr. Muigai for 1st to 20th Interested Parties

Mr. Ogembo for 21st to 26th Interested Parties

Ms. Mochogu for Respondents

Mr. Kemboi – Court Assistant

