

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA

JUDICIAL REVIEW APPLICATION NO. E002 OF 2026

REPUBLIC ..... APPLICANT

VERSUS

KENYA UNION OF POST-PRIMARY EDUCATION TEACHERS

(KUPPET) ..... 1<sup>ST</sup> RESPONDENT

SECRETARY GENERAL, KUPPET ..... 2<sup>ND</sup> RESPONDENT

BRANCH SECRETARY, MOMBASA KUPPET BRANCH ..... 3<sup>RD</sup> RESPONDENT

MOMBASA COUNTY LABOUR OFFICER ..... 4<sup>TH</sup> RESPONDENT

REGISTRAR OF TRADE UNION ..... 5<sup>TH</sup> RESPONDENT

PAUL MWANGI ..... 6<sup>TH</sup> RESPONDENT

TEACHERS SERVICE COMMISSION ..... 7<sup>TH</sup> RESPONDENT

AND

EDWIN SHIREKU ..... EX PARTE APPLICANT

RULING

The ex parte applicant moved the court through his Judicial Review proceedings herein, the application dated 29 January 2026, and the substantive motion dated 2 February 2026. The application is premised on the provisions of Order 53 rule 3 of the Civil Procedure Rules, sections 8 and 9 of the Law Reform Act, and articles 22, 23, 47, and 81 of the Constitution.

The ex parte applicant is seeking orders:

1. *An order of Certiorari do issue to remove into this court and quash the decision of the Registrar of Trade Unions made on or about 26 January 2026, registering officials*

*arising from the KUPPET Mombasa County Branch elections held on 17 January 2026.*

- 2. An order of prohibition does issue restraining the respondents, whether jointly or severally, from recognising, implementing, operationalising, or giving effect to the results of the said elections.*
- 3. An order of mandamus do issue compelling the Registrar of Trade Unions to decline registration of officials arising from the impugned elections and to require the conduct of fresh elections in strict compliance with the Labour Relations Act, the KUPPET constitution and the Registrar of Trade Unions' circular on Trade Union Elections, 2026 Cycle dated 25 September 2025.*
- 4. The costs of this application are awarded to the ex parte applicant.*

The ex parte applicant supports the application by way of his Affidavit, as elections for officials of the KUPPET Mombasa Branch were held on 17 January 2026, in accordance with the notice of the Registrar of Trade Unions dated 25 September 2025, which called upon all trade unions to conduct elections. However, the respondents conducted elections in a manner that permitted the participation of agency fee payers and non-members, used conflict-free membership registers, and failed to verify voter eligibility.

The ex parte applicant avers that, despite the KUPPET Mombasa Branch elections being marred by irregularities, the Registrar of Trade Unions has gone ahead to register the branch elections without affording the aggrieved members a hearing. This decision is illegal, procedurally improper and has violated the right to fair administrative action under Article 47 of the Constitution. The orders sought should be allowed, quashing the decision of registration, prohibiting the registration, and compelling the Registrar of Trade Unions to conduct fresh elections.

In reply, only the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents replied. They filed the Replying Affidavit of Akello Misori, the Secretary General, who avers that the ex parte applicant challenges the decision of the Registrar of Trade Unions to register the officials elected on 17 January 2026 for the KYPPEM Mombasa Branch. He claims that irregularities marred the elections, and he has invited scrutiny and a fresh election. However, upon registering the elections under section 35(2) of the Labour Relations Act (LRA), the Registrar's discretion governs the conduct of the inquiry into the elections.

The change of elected officials is the Registrar of Trade Unions' mandate. Upon such registration and decision, the option for an aggrieved party is under section 30 of the LRA. One must file an appeal and not a judicial review application. The appeal must be filed within 30 days of the date on which the Registrar of Trade Unions acted on the impugned elections and registration.

Misori avers that the instant application is not the legally prescribed means of challenging the Registrar of Trade Unions' decision. There is a legal framework for addressing such claims.

The instant application is supported by an Affidavit dated 29 January 2026, which was filed days before on 2 February 2026. The oath was taken in Mombasa, but the commissioning was in Nairobi. The affidavit is fatally defective.

The ex parte applicant has not properly moved the court. The application should be struck off. It is unsupported by an affidavit, wrongly filed under judicial review proceedings and thus incompetent under Rule 51, Rule 4 of the Civil Procedure Rules.

Parties attended court and filed skeleton written submissions and oral highlights.

The ex parte applicant has admitted that the filing of judicial review proceedings is indeed irregular. The procedure under section 30 of the LRA should have been followed.

He thus submitted that the court should invoke its inherent powers and discretion to convert these proceedings into an appeal for the purpose of challenging the decision of the Registrar of Trade Unions following the registration of elected officials of the KUPPET Mombasa Branch on 26 January 2026.

The LRA consolidates the framework for trade unions and trade disputes and provides for the registration, regulation, management, and democratisation of trade unions and employers' organisations or federations. Therefore, before invoking constitutional provisions or other legislative frameworks, including judicial review proceedings under the Civil Procedure Act and the rules thereto or the Law Reform Act, recourse should be made to the LRA.

Upon a trade union conducting its elections, including for its branches as required under section 35, upon the registration of the officials by the Registrar of Trade Unions, the 5th respondent herein, the aggrieved party is required to move the court under an appeal pursuant to section 30 of the LRA.

Section 30 of the LRA allows a party to file an appeal to the court.

### **30. Appeals against the decision of the Registrar**

*Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial Court [Employment and Labour Relations Court] against that decision within thirty days of the decision.*

The admission by the ex parte applicant, made in moving the court under a judicial review mandate rather than an appeal, cannot be cured by the court's discretion. There exists a legal framework under Section 30 for filing an appeal. A court order issued under judicial review proceedings cannot be converted into an appeal. The nature of the orders sought is fundamentally different under each procedure.

These proceedings must fail.

Additionally, the respondents have challenged the fact that the Supporting Affidavit to the application before the court is sworn at Mombasa but commissioned at Nairobi.

The ex parte applicant moved the court by way of his chamber summons dated 29 January 2026. There is a Supporting Affidavit on the same date as sworn in Mombasa and commissioned at Nairobi.

The substantive motion is dated 2 February 2026. It is supported by the Affidavit of the ex parte applicant on **29 January 2026 and commissioned on the same date at Nairobi**. Although technology and virtual proceedings are permitted and have served us well in the recent past, certain things have not changed. This is particularly the Oaths and Statutory Declarations Act. Section 5 requires the jurant to state the date and place where the oath is taken. See *Maureen Nyambura Ngigi Warui v Board of Directors, Kenya Power & Lighting Company Limited & 2 others* [2020] KEELRC 237 (KLR), where the court held that:

*These are mandatory provisions. There is no discretion for this court to vary these provisions, as they are statutory provisions regarding what constitutes a valid disposition in matters before the court. The omission to indicate the date of swearing of the affidavit attached to the application before the court renders the same defective and should be struck out, which leaves the current application unsupported with regard to the averment of....*

In **Justus Achinga Kebari & 25 others v The Attorney General** [2018] eKLR, the court emphasised that:

*"It is trite law and process that a petition shall be accompanied and supported by a valid affidavit in such support. In the instant case, the affidavits in support are dubious*

*for want of veracity in their commissioning. The petitioner has failed to controvert the clear provisions of the law negating their case in the circumstances, it must fail.... This application does not stand the test of law and process. The affidavits in its support are inadmissible for want of form and compliance with the law. They must be struck out."*

The question of informality, raised by the ex parte applicant, who sought to convert these judicial review proceedings into an appeal, was addressed in **Isaac Aluoch Polo Aluochier v The National Alliance and 542 others [2016] eKLR**. Where a statute addresses a particular procedure, the court's discretion is removed.

In this case, there is a fundamental conflict. The oath is taken in Mombasa, but the commissioning is in Nairobi. This cannot suffice.

This is compounded by the fact that the oath was taken several days before the substantive application was filed. That, as it may be, is a record manipulation. This practice cannot be allowed to take root. The foundation of the application before the court is lost. The proceedings are invalid.

**Accordingly, the application dated 2 February 2026 is improper and invalid, and is hereby dismissed. Costs to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents**

Delivered in open court at Mombasa, this 24th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and .....