

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**

**CAUSE NO. E158 OF 2026**

**DR. MALOBA**

**WEKESA.....CLAIMANT/APPLICANT**

**VERSUS**

**UASU.....1<sup>ST</sup>**

**RESPONDENT**

**REGISTRAR OF TRADE UNIONS.....INTERESTED  
PARTY**

**RULING**

1. Before Court is the Claimant/Applicant's Notice of Motion application dated 17<sup>th</sup> February, 2026, brought pursuant to Articles 41(2)(c) and 258 of the Constitution and Section 12 of the Employment and Labour Relations Court Act, wherein the Claimant/Applicant seeks orders **THAT**:-

- a) Spent
- b) Spent
- c) This Honourable Court be pleased to issue an order of temporary injunction restraining the Respondent either by themselves, agents, servants or any person acting through them to proceed to conduct the Special Delegates Conference as per their letter dated 11<sup>th</sup> February, 2026 or any other letter or dates in any

manner seeking to amend the Constitution of the Respondent, pending the hearing and determination of this claim.

d) Costs be provided for.

2. The application is supported by grounds on the face thereof and the affidavit of **Dr. Maloba Wekesa**, the Chapter Secretary of the University of Nairobi and the Applicant herein.
3. The Applicant avers that on 22<sup>nd</sup> December, 2025, this Honourable Court (differently constituted) issued a Judgment and decree declaring various sections of the Respondent's constitution as unconstitutional and further directing their amendment. He avers that the court further directed the Interested Party herein to ensure compliance with the Judgment and decree.
4. The Applicant avers that the Interested Party subsequently, in a letter dated 6th February, 2026, directed the Respondent to proceed and amend the Respondent's constitution as by law required, and in accordance with the relevant provisions of the said constitution and the orders of the court.
5. He avers that the Respondent, on 11th February, 2026, instead proceeded and straightaway convened a Special Delegates conference vide their letter dated 11th February,

2026, to be conducted on 25th February, 2026, without any input of the members as regards amendment of the constitution binding the very members.

6. It is his position that the purpose of the Special Delegates Conference is clearly indicated as to amend the existing Constitution of the Respondent. He avers further that Article 23 of the Respondent's Constitution requires that members of the Respondent be facilitated to submit proposals for amendment to be considered at a Special Delegates Conference. The Article states:

***“Alteration of/to the Constitution or Rules and Regulations shall only be made by resolution voted upon by secret ballot and passed by two thirds of the members at a National Delegates Conference. All proposals for amendments shall be submitted to the Secretary General not later than two weeks before the date of such National or Special Delegates Conference.”***

7. The Applicant states that the notice was issued on 11<sup>th</sup> February, 2026, calling for a Special Delegates Conference on 25<sup>th</sup> February, 2026, a period of exactly 14 days, and hence it is clear that on the very date the Respondent issued the notice represented the cut-off date for receiving proposals for amendment of the Constitution.

8. The Applicant further avers that prior to the announcement of the Special Delegates Conference vide Notice dated 11<sup>th</sup> February, 2026, the Respondent never brought to the attention of the members the fact of the Judgment and the proposed changes to the Constitution to enable members thereof to present their views before issuance of the notice calling for the conference.
9. The Applicant avers that should the Special Delegates Conference be allowed to proceed and the Respondent's constitution be amended, the suit herein will be rendered an academic exercise.
10. The Respondent opposed the Motion vide a Replying Affidavit sworn by Dr. Constantine Wasonga, the Respondent's Secretary General, on 19<sup>th</sup> February, 2026. He argues that the suit herein is a disguised attempt to stay, set aside, or quash the implementation of a judgment and decree delivered by a concurrent court, specifically Hon. Lady Justice Maureen Onyango in Petition No. E013 of 2025.
11. The Respondent states that the application expressly references the judgment and decree issued on 22<sup>nd</sup> December 2025, and asserts that the true intention of the current proceedings is to halt their implementation through forum shopping and backdoor litigation. It further states that the Petitioner, through proxy parties and the same law firm

(Ogembo & Company Advocates), had previously filed an application before Justice Onyango seeking a stay of implementation, and that, upon the interim stay orders being declined, one application was withdrawn while another remained pending.

12. The Respondent therefore argues that the Petitioner is acting in bad faith and with unclean hands by filing a fresh suit to obtain relief that was not granted in the original proceedings.
13. It avers that the impugned judgment of 22nd December 2025 declared several provisions of the Respondent's Revised Constitution unconstitutional, unlawful, null, and void, such as the provisions allowing co-option of members by executive committees, limiting terms of office for officials and trustees, creating unequal terms for trustees, and discriminating against new members seeking elective positions.
14. The Respondent states that the Court also ordered amendments to specific constitutional provisions to remove ambiguities in the election of delegates, eliminate restrictions on eligibility for national positions, clarify identification of returning officers, and streamline the structure and roles of the electoral committee and returning officers.

15. The Respondent states that the court orders were properly extracted and forwarded to the Interested Party, who, on 6th February 2026, directed the Respondent to convene a Special National Delegates Conference (NDC) to implement the judgment before conducting elections. It avers that to comply, the Petitioner, together with other National Executive Committee (NEC) officials, participated in several meetings to draft proposed constitutional amendments for presentation to members through Chapter Secretaries.
16. The Respondent argues that the Petitioner, as UASU Chapter Secretary for the University of Nairobi, actively participated in preparing the amendments and received the notice of the Special Delegates Conference (SDC), and therefore cannot now claim ignorance or mislead the Court.
17. The Respondent avers that NEC met on 11th February 2026 and directed the National Secretary General to issue notice of the proposed SDC, and that the notice was circulated widely through official communication channels, including WhatsApp groups, and that no member has complained of not receiving notice; instead, members have submitted views on the proposed amendments.
18. The Respondent further contends that the Petitioner cannot purport to speak on behalf of unnamed members who have not raised objections, since, as Chapter Secretary, he was among the first to participate in preparations and receive the SDC notice. Regarding facilitation, the Respondent

states that no member has complained of a lack of facilitation to attend the SDC.

19. The Respondent confirms that the SDC venue, Nakuru Athletic Club, has been booked and paid for, and a facilitator engaged at a cost that cannot be recovered. It also notes that the 14-day notice requirement under Article 23 of the Constitution has been complied with, which the Petitioner admits.

20. The Respondent emphasizes that the judgment is public information and binding on all parties, including those who opposed it. It denies allegations of selective delegate selection, stating that no eligible delegate has complained of exclusion.

21. Finally, the Respondent asserts that the SDC is being convened strictly in compliance with the Court order and directions of the Interested Party, and that a court order is mandatory and not subject to voting or selective implementation, and that instead, all parties are obligated to comply fully.

22. The Respondent prays that the Motion be dismissed with costs.

23. Parties urged the Motion by oral submissions on 23<sup>rd</sup> February, 2026, where counsels for both parties reiterated their pleadings.

### **Determination**

24. I have considered the application, the grounds, the affidavit in support, the further affidavit, the replying affidavit in opposition, and the oral submissions by both Counsels. The singular issue for determination is whether the Claimant/Applicant has met the threshold for the grant of a temporary injunction restraining the Respondent from conducting the Special Delegates Conference (SDC).

25. In the often cited case of ***Giella v Cassman Brown & Co. Ltd [1973] EA 358***, it is settled that to meet the threshold for grant of injunctive relief a party must demonstrate a prima facie case with a probability of success, that he stands to suffer irreparable injury not compensable in damages, and where in doubt, the matter is decided on a balance of convenience.

26. The definition of a prima facie case was elaborated in ***Mrao Ltd v First American Bank of Kenya Ltd & 2 Others, (2003) KECA 175 (KLR)***, where the Court of Appeal stated that a prima facie case is one which, on the material presented, shows a right apparently infringed so as to call for rebuttal from the opposite party. The Court is further expected to exercise caution where the orders sought

would effectively suspend implementation of a lawful decision or public process.

27. In ***Nguruman Limited v Jan Bonde Nielsen & 2 Others (2013) KECA 347 (KLR)***, the Court of Appeal emphasized that the three conditions in *Giella* are sequential and all must be satisfied.
28. The Applicant's grievances are firstly that Members of the Respondent union were not adequately facilitated to submit proposals before issuance of the Special Delegates Conference notice, and secondly that the 14-day notice issued by the Respondent effectively coincides with the Constitutional cut-off date for submission of amendments.
29. From the court record and the submissions by both Counsels, it is not disputed that a judgment delivered on 22nd December 2025 declared several provisions of the Respondent's Constitution unconstitutional and directed amendment thereof. It is also not in dispute that the Interested Party directed compliance with the said Judgment.
30. Article 23 of the Respondent's Constitution requires proposals to be submitted two weeks before the SDC, and it is further evident that Notice was issued on 11th February

2026 for a conference on 25th February 2026, which by simple arithmetic complies with the 14 day requirement.

31. The Applicant herein has expressly stated that he does not challenge the validity of the judgment nor the obligation to amend the Constitution, but rather, he challenges the process leading to the SDC.
32. The Respondent, on its part, contends that the Applicant participated in drafting amendments, that a NEC meeting was held where the Applicant attended, that the Notice was circulated, and finally that no member has formally complained of exclusion.
33. There is no denying that the orders sought would restrain the implementation of a subsisting judgment of a court of concurrent jurisdiction to this court. Although framed as a procedural challenge, the practical effect of the injunction would be to suspend compliance with the earlier judgment, which judgment has neither been stayed nor set aside.
34. Further, it is evident from the said judgment that the court already told the parties what to do, having picked out the sections of the Respondent's constitution that it deemed unconstitutional and proceeded to correct them, and all that remains to be done by the delegates is to pass the amendments.

35. In light of the foregoing, I reach the conclusion that the Applicant has not demonstrated an identifiable legal right being infringed, as the Respondent is simply acting pursuant to an order of this court.
36. In the premises, I find and hold that, on the material before this Court, a prima facie case has not been established.
37. On whether the Applicant has demonstrated irreparable harm, he argues that the suit will be rendered academic if amendments are effected.
38. In my view, the amendment of a union's Constitution remains subject to judicial scrutiny such that any irregular amendments can be invalidated by the Court if ultimately found unlawful.
39. On this account, it follows that no specific prejudice personal to the Applicant has been demonstrated. In ***Nguruman Limited v Jan Bonde Nielsen & 2 Others*** (supra), the Court held that speculative injury or apprehension does not amount to irreparable harm.
40. The Applicant has also not controverted the Respondent's assertion that it has booked and paid the SDC venue, that

delegates have been notified, and that the meeting is convened to comply with a binding court judgment.

41. In the circumstances, the balance of convenience tilts in favour of compliance with the judgment and not the obstruction thereof.

42. In the final analysis, I find the Applicant's Notice of Motion dated 17th February 2026 devoid of merit and is hereby dismissed with costs to the Respondent.

43. It is so ordered.

**SIGNED, DATED, AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup>  
DAY OF FEBRUARY, 2026**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Ogembo present for the Claimant/Applicant

Ms. Olalo h/b for Mr. Koceyo for the Respondent

N/A Interested Party

Ms. Esther S - Court Assistant