

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC PETITION NO. E168 OF 2025

JARED OOKO DEYA.....1ST
PETITIONER
DR. ROBERT ADAWO KING WARA.....2ND PETITIONER
FRANCIS KENGARA OMAYO.....3RD PETITIONER
KHAMIS HASSAN SHEE.....4TH PETITIONER
DENIS OGATO ORINA.....5TH PETITIONER

VERSUS

REGISTRAR OF TRADE UNIONS.....1ST RESPONDENT
UNIVERSITIES' ACADEMIC
STAFF UNION (UASU).....2ND RESPONDENT
COMMISSIONER OF LABOUR.....3RD RESPONDENT

JUDGMENT

The Petitioners are delegates and members of the University Academic Staff Union, (UASU) challenging the actions of the 1st Respondent, the Registrar of Trade Unions of retrospectively, unilaterally and without lawful authority, cancelling a duly issued certificate of alteration of the UASU Constitution dated 6/8/2025.

The Petitioner states that Registrar's decision was *ultra vires* the powers confirmed on the office in terms of section 27(7) of the labor Relations Act, 2007.

The Petitioner posit that the conduct by the Registrar violates Articles 47(1) (2) and (3) of the Constitution of Kenya 2010.

The Petitioners also refer to section 5(1) of the Fair Administrative Action Act which provides:-

“In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interest of a group of persons or the general public, an administrator shall,

- (a) Issue a public notice of the proposed administrative action inviting public views in that regard;
- (b) consider all views submitted in relation to the matter before taking the administrative action.
- (c) consider all relevant and material facts and
- (d) where the administrator proceeds to take the administrative action proposed in the notice.

The Petitioners rely on the Court of Appeal decision in ***Civil Appeal 52 of 2014 Judicial Service Commission versus Mbalu Mutava and another [2015] eKLR*** in which the court addressed itself to Article 47 of the Constitution as follows:-

“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the bill of rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers,

state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”

The Petitioners posit that the Registrar failed to refer to UASU's National Executive Committee (NEC) regarding any dispute whether interpretation of Article 237 UASU's repealed 2014 constitution taking the drastic action.

The Petitioners seek the following reliefs:-

- a) A declaration that the purported cancellation and revocation of the Certificate of Alteration of the UASU Constitution issued on August 6th 2025 is not only illegal, baseless, arbitrary and whimsical but it is also in blatant violation of the Petitioners' constitutional rights.
- b) A declaration that the decision, actions and omissions by the Registrar of Trade Unions are procedurally and substantively ultra vires hence constitute an abuse of office and powers.
- c) A declaration that the Registrar of Trade Unions has no statutory powers under the Labour Relations Act, 2007 to revoke/cancel a Certificate of Registration post-facto, without any legal basis, due process including fair hearing, administrative action and reasonable notice to UASU and its members.
- d) A declaration that the Registrar of Trade Unions abused her statutory powers by ignoring and failing to refer to UASU's National Executive Committee (NEC) regarding any dispute over the interpretation of Article 23 of UASU's repealed 2014 constitution, before taking any consequential action thereto.

- e) A declaration that the Registrar of Trade Unions' cancellation of the Certificate of Alteration of the Constitution issued on 6th August 2025 and the UASU Constitution 2024 were unilateral, un-procedural, unjustified, and a blatant violation of the Petitioner's rights to fair administrative action, fair hearing, and rules of natural justice.
- f) A declaration that the UASU Constitution 2024 is the valid and operative UASU Constitution pursuant to the registration of proposed amendments to the UASU Constitution 2024 and issuance of the Certificate of Alteration of the Constitution Registration on 6th August 2025.
- g) A permanent injunction restraining the Respondents by themselves, their officers, servants and assigns or anyone acting on their behalf or instructions from implementing, gazetting or undertaking any consequential action or decision pursuant to the letter of the Registrar of Trade Unions Reference No. MLSTP/TU/143/2 and any other related matters raised in this petition.
- h) Costs of the application and instant petition.
- i) Any other appropriate reliefs that this Honourable Court may deem just and fit to grant in the interest of justice.

Replying Affidavit

The Registrar of Trade Unions Ann Kanake filed a replying affidavit in which she defends the suit and deposes that the office received a letter dated 18th December 2024, conveying a notice of amendment of Constitution (Form I) dated 11/12/2024.

That subsequently the office started receiving objections to the amendments of the union constitution even before the process of gazette was undertaken. The objections cited among other reasons lack of proper procedures as outlined in Article 23 of the union constitution.

That in interest of clarity, on 6/1/2025, she wrote to the National Secretary General of the union informing him of the objections and required the union to respond to the objections raised. That she also noted from the minutes of the NDC that was held the amendments were approved by ratification/acclamation as opposed to secret ballot as is the requirement under Article 23 of the Constitution.

The union responded by a letter dated 13/1/2025 and in line with the provisions of section 27(4) of the Act, the Registrar issued a gazette notice dated 5/2/2025 inviting the public to peruse and forward any objections against the proposed amendments within 21 days. The Gazette notice was published on 20/6/2025. That no member visited the office to peruse the amended constitution but numerous objections were received by the office and were all similar in nature to the ones received earlier. Copies of some of the objections received are attached to the replying affidavit.

The Registrar forwarded the objections again to the union requesting for a response which the union did by a letter dated 16/7/2025 vide the National Secretary General.

The Registrar upon considering the objections and the response gave its opinion on the matter and pursuant to section 27(4)(c) of the Labour Relations Act, 2007, that states that the Registrar is mandated to:

“make any orders that he/she deems fit in the circumstances.” the Registrar found that the process for amendment of the constitution as is guided in Article 23 of the union constitution was not adhered to as the voting was not subjected to a secret ballot and the Registrar referred back the proposed amendments to the union for procedural compliance. Further, the office directed that a special delegates conference (SDC) be held within 14 days and the amendments be subjected to a secret ballot in terms of Article 23 of the union constitution.

That the union conveyed an SDC to be held on 5/8/2025. The notice is attached marked “AK 11”, it was copied to all the chapter secretaries and to the Registrar.

That by a letter dated 6/8/2025, the union informed the Registrar that it held a successful and procedural SDC. A labour officer wrote a letter dated 5/8/2025 confirming his attendance of the SDC and witnessing the voting and attached the vote tally results said letter is attached.

That on 6/8/2025 the Registrar issued the union with a certificate of Alteration of constitution (Form L) and a copy. The certificate and amended constitution are annexed and marked “AK-15” and 1/6” respectively.

That the Registrar received more complaints from delegates of the said SDC and objections to the issues of the certificate and registration of the amended constitution.

That the Registrar considered the objections in view of Article 23 of the union constitution which provides.

“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.”

The Registrar deposes that the Returns by the Labour Officer indicated the votes cast 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 and there was only one spoilt vote. The Registrar noted that the 2/3 majority threshold required a vote of at least 299 in favour of the amendment out of the 449 cast votes at the SDC.

That the secretary General attempted to explain this anomaly by a letter dated 6/8/2025 replying on paragraph 2 of Article 23 which provided for a process of review/referendum which began with submissions made by the Constitution Review Committee and submitted to the National Executive Committee for adoption and that the alternative process only required a vote by a simple majority in favour of the amendments and so the process was proper.

The Registrar considered the objections, the response by the Secretary General and the provision of Article 23 of the union constitution and by a letter dated 7/8/2025 the Registrar wrote to the union Secretary General

informing them of a decision to cancel the certificate of Alteration of the amended union constitution made on 5/2/2025 and that the process of the certificate and registration of the amended union constitution was done by the office of the Registrar in error.

Further Affidavit

The union responded to the replying affidavit by the Registrar reiterating the legitimacy of the process and urging that the petition be allowed and of that the Registrar rescind her decision to revoke the certificate and registration of the amended union constitution.

DETERMINATION

The parties filed written submissions in which the union asserted the legitimacy of the process followed in the alteration of the union constitution whereas the Petitioners persisted that the process did not follow the dictates under Article 23 of the union constitution in that the mandatory two thirds threshold was not achieved at the SDC and therefore the Registrar had no choice but to reconsider her earlier decision to issue a certificate of registration of the alterations to the union constitution.

The court notes that it has had occasion to consider similar situation in a previous petition whose facts are materially similar to this one.

The court relied in that previous matter on the principle that an administrative decision such as the one taken is based on the corrective principle which is an inherent jurisdiction to revisit previous decisions by an administrative authority and it is not limited in correcting minor errors which do not substantially affect the right of the parties of the decision

taken rather they make a decision where it comes to the attention off the administration that the mistake was made as a result of misrepresentation of material facts as the Registrar deposed had happened in this particular case.

The issues for determination are:-

- (i) Whether the Petitioners violated the doctrine of constitutional avoidance by failing to file an appeal to this court within 30 days of the decision by the Registrar in terms of section 30 of the Labour Relations Act.
- (ii) Whether the Petitioners have proved the alleged constitutional violations to the required standard.

In answer to issue one above, the court notes that section 30 of the Labour Relations Act, 2007 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.”

In this respect ***Weldon Korir J. (as he then was) in Sevnaj Singh Chana versus Diamond Trust Bank (Kenya) Limited and another [2020] eKLR***, held at paragraph 62 that:

“...Jurisdiction is exercised within the laid down principles of law. One of those principles is one which requires that where a statutory mechanism has been provided for the resolution of a dispute, that procedure should first be exhausted before the courts can be approached for resolution of that dispute. Indeed, like any other legal principle, this doctrine has

exceptions. In my view, it is the duty of a party who bypasses a statutory dispute resolution mechanism to demonstrate that there were reasons for avoiding that route.”

In the present matter, section 30 gives jurisdiction to the Industrial Court now ELRC, to entertain appeals from persons aggrieved by a decision of the Registrar of Trade unions. Failure to file an appeal to this court is not a mere procedural error but raises a jurisdictional issue which has the consequences of denying this court jurisdictions to entertain a suit challenging a decision made by the Registrar of Trade Unions in any other manner other than by an appeal to the court. This court indeed finds that it lacked jurisdiction to hear and determine this petition since the Labour Relations Act, prescribes a procedure that has been trodden by many parties before this court and confirmed by numerous precedence by this court and affirmed by the Court of Appeal. ***KKB v SCM and 5 others (Constitutional petition 014 of 2020) 2022 KEHC 281 (KLR) (22 April 2022) (Ruling).***” where the court stated,

“The doctrine of ripeness and constitutional avoidance gives credence to the concept that the constitution does not operate in a vacuum or isolation. It has to be interpreted and applied in conjunction with applicable legislation together with other available legal remedies. Where there are alternative remedies the preferred route is to apply such remedies before resorting to the Constitution. The possibility of the elevation of any dispute to a constitutional issue is what is sought to be averted by the doctrines of ripeness and constitutional avoidance. It is borne out of a realization that

all legislative or common-law remedies are part of the legal system.”

In Faraj & 3 others v Police & 2 others [2022] KEHC 287 (KLR) it was held that;

“...the doctrine of ripeness and the doctrine of avoidance. Like res judicata or the doctrine of exhaustion, these two doctrines can preclude a court from entertaining a case. Constitutional avoidance has been defined as a preference for deciding a case on any basis other than one which involves a constitutional issue being resolved. As a principle, constitutional avoidance has been linked to the doctrine of justiciability. In broad terms, justiciability governs the limitations on the constitutional arguments that the courts will entertain. It encompasses three main principles: standing, ripeness, and mootness. The avoidance doctrine was fortified in Sports and Recreation Commission v Sagittarius Wrestling Club and Anor. ...”

Furthermore, the courts should at all times avoid determining matters that do not raise genuine constitutional issues on the basis of the national constitution.

This matter resolves a dispute arising from Article 23 of the union constitution and may only be determined on the question whether the amendment to the union constitution, registered and then subsequently revoked by the Registrar of the Trade Union met the voting threshold of two thirds majority required to alter the union constitution. No genuine constitutional issue arises from this petition.

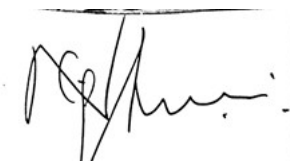
In answer to issue two as framed, the Petitioner have not raised any genuine issues to be determined on the basis of interpretation, protection or enforcement of the constitution of Kenya 2010.

In the case of *Muiruri versus Credit Bank Ltd and another, Nairobi HCMCS No. 1382 of 2003 [2006] 1 KLR 385*, Nyamin J (as he then was) found that the doctrine of constitutional avoidance requires courts to resolve disputes on a constitutional basis only as a final resort after first exhausting all other methods. That a constitutional issue is that which directly arises from court's interpretation of the constitution.

In the present case, the failure by the Petitioners to file an appeal to this court within 30 days in terms of section 30 of Labour Relations Act denied this court jurisdiction to hear and determine the same and the petition is struck out on that basis. However, for completion, this court finds that the petition does not raise any genuine constitutional issue for hearing and determination and the petition fails for lack of merit for the Petitioners having failed to prove that the Registrar of Trade Unions and other Respondents violated their constitutional rights.

Accordingly, the petition fails on all the fronts aforesaid and is dismissed for lack of merit with no order as to costs.

Dated at Nairobi this **1st day of March 2026**



Mathews Nduma

JUDGE

**Dated, signed and delivered in open court at Nairobi this 11th day
of March 2026**

J.W KELI

JUDGE

In presence of:

Mr. Bogong for Petitioners

Mr. Owade and Ben Sihanga for 2nd Respondent

Ms. M/s. Mochage for 1st and 3rd Respondent

Mr. Kemboi – Court Assistant