

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAROK

ELRC PETITION NO. E001 OF 2026
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

KIPKOECH EVANS1ST
PETITIONER

NGETICH GEOFFREY CHERUIYOT.....2ND
PETITIONER

VERSUS

**KENYA UNION OF POST-PRIMARY
EDUCATION TEACHERS.....1ST**
RESPONDENT

THE SECRETARY GENERAL - KUPPET.....2ND
RESPONDENT

**THE NATIONAL ELECTIONS
BOARD - KUPPET.....3RD**
RESPONDENT

**THE COUNTY LABOUR OFFICER
NAROK COUNTY.....4TH**
RESPONDENT

THE REGISTRAR OF TRADE UNIONS.....5TH
RESPONDENT

RULING

Introduction

1. The Petitioners/Applicants filed a Notice of Motion dated 3rd March 2026 under Certificate of Urgency seeking the following orders that:

i. Spent

ii. Pending the inter-partes hearing and determination of this application, this Honourable Court be pleased to issue interim conservatory orders restraining the 1st, 2nd, 3rd, 4th and 5th Respondents, whether by themselves, their agents, servants, employees, or any person acting under their authority or instructions, from:

a. Proceeding with, conducting, supervising, or in any way facilitating the KUPPET Narok County Branch elections rescheduled for 8th March 2026 or on any other date, pending the hearing and determination of this Application and Petition.

b. Declaring, gazetting, swearing in, or allowing any purportedly elected officials from the impugned Narok County Branch elections to assume office or exercise any functions associated therewith, pending the hearing and determination of this Application and Petition.

c. Implementing, enforcing, or giving effect to any decisions, notices, or declarations arising from the impugned Narok County Branch elections, scheduled for 8th March 2026.

d. Further interfering with, altering, or manipulating the membership register, voters' register, or any electoral records of the KUPPET Narok County Branch in a manner that excludes or misclassifies bona fide members, including the Petitioners/Applicants and the 490 affected teachers, pending the aforesaid restoration and issuance of the voters' register.

iii. Pending the inter-partes hearing and determination of this application, this Honourable Court be pleased to issue interim conservatory orders to the 1st, 2nd, 3rd, 4th and 5th Respondents, whether by themselves, their agents, servants, employees, or any person acting

***under their authority or instructions,
from:***

***a. Proceeding with, conducting,
supervising, or in any way
facilitating the KUPPET Narok
County Branch elections
rescheduled for 8th March 2026, or
on any other date, using a voters'
register or membership list that
excludes or disenfranchises the
Petitioners/Applicants and/or the
490 affected TSC teachers through
the impugned reclassification as
"Agency Members";***

***b. Gazetting, swearing-in, allowing to
assume office, or otherwise
recognizing any person purportedly
elected in any Narok County Branch
election held or to be held on the
basis of a defective, unlawful or
misclassified voters' register;***

***c. Implementing, enforcing or acting
upon the impugned reclassification
in any manner whatsoever,
including denying the***

Petitioners/Applicants and affected teachers their full membership rights, such as voting, vying for positions, or participating in union governance;

d. Further interfering with, altering, or manipulating the membership register, voters' register, or any electoral records of the KUPPET Narok County Branch in a manner that excludes or misclassifies bona fide members, including the Petitioners/Applicants.

iv. Pending the inter-partes hearing and determination of this application, this Honourable Court be pleased to issue a mandatory injunction compelling the 1st, 2nd, and 3rd

Respondents to immediately:

a. Produce, disclose, and furnish the Petitioners/Applicants and this Honourable Court with a complete, updated, and certified copy of the KUPPET Narok County Branch membership register, voters'

register, and all related electoral records, including details of any reclassifications, exclusions, or additions made thereto since the last branch elections;

b. Provide a detailed explanation, supported by documentary evidence, of the basis for the reclassification of the 491 affected TSC teachers as “Agency Members,” including records of any consultations, notices, hearings, or compliance with the KUPPET Constitution and relevant TSC circulars;

c. Reinstate all bona fide members arbitrarily reclassified as “Agency” members to full membership status, with immediate restoration of all attendant rights, including voting and vying rights, and provide a list of all such reinstated members to the Petitioners/Applicants and this Honourable Court.

- v. Pending the hearing and determination of the Petition herein, this Honourable Court be pleased to issue orders of prohibition directed at:**
- a. The 4th Respondent (COUNTY LABOUR OFFICER, NAROK COUNTY) prohibiting him/her from supervising, endorsing, or certifying the impugned elections or any results arising therefrom until the Petition is heard and determined;**
- b. The 5th Respondent (REGISTRAR OF TRADE UNIONS) prohibiting him/her from registering, gazetting, or recognizing any elected officials from the impugned Narok County Branch elections until the Petition is heard and determined.**
- vi. Pending the hearing and determination of the Application herein, this Honourable Court be pleased to issue conservatory orders preserving the status quo ante, specifically:**

- a. Suspending the entire KUPPET Narok County Branch election timetable issued by the 1st Respondent, including all nominations, campaigns, voting, and declarations related thereto;**
- b. Directing the 1st, 2nd, and 3rd Respondents to halt all administrative actions that perpetuate the violations complained of, such as the exclusion of the Petitioners/Applicants and other members;**
- vii. Upon hearing this application inter-partes, this Honourable Court be pleased to grant an order directing the 1st, 2nd, and 3rd Respondents to:**
- a. Reopen nominations for all positions in the KUPPET Narok County Branch, allowing all eligible bona fide members, including the Petitioners/Applicants and the 490 affected teachers, to participate without discrimination or arbitrary exclusion;**

b. Conduct free, fair, transparent, and verifiable elections for all positions in the Narok County Branch in strict compliance with the Constitution of Kenya 2010, the Labour Relations Act, the Fair Administrative Action Act, the KUPPET Constitution, and all relevant judicial precedents on the 1st Respondent's elections, under the supervision of the 4th and 5th Respondents.

viii. The OCS Narok Police Station ensure compliance with the orders of this Honourable court.

ix. The costs of this application should be provided.

x. This Honourable Court be pleased to grant such further, it may deem just, equitable, and expedient in the circumstances.

2. The application is brought under ***Articles 22, 23, 159(2)(a), (b), (c), and (d), 165(3)(d), 258, and 259 of the Constitution of Kenya, 2010; Sections 4, 5, 6, 7, and 11 of the Fair Administrative Action Act, 2015; the***

***Employment and Labour Relations Court Act;
Sections 30, 34 and 35 of the Labour Relations
Act, No. 14 of 2007; and all other enabling
provisions of the law.***

Petitioners/Applicants' supporting affidavit

3. The application is supported by the affidavit of Kipkoech Evans, a duly registered member of TSC and KUPPET Narok Branch, dated on the same date as the application.
4. The Petitioners/Applicants aver that they and fellow teachers, who have continuously paid full union dues through the TSC check-off system and previously participated in KUPPET Narok Branch elections without restriction, were in January/February 2026 arbitrarily reclassified by the Respondents—together with about 490 others—as “Agency Members” without notice, consultation, lawful authority, or disciplinary basis.
5. The Petitioners/Applicants aver that this misclassification, discovered when verifying eligibility for the branch elections originally scheduled for 11th February 2026, which were later postponed due to chaos and now rescheduled for 8th March 2026, stripped them of voting rights, eligibility for office,

and union privileges despite their bona fide membership.

6. The Petitioners/Applicants aver that the Respondents have refused to provide updated registers despite repeated requests, and similar exclusions have already been condemned by courts in Nairobi (ELRCPET/E013/2026), Kiambu (ELRCPET/E025/2026), Nakuru (ELRCPET/E009/2026), and Laikipia (ELRCPET/E068/2026).

7. The Petitioners/Applicants argued that unless urgent conservatory orders are granted, the elections will proceed on a defective register, causing irreparable harm to constitutional rights under Articles 27, 36, 41, and 47, with the balance of convenience favouring preservation of the status quo pending verification and reinstatement.

1st, 2nd and 3rd Respondents' replying affidavit

8. In opposition to the application, the 1st, 2nd and 3rd Respondents have filed a replying affidavit sworn by Akelo M. T Misoru, the 2nd Respondent herein and the 1st Respondent Secretary General, dated 5th March 2026.

9. The Respondents aver that the KUPPET Narok Branch elections scheduled for 11th January 2026 at Ole Tipis Girls High School were disrupted by chaos, forcing cancellation and postponement, as confirmed by the County Labour Officer's report dated 12th January 2026.
10. The Respondents argue that this suit is defective, filed late, and violates the doctrine of exhaustion since internal union mechanisms under the KUPPET Constitution (2024) were not pursued.
11. The Respondents contend that the alleged "reclassification" of members as agency fee payers stems from the Teachers Service Commission's T-Pay payroll system, not from unilateral union action, and that payments made by Charles Ngeno on 24th February 2026 were irregular.
12. The Respondents aver that union membership requires proper authorization, that no constitutional violations have been shown, and that halting the elections rescheduled for 8th March 2026 would prejudice the majority of members and undermine union autonomy. The Respondents, therefore, urge dismissal of the application with costs.

13. The 4th and 5th Respondents both did not enter appearance or file a response regarding the application despite directions being given.

Analysis and determination

14. The court has considered the application, supporting affidavit and the annexures thereto together with the Respondents' replying affidavit; the singular issue for determination is whether the application is merited.

15. In ***Giella v Cassman Brown & Co. Ltd [1973] EA 358***, the court set out the principles of injunctive reliefs as follows:

(a) establish a prima facie case with a probability of success;

(b) show they will suffer irreparable injury, not compensable by damages; and

(c) prove the balance of convenience favours them.

16. In ***Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] KEHC 2174 (KLR)*** the court stated that for conservatory orders to be granted, the applicant ought to have demonstrated a prima facie case with a likelihood of success and that in the

absence of the conservatory orders he is likely to suffer prejudice, potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. Further, the court is to exercise its discretion in deciding whether to grant or deny a conservatory order by considering all relevant material facts and avoiding immaterial matters.

17. In this instant case, the Petitioners are seeking orders for elections not to take place as they were reclassified to “Agency Members” with 490 others without notice, consultation, lawful authority, or disciplinary basis, while the Respondents are arguing that an exhaustive mechanism was not used to resolve the issue at hand.

18. The Honourable Court already gave orders for elections to proceed as scheduled. The following orders were issued: -

“1. The Respondents will immediately avail the updated certified copy of Narok County Membership Register to the members for members to confirm their names before 8th of March 2026.

2. The Respondents to reinstate all members of KUPPET Narok Branch who have their

support documents including T-Pay portal evidence and proof of having been consistently paying their union membership dues for the last 13 weeks. This to be done immediately.

3. All bona fide members of KUPPET Union Narok Branch be allowed to participate in the elections scheduled for 8th March 2026 which court orders will proceed accordingly. Failure to comply the Respondents will be held in contempt of court and will be dealt with under the Law if so proved and the elected officials will not be gazetted or sworn in if no compliance until the contempt is purged. In any event, swearing will not take place before 13th March 2026.

4. Full Ruling to be delivered on 13th March 2026 and parties can file their submissions as follows: -

Petitioners within 3 days hereof and Respondents within 3 days service.”

19. Further, KUPPET Constitution 2024, Article 22.0 provides for internal dispute resolution procedure where the issue ought to have been raised through

the various structures of the Union. In ***Muthinja & Another v Henry & 1756 Others*** [2015] KECA 304 (KLR), the Court of Appeal held as follows:

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Court is invoked. Courts ought to be 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. This accords with Article 159 of the Constitution, which commands courts to encourage alternative means of dispute resolution”.

See also William Odhiambo Ramogi & 3 Others V Attorney General & 4 Others, Muslim for Human Rights & 2 Others Interested Parties [2020] eKLR.

20. The parties should have proceeded with elections as scheduled as per the court orders of 6th March 2026. If there are other issues, the parties will seek alternative dispute resolution mechanisms or approach the court as appropriate. The Application dated 3rd March 2026 is therefore dismissed.

21. Costs of the application will be in the cause.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 13th Day of
March, 2026.**

**ANNA NGIBUINI MWAURE
JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In

permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE