

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAKURU  
PETITION NUMBER E001 OF 2026**

**BETWEEN**

1. DR. MAGARE – GIKENYI B
2. PHILEMON ABUGA NYAKUNDI
3. DISHON KEROTI MOGIRE
4. DAVID NGATIA NJUGUNA .....PETITIONERS

**VERSUS**

1. KENYA UNION OF POST PRIMARY TEACHERS [KUPPET]
2. MAURICE AKELO T. MISORI, SG KUPPET
3. REGISTRAR OF TRADE UNIONS
4. HON ATTORNEY-GENERAL .....RESPONDENTS

**JUDGMENT**

1. The Petitioners filed the Petition dated 1st January 2026. The lead Petitioner, Dr. Magare Gikenyi is described as a Consultant Trauma and General Surgeon, working for the County Government of Nakuru.
2. The Co-Petitioners are described as Teachers and Human Rights Defenders.
3. All Petitioners are described in their pleadings, as public-spirited individuals, who reside in the County of Nakuru.
4. The 1st Respondent is a registered Trade Union, and the 2nd Respondent its Secretary-General. The 3rd Respondent is the Registrar of Trade Unions, whose statutory functions include registration and regulation of

Trade Unions. The 4th Respondent is the Attorney-General, constitutionally mandated as the Chief Legal Officer to the Government, and the Guardian of Public Interest.

5. The Petition revolves around the ongoing trade union elections, specifically those relating to the 1st Respondent.
6. The Petitioners hold that the elections organized and conducted by the 1st Respondent, are in violation of the best interest of the Child, advanced through Articles 43 and 53 of the Constitution as read with section 8 of the Children Act 2022.
7. They highlight the principle that, "*A Child's best interests are of paramount importance in every matter concerning the Child.*"
8. The Petitioners submit that the 1st Respondent has scheduled elections on school days, interfering with the School Children's learning. Teachers will be away from Schools, engaging in elections, while they are supposed to be in their classes, teaching.
9. The second pillar to the Petition, is that the elections violate the constitutional right and freedom of worship of some Teachers, members of the 1st Respondent.
10. The elections are scheduled to continue on weekends. Teachers who worship on Saturdays or Sundays, will have their right and freedom of worship, under Article 32 of the Constitution, violated.

11. The Petition is founded on the affidavit of the 1st Petitioner, sworn on 1st January 2026.
  
12. The orders sought by the Petitioners are summarized as follows: -
  - a. Declaration that the scheduled elections violate the Children's constitutional and statutory right to education.
  
  - b. Declaration that the scheduled elections are in violation of some Teachers' right and freedom of worship.
  
  - c. Declaration that the schedule of elections is discriminatory to some Teachers.
  
  - d. The letter dated 26th November 2025, issued by the 1st Respondent, scheduling the elections, be quashed through an order of certiorari.
  
  - e. All persons elected under the schedule issued by the 1st Respondent, are permanently restrained by way of injunction, from holding office they were elected to.
  
  - f. An order of prohibition, barring the Respondents or any other persons, from taking any action pursuant to, or implementing, the letter dated 26th November 2025, issued by the 1st Respondent, scheduling the elections.

- g. An order of mandamus directing the Respondents to reschedule the elections, ensuring the schedule does not infringe on the right of education and the right and freedom of worship.
  - h. The 3rd Respondent is barred from recognizing any officials elected under the schedule contained in the letter dated 26th November 2025.
  - i. The Respondents are compelled to comply with the Constitution and other Laws.
  - j. Any other appropriate relief.
  - k. Respondents to pay the costs of the Petition.
13. The 1st and 2nd Respondents oppose the Petition. They rely on the affidavit sworn on 17th January 2026, by the 2nd Respondent.
14. The 2nd Respondent explains that scheduling of trade union elections is broadly determined by the 3rd Respondent.
15. The 3rd Respondent issued a circular dated 25th September 2025, requiring branch elections to be held between 5th January 2026 and 31st March 2026; national elections between 1st April 2026 and 30th June 2026; and, COTU and TUC elections held by 30th August 2026, ending the cycle.

16. Consequently, the 1st Respondent issued the schedule of elections, dated 26th November 2025.
17. All elections are scheduled on weekends, save for one, scheduled on 27th February 2026, which was schools midterm break.
18. The schedule would not in any way, interfere with learning.
19. The 1st and 2nd Respondents took guidance from clause 4.7 of the Recognition Agreement concluded between the 1st Respondent and the Teachers Service Commission, which stipulates that learning must not be interrupted.
20. The 1st and 2nd Respondents underline that, they have not violated Children's right to education, and the best interest of Children under Article 53 of the Constitution. They have not infringed Children's protections and guarantees under the Children Act, 2022.
21. The 1st Respondent explains that the schedule does not infringe any Teacher's right and freedom of worship under Article 32 of the Constitution.
22. Worship on either Saturday or Sunday, is not limited by elections held on either day. Voting does not take the whole day, neither does worshipping. Teachers can worship and vote on the same day.

23. Scheduling of elections on weekends is meant to protect Children's right to education, by ensuring that the Teachers are in class on working days.
24. The 1st and 2nd Respondents submit that the elections must be held within the timelines prescribed by the 3rd Respondent, and the suggestion by the Petitioners to defer elections to a later date, would interfere with the electoral cycle.
25. The Parties argued the core aspects of the Petition, in an application for conservatory measures, brought by the Petitioners, under certificate of urgency, dated 1st January 2026. The Court gave a ruling declining conservatory measures, on 30th January 2026.
26. Parties agreed that the Petition is determined on the strength of their affidavits and submissions on record. They confirmed filing and exchange of submissions at the last mention before the Court, on 10th February 2026.
27. The 3rd and 4th Respondents did not participate in the proceedings.

**The Court Finds: -**

28. At the last mention, on 10th February 2026, the lead Petitioner suggested that in light of the ruling of the Court dated 30th January 2026, the Petition was rendered academic.

29. In responding to the application for conservatory measures, Counsel for the 1st and 2nd Respondents had suggested that, the Petitioners ought to have withdrawn the Petition, submitting that the Petition did not disclose a reasonable cause of action.
30. The Petitioners appeared to suggest at the last mention, that it was 'unfortunate' that the Court determined the Petition, through the application for conservatory measures.
31. The Petitioners came to Court seeking conservatory measures, much in the same mould, as the final orders sought in the Petition- barring the 1st Respondent from proceeding with elections as scheduled; suspending registration of officials elected under the schedule of elections; prohibiting the Respondents and any persons, from implementing the letter dated 26th November 2025; and from acting on any election outcome.
32. The Court acted on the material placed before it, in particular, the affidavit of Akello Misori, the 2nd Respondent herein, which completely discounted the Petitioners' apprehensions, on violation of the Children's right to education, and the Teachers' right and freedom of worship.
33. The 1st and 2nd Respondents established that the schedule of elections did not fall on any schooling day. They established that elections scheduled on weekends, did not prevent any Teacher from exercising their right and freedom of worship. What was left for the Court to try?

34. Trade Union elections have to be held, as a statutory imperative, and it is hard to understand on what day they should be held, if not on weekdays or weekends.
35. Conservatory measures are issued where there is a plausible cause. They are intended to preserve rights, and prevent irreversible harm, pending a final decision. Where the issues raised in the application for conservatory measure, are joined at the hip with the issues raised in the substantive Petition, and the Court declines conservatory measures, it is a strong indication that there is no plausible cause, and a Petitioner receiving such an indication, ought to re-look into his Petition, and decide if to continue prosecuting the Petition, or to withdraw.
36. There was no need for further argumentation, in light of the 2nd Respondent's affidavit, whether, by going on with the scheduled elections, the 1st and 2nd Respondents, were in violation, or likely to violate, the constitutional rights and freedoms, advanced by the Petitioners.
37. In the view of the Court, the submission by the Counsel for the 1st and 2nd Respondents, that the Petitioners should have considered withdrawing the Petition, having been supplied with evidence that the 1st and 2nd Respondents had addressed the Petitioners' concerns, was a submission with considerable force.
38. It was not the right approach for the Petitioners to come before the Court, and submit that the Petition had been determined through the

ruling of the Court, rendered academic, and then propose to file final submissions, to enable the Court make a final decision “ for the record.”

39. It was the affidavit of the 2nd Respondent, which was not discounted by any evidence by the Petitioners, which rendered the Petition academic.
40. The Court should not be placed in a position where it is compelled to write Judgments, in moot actions. If a Party is of the view that its action has become moot, of mere academic value, it ought to withdraw the action.
41. For reasons stated here, and in the ruling dated 30th January 2026, the Court finds the Petition to have no merit.

**IT IS ORDERED: -**

- a. The Petition is declined.***
- b. No order on the costs.***

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Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, this 31st day of March 2026.

James Rika  
Judge

