

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

ELRC PETITION E095 OF 2026

(FORMERLY KAKAMEGA ELRC PETITION E 006 OF 2026)

DR. CLARENCE EBOSO MWERESA.....1ST
PETITIONER

DR. DEOGRACIOUS MAERO.....2ND
PETITIONER

DR. WENDY KIMBUI.....3RD PETITIONER

DR. MALINDI CHAO.....4TH
PETITIONER

DR. HASSAN MKUCHE.....5TH
PETITIONER

DR. JAMES MWEU.....6TH PETITIONER

DR. ZEITUNI MULAA.....7TH
PETITIONER

-VERSUS-

KENYA MEDICAL PRACTITIONERS PHARMACISTS

AND DENTISTS' UNION.....1ST
RESPONDENT

DR. MOUNDE MOKAYA.....2ND RESPONDENT

DR. OSCAR NYAMUNYAMU.....3RD
RESPONDENT

DR. PAULINE KIPROP.....4TH
RESPONDENT

DR. DAVIS OMBUI.....5TH
RESPONDENT

DR. EVELYNN CHEGE.....6TH RESPONDENT
(2nd -6th Sued as members of the Independent Electoral Committee of the KMPDU)

-AND-

REGISTRAR OF TRADE UNIONS.....INTERESTED
PARTY

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The applicants filed a petition together with an application vide a Notice of Motion dated 17th March 2026 brought under Article 162 (2) (a) of the Constitution, Sections 4, 12 (1) (2), (2) and (3) of the Employment and Labor Relations Court Act. Rule 10 of the Employment and Labour Relations Court (Procedure) Rules, Rules 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and all other enabling provisions of the law seeking for the following orders-

a. spent

b. THAT pending the hearing and determination of the main Petition, this Honourable Court be pleased to issue a conservatory order restraining the 2nd ,3rd 4th 5th and 6th Respondents from taking any further steps towards conducting the 1^a Respondent's elections scheduled to be held on 2nd April 2026.

- c. THAT pending the hearing and determination of this Application, this Honourable Court be pleased to issue conservatory orders suspending the 1st Respondent's election of its official scheduled to be held on 2nd April, 2026.
- d. THAT pending the hearing and determination of the main Petition, this Honourable Court be pleased to issue a conservatory order restraining the 2nd ,3rd ,4th and 5th Respondents from taking further steps towards conducting the 1st Respondent's elections scheduled to be held on 2nd April 2026.
- e. THAT pending the hearing and determination of the main Petition, this Honourable Court be pleased to issue conservatory orders suspending the 1st Respondent's election of its official scheduled to be held on 2nd April, 2026.
- e. THAT the cost of this Application be provided for.

2. Grounds of the application

i) Unlawfully constituted Independent Electoral Committee and lack of independence.

- 1) On 15th February 2026, the 1st Respondent's officials issued an informal state of the union address where they communicated the decision of the National Executive Committee that the Independent Electoral Committee that conducted the 1^a Respondent's elections of May, 2021 had been reappointed and would be responsible for managing and conducting the forthcoming elections of the 1st Respondent.

- 2) The 1st Respondent's National Executive Council essentially unilaterally appointed the 2nd, 3rd, 4th, 5th and 6th Respondents as members of the Independent Electoral Committee on the guise of extending their term of office.
- 3) The Independent Electoral Committee constituted of the 2nd to 6th Respondents herein bungled the previous elections of the 1st Respondent that was held way back in May, 2021.
- 4) The results of the elections of May 2021 were challenged in this Honourable Court in Nairobi ELRC Petition NO. E.080 Of 2021, Dr. Magare Gikenyi J. Benjamin & 4 Others -Vs- Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU), Commissioner of Labour & Registrar of Trade Unions-And-18 Interested Parties.
- 5) This Honourable Court, in a ruling delivered on 15th December, 2021, nullified the results of elections of May, 2021 mainly on the ground that they were unverifiable. The Court further ordered that a fresh election be conducted within 45 days.
- 6) Following the nullification of the results of the elections of May, 2021, the members of the Independent Electoral Committee left and/or resigned from the Committee and as such, they did not conduct the repeat elections that were held in June, 2022.
- 7) The repeat elections were conducted by the officials of the 1 Respondent, supervised by ministry of Labour, on the ground that the members of the Independent Electoral Committee had resigned and/or left the Committee.

- 8) The Interested Party herein, in fact, declined to register the Respondent's officials elected from the repeat elections inter-alia on the ground that the said elections were not conducted by the Independent Electoral Committee. The elected officials of the 1st Respondent were, eventually, registered by the Interested Party herein following a Court order.

- 9) The 2nd, 3rd, 4th, 5th and 6th Respondents having left and/or resigned from the Independent Electoral Committee, after the bungled May 2021 elections, the 1st Respondent's National Executive Committee could not extend their term as there was nothing to extend.

- 10) In any event, the Independent Electoral Committee, is not a standing committee of the 1st Respondent but an ad hoc committee for conducting a specific election of the 1st Respondent and the terms of office of its members terminates upon the conclusion of the election they were appointed to conduct.

- 11) The 2nd to 6th Respondents cannot be re-appointed to the Independent Electoral Committee by the 1st Respondent's National Executive Committee without the involvement of the Annual Delegate Conference or a Special Delegate Conference, which are the supreme authority of the union.

- 12) The Independent Electoral Committee is, further, improperly and/or unlawfully constituted as it has four members instead of five members contrary to Article 9 (1) of the

1st Respondent's Constitution as the 6th Respondent resigned immediately after the conclusion of the May 2021 elections from participating in union activities as a branch member.

13) The Independent Electoral Committee is further constituted of persons who are not eligible to be members of the said Committee particularly as follows;

a. The 5th Respondent, who is the alleged Treasurer of the Committee is an employee of Aga Khan University hospital working as an endocrinologist. He has not been an active member of the union for the last three years since he moved from his employment with Murang'a county government. He is not even in the voter register proposed by the very IEC The 1st Respondent does not have a recognition agreement with Aga Khan University Hospital. Consequently, the 5th Respondent is not a bona fide member of the 1st Respondent and does not belong to any branch of the Union. This is a mandatory requirement to serve in the independent Elections committee of the 1st respondent.

b. Only bona fide members of the 1st Respondent are eligible to be appointed as members of the Independent Electoral Committee and the 5th Respondent is not a bona fide member of the 1st Respondent.

14) The Independent Electoral Committee is, moreover, not independent at all as the 2nd and 3rd Respondents were appointed to serve in various standing committees after the conclusion of the May 2021 elections. The standing committees are directly answerable to the 1st Respondent's National Executive Committee and the members of the Committee

have all declared interest to vie in the forthcoming elections. The 2nd and 4th Respondents serve in the standing committees as follows:

- a) The 2nd Respondent, who is the chairperson of the Independent Electoral Committee, after the May 2021 elections, applied, was interviewed and appointed by the National Executive Committee to the Legal Affairs standing committee. He has been serving as part of the said committee and he has been chairing a subcommittee of the legal affairs committee that was responsible for pursuing a review to the union constitution just prior to the notification of elections by the registrar; and
 - b) The 3rd Respondent, who is the Vice Chairperson of the Independent Electoral Committee, after the May 2021 elections, applied, was interviewed and appointed by the National Executive Council to be the chairperson of the Communications standing committee of the Union.
- 15) The two members are not independent from the incumbent officers and from the union organs to serve in the Independent Electoral Committee.

ii) Irregularities in the Register of Voter's Register

- 16) The unlawfully constituted Independent Electoral Committee came up with a voter register and election schedule in collusion with 1^a Respondent National Executive Committee without involving the branches who are the custodian of the actual registers of the union membership.

- 17) The branches were not requested by the independent elections committee to submit their members lists yet the Branches Secretaries are the custodian of branch member lists under the union constitution on behalf of branches. No Branch meetings were held to ratify the legitimate members of the branches.
- 18) The Independent Electoral Committee has ended up publishing a voter's register that is fraught with irregularities that would certainly and fatally doom the eventual outcome of the election particularized as hereunder:
- a) Significant inflation of the numbers of voters - the published register of voters has included over 3500 persons who do not belong to any of the branches of the union. The said persons are neither persons found in the register of branch members, nor in the register of professional regulatory bodies. No official explanation has been given for these ghosts in the register despite questions asked
 - b) Missing names of Bonafide members in the register despite the inflated numbers, the register surprisingly has omitted names of many bona fide members known to branch membership particularly in branches and counties perceived to be aligned to prospective candidates opposed to the incumbents.
 - c) Absence of register capture date (Eligibility Criteria) the register fails to specify the duration or exact point in time when the member data was captured. This omission is a notable departure from the usual practice of previous registers published during the voting cycle and makes it impossible to accurately verify the eligibility criteria of included members. This is certain to lead to either disenfranchisement of bona fide voters

or to the inclusion of persons who are ineligible to vote as per Section 34 of the Labour Relations Act

d) Lack of essential data and categorization there are missing DU numbers for members, which are used as an additional unique identification correlated to the national ID number. Further, the Register facility categorization as the list is not categorized by the facilities that remit dues. Without this breakdown, it is nearly impossible for the general membership to cross- reference their details and confirm the registry's legitimacy and accuracy.

e) Some candidates who initially were verified as part of the voter register later found themselves unable to nominate persons on grounds that they were not members. It is therefore clear that the register or platform upon which the register is accessed is not safe and is subject to changes willy-nilly on someone's whim.

19) The register as published by the Independent Electoral Committee with the foregoing irregularities cannot guarantee free, fair and transparent elections of the union.

iii) Unlawful requirements/criteria for candidates set by the Independent Electoral Committee.

20) The Independent Electoral Committee unilaterally set the qualification criteria for candidates who intend to vie in the elections, which qualifications are not founded on the 1st Respondent's Constitution. These qualifications include the following:

- i) The requirement to pay exorbitant non-refundable nomination fees that are outrageously prohibitive; and
 - ii) The requirement to obtain a fresh certificate of good conduct to prove that one has no prior conviction.
- 21) The notice setting out the new qualification requirements was issued less than two weeks to the deadline for submitting the applications for candidates and such, there is no sufficient time to comply with new qualifications requirements hence locking out member who would be contesting in the union election.
- 22) The new qualification requirement introduced by the Independent Electoral Committee have not been ratified by any organs of the union having authority to ratify them.23) The Independent Electoral Committee has been receiving nomination papers upon payment of the unlawful nomination fees which has locked out many bona fide members who would otherwise be contesting in the union elections.
- 24) The Independent Electoral Committee as currently placed is unlawfully and/or improperly constituted and it lacks the requisite independence for it to not only manage the 1 Respondent's forthcoming elections but also to conduct them.
- 25) The register of voters, as published by the Independent Electoral Committee, is full of irregularities that will adversely impact the credibility of the 1" Respondent's elections. Further, a free, fair, transparent and verifiable union's election cannot be guaranteed by

the Register of Voters published by the Independent Electoral Committee, yet, within the timelines available, no new proper register publication is constitutionally possible within the election schedule.

26) It is in the interest of justice that the orders sought are granted to enable proper constitution of the Independent Electoral Committee and cleaning up of the Register of Voters.

3. The Application is further supported by annexed sworn Affidavit of DR CLARENCE EBOSO MWERESA, the 1st applicant sworn on the 7th March 2026 where he annexed several documents in support of the petition and application including directions of IEC on the upcoming elections and the requirements as well as protest against the elections by branch special general meeting.

4. The application was opposed by the 1st respondent through affidavit of Dr Davji Bhimji Atella sworn on the 23rd March 2026 and pertinent in the response was that the petition was tainted by laches for being filed few days to the election which was scheduled in advance for April, that the issue of IEC was *resjudicata* pursuant to *Cheruiyot v Independent Electoral Committee (IEC) Kenya Medical Practitioners, Pharmacists and Dentists' Union (KMPDU) & another* (Employment and Labour Relations Cause E070 of 2025) [2026] KEELRC 389 (KLR) (12 February 2026) (Judgment) which affirmed the IEC to conduct the upcoming elections, that the publication of the register of voters is a mandate of IEC and not the union branches, and that the issue of nomination fee is overtaken by events

as the nominations were closed. Dr Atella annexed among others the aforesaid judgment delivered by Justice Maureen Onyango on the 12th February 2026. The 1st respondent urged the court to allow their application dated 23rd March 2026 seeking for consolidation of this Petition with ELRCPET/E092/2026 Fredrick Mumo Mwaka Vs Kenya Medical Practitioners Pharmacists and Dentists Union and the Independent Electoral Committee of KMPDU And 1 Other (formerly ELRCC/E269/2026).

5. The 2nd respondent and 5th respondent opposed the application vide affidavits both dated 26th March 2026.
6. The applicants filed a further affidavit of the 1st applicant sworn on the 30th march 2026 in rejoinder to the replying affidavits of the respondents where he annexed his letter dated 3rd March 2026 and titled 'dispute relating to the conduct of the union elections ' which challenged the validity of the membership of IEC and role in the elections, annexed emails of invitation to the legal committee which the court discerned related to the 2nd respondent's membership to the committee. The deponent referred to annexure of WhatsApp communication which was not annexed.
7. The application was canvassed orally on the 30th March 2026. The applicants were represented by Mr. Nyamodi and Mr. Barasa Advocates, the 1st respondent was represented by Ms Guserwa appearing with Washika Advocates, and the 2nd and 5th respondents were represented by Dr Komolo Advocate. There was no appearance by the 3rd and 6th Respondents.

Decision

8. The issue for determination is whether the application for conservatory orders is merited.
9. Article 23 (3) of the Constitution affords a party to proceedings brought pursuant to Article 22, asserting violation or threat of violation of any Constitutional right or fundamental freedom, to prompt the court for any relief, including a conservatory order as sought in the instant case, as follows:

“ 23 (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including-

- a. *a declaration of rights;*
 - b. *an injunction;*
 - c. *a conservatory order;*
 - d. *a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;*
 - e. *an order for compensation; and*
 - f. *an order of judicial review.”* (emphasis)
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10. The applicant on the basis for grant of conservatory orders relied on the decision in *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] KEHC 2174 (KLR) where the court summarized the jurisprudence from superior courts as follows- *‘I state without vacillation that the path to be followed by a court seized*

with an application under Article 23 (3) (d) is now relatively clear. Foremost, the applicant ought to demonstrate a prima facie case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice. As was stated by Musinga, J (as he then was) in the case of Centre for Rights Education and Awareness and 7 Others –v- The Attorney General [HCCP No. 16 of 2011]:

“[Arguments] in this ruling relate to the prayer for a conservatory order in terms of prayer 3 of the Petitioner’s application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution”.

It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis. In these respects, I would quickly make reference to M. Ibrahim J (as he then was) in the case of Muslims for Human Rights [MUHURI] & Others –v- Attorney General & Others CP No. 7 of 2011, who whilst agreeing with Musinga J’s statement in Centre for Rights Education and Awareness [CREAW] and 7 Others –v- The Attorney General (Supra) stated as follows:-

“I would agree with my brother that an applicant seeking conservatory orders in a Constitutional case must demonstrate that he has a prima facie case with a likelihood of success” (emphasis).

Recently the same pertinent observations were made by Ngugi J and Muriithi J sitting separately in Jimaldin Adan Ahmed & 10 Others –v- Ali Ibrahim Roba and 2 Others [2015] eKLR and Micro Small Enterprises Association of Kenya (Mombasa Branch) –v- Mombasa County Government [2014] eKLR respectively.

Once the applicant has established to the court’s satisfaction a prima facie case with a likelihood of success the court is then to decide whether a grant or a denial of the conservatory relief will enhance the Constitutional values and objects of the specific right or freedom in the Bill of rights: see Patrick Musimba –v- The National Land Commission & 4 Others HCCP 613 of 2014 (No. 1) [2015] eKLR and also Satrose Ayuma & 11 Others –v- Registered Trustees of Kenya Railways Staff Retirements Benefits Scheme [2011] eKLR.

Thirdly, flowing from the first two principles, is whether if an interim Conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is indeed the business of the court to ensure and secure so far as possible that any transitional motions before the court do not render nugatory the ultimate end of justice. In these respects the case of Martin Nyaga Wambora –v- Speaker of the County Assembly of Embu & 3 Others CP No. 7 of 2014, is relevant, especially paragraphs [59] [60] and [61] thereof.

The fourth principle which emerges from the various cases and is well captured by the Supreme Court of Kenya in the case of Gatirau Peter Munya –v- Dickson Mwenda Githinji & 2 Others [2014] eKLR is that the court must consider conservatory orders also in the face of the public interest dogma.

Finally, the court is to exercise its discretion in deciding whether to grant or deny a conservatory order. The court must consequently consider all relevant material facts and avoid immaterial matters. The court will consider the applicants credentials, the prima facie correctness of the availed information, whether the grievances are genuine legitimate and deserving and finally whether the grievances and allegations are grave and serious or merely vague and reckless: see Centre for Human Rights and Democracy & 2 Others –v- Judges and Magistrates Vetting Board & 2 Others CP No. 11 of 2012 as well as Suleiman –v- Amboseli Resort Ltd [2004] 2 KLR 589.’

11. The Supreme Court of Kenya in Gatirau Peter Munya vs. Dickson Mwenda Githinji & 2 other (2014) eKLR stated, ‘*Conservatory orders bear a more decided public-law connotation: for they are orders that facilitate the orderly functioning within public agencies, as well as uphold the adjudicatory authority of the Court in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to private-party issues such as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay.*⁸ *Conservatory orders ought to be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.*’

12. I upheld the foregoing decisions of the superior courts and applied the set threshold on conservatory orders in the determination of the application.

Whether a prima facie case is established

13. The court heard the parties orally and discerned from the submission of counsel of the applicants, the basis of the conservatory orders to be – lack of quorum on the basis of alleged resignation of the 6th respondent, lack of qualification of the 5th respondent, and lack of independence of the other 4 members. The counsel clarified that they were not challenging the appointment of the Independent Election Committee (IEC) members, as affirmed by Lady Justice Onyango, but the continued eligibility and independence of the said members in the intervening period.
14. Regarding the alleged resignation, the 1st petitioner filed an affidavit dated March 30, 2026, and in paragraph 9, stated the following- *‘THAT in response to para 32, on 16th February 2026, immediately after the 1st respondent's national officers disclosed their decision to reappoint the 2nd and 6th respondents, I wrote a message to the 6th Respondent inquiring about her membership to IEC. She confirmed that she had long vacated that position after the last election. (Annexed hereto and marked as "CEM-02" is a WhatsApp communication between myself and the 6th Petitioner.)’* On perusal of the said affidavit and annexures, the Court did not find the stated *‘CEM-02’*. He who alleges proves. The allegation of resignation is not supported and ought to be supported by a resignation letter addressed to the 1st respondent and not personal communication (which is not proved) with the 1st petitioner, who is not holding office in the 1st respondent. The court's attention was drawn to the letterhead of the IEC, which omitted the 6th Respondent (page 100 of the application). The Court was not informed of the union constitution's provision that the committee could not function with a vacancy in membership. The court was satisfied by the response of the 5th respondent for his eligibility. The appointment of all the IEC members and the validity of IEC as constituted was affirmed as valid by Lady Justice Onyango in Cheruiyot v Independent Electoral

Committee (IEC) Kenya Medical Practitioners, Pharmacists and Dentists' Union (KMPDU) & another (Employment and Labour Relations Cause E070 of 2025) [2026] KEELRC 389 (KLR) (12 February 2026) (Judgment) as follows- *‘Whether the Independent Electoral Committee was properly appointed and ratified in accordance with the 2nd Respondent’s Constitution*

37. *Section 34(1) of the Labour Relations Act, 2007 provides that elections of officials of a trade union shall be conducted in accordance with the union’s registered constitution.*

38. *Article IV(D) of the 2nd Respondent’s Constitution vests in the National Executive Committee with the mandate to appoint members to the various standing committees.*

39. *The composition and appointment of the Independent Elections Committee is provided for in Article IX as follows:-*

1. *Five bona fide union members who will not be eligible to run for an elected office and cannot co-opt.*

2. *Criteria for appointment-*

i. *Member of the Union sufficiently literate in Kiswahili and English or either*

ii. *Registered member of the Union and Medical board*

iii. *Two (2) years post internship*

iv. *No record of criminal conviction*

v. *Shall have paid dues for at least 12 months*

40. *Article VIII provides for the Union Standing Committees but does not mention the Independent Elections Committee as one of the Union Standing Committees. However, by*

its nature and as stated at paragraph 7 of the Respondents' Replying affidavit and Witness Statement, under Article IV(D) the National Executive Committee has the role and mandate to appoint members' of various committees including the Independent Elections Committee.

41. This therefore means that the Independent Elections Committee is one of the standing committees of the 2nd Respondent even though it is not specifically mentioned in Article VIII of the Constitution.

42. Article VIII (4) and (5) provide for tenure of the Standing Committees as follows: (4) The committees shall serve five-year renewable terms. (5) In the event of a vacancy in a committee by resignation, dismissal or death, the National Executive Council shall appoint a new member to fill the gap.

43. There is thus an anomaly, vacuum or ambiguity with respect to the tenure and manner of appointment of members to the Independent Elections Committee as there is no specific reference to tenure of the Committee in the Union Constitution. At the same time there is no mention of the committee being permanent or an indication that it was the intention in Article IX to make it a permanent committee.

44. There is further no provision for the National Executive Committee to constitute or extend the tenure of the Independent Elections Committee as was done by the National Executive Committee on 17th January 2021.

45. In view of the fact that there is a vacuum in the Union Constitution on the tenure of office of the Independent Elections Committee, it would not be correct to state that the extension of the term of the Committee by the National Executive Committee was in violation of the Union Constitution.

46. *It is also not practical to convene the Delegates Conference to deal with the issue before the elections of the union which according to Article XIV are to be held in the month of April of every election year. Further, Article V (A) (1) of the Union Constitution provides for the convening of the Annual Delegates Conference in the month of May.*

47. *In the circumstances the court recommends that the term of office of the Independent Elections Committee be discussed and resolved at the next Annual Delegates Conference to be held May, 2026*

60. *In the upshot, the Court finds that the Independent Electoral Committee as appointed on 17th January 2021 and ratified on 13th February 2021 is properly constituted under the 2nd Respondent's Constitution as currently framed. Further, that the extension of the term of office of the Committee at the meeting of the National Executive Council of 3rd October, 2025 was not in violation of any provision of the Union Constitution.''* So far, no evidence has been placed before me to suggest that the elections due on 2nd April 2026 are not being conducted as per the union constitution as stated in section 34 of the Labour Relations Act to wit- '(1)The election of officials of a trade union, employers' organisation or federation shall be conducted in accordance with their registered constitutions. (2)The constitution of a trade union, employers' organisation or federation shall— (a)not contain a provision that discriminates unfairly between incumbents and other candidates in elections; and(b)provide for the election, by secret ballot, of all officials of a trade union at least once every five years.(3)Notice of the election of officials under this section shall be given to the Registrar in the prescribed form within fourteen days of the completion of the election. (4)Disputes arising from, or connected directly or indirectly to, elections held under this section may be referred to the Industrial Court.(5)The Registrar may issue directions to a trade union, employers' organisation or federation to ensure that elections are conducted in accordance with

this section and their respective constitutions.” This is the only basis the court may intervene in the process.

15. Regarding the alleged lack of independence due to the appointment of IEC members to standing committees, the court determined that nothing in the union's constitution prohibits IEC members from being appointed to these committees. Section 34(1) of the Labour Relations Act, 2007, states that elections for trade union officials shall be conducted according to the union’s registered constitution. Justice Onyango (supra) summarized the appointment process to standing committees as follows: 'Article IV(D) of the 2nd Respondent’s Constitution vests in the National Executive Committee the authority to appoint members to the various standing committees.'

39.The composition and appointment of the Independent Elections Committee is provided for in Article IX as follows:1.Five bona fide union members who will not be eligible to run for an elected office and cannot co-opt.2.Criteria for appointment-

i.Member of the Union sufficiently literate in Kiswahili and English or either

ii.Registered member of the Union and Medical board

iii.Two (2) years post internship

iv.No record of criminal conviction

v.Shall have paid dues for at least 12 months. The Judge then observed ‘Article VIII provides for the Union Standing Committees but does not mention the Independent Elections Committee as one of the Union Standing Committees. However, by its nature and as stated at paragraph 7 of the Respondents’ Replying affidavit and Witness Statement, under Article

IV(D) the National Executive Committee has the role and mandate to appoint members' of various committees including the Independent Elections Committee.

41.This therefore means that the Independent Elections Committee is one of the standing committees of the 2nd Respondent even though it is not specifically mentioned in Article VIII of the Constitution.

42.Article VIII (4) and (5) provide for tenure of the Standing Committees as follows:(4)The committees shall serve five-year renewable terms.(5)In the event of a vacancy in a committee by resignation, dismissal or death, the National Executive Council shall appoint a new member to fill the gap.'' The court found no basis to deviate from the foregoing observation by Lady Justice Onyango. Save for apprehension of bias arising from lawful appointments to the standing committees, the applicants' apprehension is not supported by any other valid ground to challenge the capacity of the IEC members.

16. On the allegations related to the registers, I agreed with the respondents that those are matters subject to election appeals. There is no evidence placed before me of any voter who has been disfranchised and or denied the right to vote or is irregularly in the register. The register is not before the court. The issue of whether the registers have bona fide voters is an issue for the IEC to decide as per the union constitution. It would be overreach for the court to intervene in the election process based on the allegations of irregularities of the register, without sight of the approved register, when there is a body with a mandate to conduct the union elections, including approval of the register. On the issue of nomination fees, again there was no evidence before court that the same is against the union constitution. It is proper to give the IEC the opportunity to do its work as per the union constitution. The foregoing led the court to conclude there was no disclosure of a prima facie case.

17. The court upholds the decision in *Cheruiyot v Independent Electoral Committee (IEC) Kenya Medical Practitioners, Pharmacists and Dentists' Union (KMPDU) & another (Employment and Labour Relations Cause E070 of 2025) [2026] KEELRC 389 (KLR) (12 February 2026)* (Judgment), THAT –*‘It is a well-established principle that courts should be slow to interfere with the internal affairs of voluntary associations, including trade unions, where such bodies act within their constitutional mandate and the law. The role of the Court is supervisory, to ensure compliance with statutory and constitutional requirements.*

59. In the present case, no violation of the Labour Relations Act or the Union’s Constitution has been established. Judicial intervention would therefore be unwarranted.

60. In the upshot, the Court finds that the Independent Electoral Committee as appointed on 17th January 2021 and ratified on 13th February 2021 is properly constituted under the 2nd Respondent’s Constitution as currently framed. Further, that the extension of the term of office of the Committee at the meeting of the National Executive Council of 3rd October, 2025 was not in violation of any provision of the Union Constitution.’ The decision was dated 12th February 2026. There is no evidence of any issue of eligibility of the 2nd to 6th Respondent placed before the court post the judgment to support the allegations of lack of eligibility and bias. Like my Sister Judge, I hold that no violation of the Labour Relations Act or the Union’s Constitution has been established. Judicial intervention is therefore unwarranted.

17. In the upshot the application dated 17th March 2026 is disallowed. Costs in the cause.

18. The Court further orders the consolidation of this Petition with ELRCPET/E092/2026 Fredrick Mumo Mwaka Vs Kenya Medical Practitioners Pharmacists and Dentists Union and the Independent Electoral Committee of KMPDU And 1 Other (formerly

ELRCC/E269/2026) as the issues arise from similar cause of action and that is in the interest of justice and for prudent utilization of judicial time. The court further orders that the petitioner file written submissions in the petition within 21 days and serve. The respondent to file in 21 days of service. Mention on 18th May 2026 for highlighting of submissions in both petitions.

19. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 1ST DAY OF APRIL, 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

C/A -Otieno

Applicants – Nyamodi & Barasa

1st Respondent - Guserwa & Washika

2nd & 5th Respondent - Dr. Komolo