

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC PETITION NO. E099 OF 2026**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**HON. WILSON SOSSION.....1<sup>ST</sup> PETITIONER**

**MARTHA A. OMOLLO .....2<sup>ND</sup> PETITIONER**

**VERSUS**

**KENYA NATIONAL UNION OF TEACHERS (KNUT)**

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

**THE SECRETARY GENERAL KENYA NATIONAL UNION OF**

**TEACHERS (KNUT).....2<sup>ND</sup> RESPONDENT**

**THE COMMISSIONER OF LABOUR, MINISTRY OF LABOUR**

**AND SOCIAL PROTECTION.....3<sup>RD</sup> RESPONDENT**

**THE REGISTRAR OF TRADE UNIONS.....4<sup>TH</sup> RESPONDENT**

**RULING**

Before the court for determination is the Petitioners/Applicants notice of motion dated 26<sup>th</sup> March, 2026 filed under certificate of urgency on even date seeking Conservatory Orders and a temporary injunction pending hearing and determination of the application *inter partes* and the petition.

When the matter came up on 26<sup>th</sup> March, 2026, the court did not grant any orders pending hearing and determination of the instant application *inter partes* and prayers No. 1, 2, 3, 4, 5 and 6 of the notice of motion fall by the way side.

The directed service of the application and petition and *inter partes* hearing on 30<sup>th</sup> March, 2026 when counsel for the parties appeared for *inter partes* hearing.

Counsels appraised the court on their respective cases and directions on responses and filing and exchange of submissions were given with strict timelines.

In this instance, the applications are praying for:

- (i) Conservatory Orders and a temporary injunction pending the hearing and determination of the petition dated 26<sup>th</sup> March, 2026 as follows:

7. Conservation Order to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Respondents their officials, agents and/or any person acting under their authority from barring the applicants from contesting for the position of Secretary General and Deputy Secretary General respectively in the KNUT

National elections scheduled for 3<sup>rd</sup> April, 2026 at Tom Mboya Labour College, Kisumu.

8. Conservation order to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, their officials agents and/or any person acting under their authority from acting or proceeding with conducting or holding the scheduled nominations and National elections on 2<sup>nd</sup> and 3<sup>rd</sup> April, 2026 respectively.
9. Conservatory Order staying and suspending the implementation of the circular notice dated 13<sup>th</sup> March, 2026 and the nomination and national elections scheduled on 2<sup>nd</sup> and 3<sup>rd</sup> April 2026 respectively.
10. Conservatory Order suspending the nominations and national elections scheduled on 2<sup>nd</sup> and 3<sup>rd</sup> April 2026 until all the 110 Branches including Turkan and Rarieda branches 47 County Councils and 8 Regional Counsels hold elections elect their officials and are properly constituted.
11. A temporary injunction to restrain the 3<sup>rd</sup> and 4<sup>th</sup> Respondents from processing registering and or certifying any results that may emanate from KNUT National elections scheduled on 3<sup>rd</sup> April, 2026.
12. Costs of this application be provided for.

The motion was expressed under section 12(3) of the Employment and Labour Relations Court Act, Rules 10, 44, 45 and 47 of the Employment and Labour Relation Court (Procedure) Rules and Rule 19 and 23 of the Constitution of Kenya (protections of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and based on the grounds set forth on its face and the Supporting Affidavit of Mr. Wilson Sossion sworn on 26<sup>th</sup> March, 2026.

The applicant's case is that they were seeking to contest in the forthcoming KNUT National elections scheduled for 3<sup>rd</sup> April, 2026 for the position of secretary General and Deputy Secretary General respectively, but the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's had expressed opinions to the contrary. That the 2<sup>nd</sup> Petitioner was not a delegate and the 1<sup>st</sup> Petitioner was an unwelcome guest. The 1<sup>st</sup> Petitioner's case is that he registered as teachers with the Teachers Service Commission and was employed as a teacher in September, 1993 and served as an official of the Respondent union from June 2001, elected Secretary General and re-elected in 2016 until he resigned on 25<sup>th</sup> June, 2021 and was deregistered as a teacher vide Gazette Notice No. 10382 of

29<sup>th</sup> October 2019 and served as nominated member of Parliament from 2017.

That the deregistration was challenged in ELRC Petition No. 224 of 2019 but the court upheld the deregistration and an appeal (Civil Appeal No. 4760 of 2019) the Court of Appeal held that there were procedural infractions and the termination was unfair and according to the 1<sup>st</sup> Petitioner the deregistration was reversed but his name had not been reinstated in the Register of teachers.

That section 31(4) of the Labour Relations Act renders the 1<sup>st</sup> Petitioner eligible to view for the position of Secretary General and was still a member of KNUT.

The 1<sup>st</sup> Petitioner avers that he wrote to the 2<sup>nd</sup> Respondent on 18<sup>th</sup> February, 2020 to declare his interest to view for the position of Secretary General and paid union dues for from 1<sup>st</sup> July, 2012 to 1<sup>st</sup> June, 2026 on 7<sup>th</sup> November, 2026 among other payments of union dues.

That the 2<sup>nd</sup> Respondent had vide letter dated 13<sup>th</sup> March 2026 notified members of a special Delegates Conference for purposes of National

elections at Tom Mboya Labour College, Kisumu and nomination would take place on 2<sup>nd</sup> April 2026.

The 1<sup>st</sup> Petitioner averred that holding elections on a public holiday would deny majority of the delegates, who were Christians a chance to vote.

That 1<sup>st</sup> Respondent had issued threats to the 1<sup>st</sup> Petitioner through the print media, The Standard on 23<sup>rd</sup> March, 2026 at page 10 and weekly Citizen for 23<sup>rd</sup> to 29<sup>th</sup> March, 2026 at page 14 that he lacked qualifications to run for the position of Secretary General.

That as a practice, KNUT National elections were held after all 110 branches and 47 County Councils and 8 regional Councils had elected their officials and elections for Turkana and Rarieda Branches were suspended by the Court.

That election of all County Councils and regional Councils are yet to be conducted.

The Petitioners averred that they were apprehensive that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents would communicate that they were ineligible to vie for the positions they seek and thus defeat their candidature.

That KNUT elections have always been at Nairobi due to its centrality and Kisumu was known for violence and organized goons during election time and as a consequence the venue should be relocated to Nairobi.

The 1<sup>st</sup> petitioner averred that he was eligible to vie for the position of Secretary General of the union on account of having been a teacher, a member of the union and the provision of section 21 (4) of the Labour Relations Act.

### **Respondent's Case**

For a Replying Affidavit sworn by Mr. Collins Henry Oyoo on 28<sup>th</sup> March, 2016 affiant deponed that the 1<sup>st</sup> petitioner's letter dated 18<sup>th</sup> February, 2016 on his intention to vie for the position of Secretary General of the union was misplaced as the procedure of declaring interest was spelt out in the unions constitution in accordance with which elections ought to be conducted and the union had a template and the 1<sup>st</sup> petitioner sent another letter on 2<sup>nd</sup>

March, 2026 that the 1<sup>st</sup> petitioner's letters served no purpose and the 2<sup>nd</sup> petitioner who participated in the Nairobi Branch elections went through the same process. The affiant further deponed that he received J. A Guserwa & Co. Advocates letter dated 22<sup>nd</sup> February, 2026 forwarding a deposit slip of Kshs.72,000.00 deposited in the unions account as union dues to render that the 1<sup>st</sup> petitioner eligible to participate in the elections but the constitution had no place for such payment and the 1<sup>st</sup> petitioner was not a member of the union through the check off system and was deregistered as a teacher in 2019 and the Court of Appeal found that there were valid reasons to deregister the 1<sup>st</sup> petitioner and he thus ceased to be a teacher and the Teacher Service Commission had confirmed as much and no order of reinstatement of the name had been received.

The affiant deponed that the 1<sup>st</sup> petitioner ceased to be a member of the 2<sup>nd</sup> Respondent or didn't of Article III (i) of the constitution. That the 1<sup>st</sup> petitioner was not a member of the union was ineligible for membership was not a worker under the Constitution of Kenya and no right to fair labour practice would be violated in the event of this being declared ineligible to contest and in any case the 2<sup>nd</sup> Respondent's constitution

provided for eligibility for election as national official and the 1<sup>st</sup> petitioner did not meet the criteria and had not paid union dues since 2021.

That the circular dated 13<sup>th</sup> March 2026 was issued pursuant to the circular by the Registrar of Trade Unions and payment of union membership arrears was intended to circumvent section 33 (c) of the Labour Relations Act.

That the 2<sup>nd</sup> Respondent's Constitution provided for quorum for delegates conferences at 1/3 of members entitled to attend.

That national elections have been held outside Nairobi for instance in 1996 – Kisumu 2006, Mombasa and 2023 Nakuru and elections are conducted in accord with the constitution of the union.

### **Applicant's submissions**

Vide a Supplementary Affidavit sworn on 30<sup>th</sup> March, 2026, the 1<sup>st</sup> petitioners deposed that in law the Secretary General need not be registered as a member of the union or registered teacher.

That after deregistration, the affiant remained a member of the union up to 25<sup>th</sup> June, 2021 when he resigned, but retained membership of the union to date.

That because termination of employment was unfair, it negated degistration and he remained a member of the union, and had paid all arears and those vying for positions need not be delegates but only delegates voted.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, further Affidavit was sworn on 31<sup>st</sup> March, 2026 and Mr. Collins Henry Oyuu deponed that no Secretary of the 1<sup>st</sup> Respondent including branch secretaries have been a non-member of the union and the non-payment of subscription was for more than 13 months and the deposit of union dues was intended to detect the union's constitution.

That the 1<sup>st</sup> petitioners were aware of the notice of the delegates conference and nothing prevented him from moving the court earlier. The took too long and the day was inexcusable.

That nomination was conducted by Labour officers as designated by the commissioner for labour and Conservatory Orders will occasion financial loss and inconvenience to the Respondents and delegates and allowances

had been paid venue booked at Kshs850,000.00 for 2 days and security arrangements made.

The affiant deponed that quorum for the conference was 1/3 of those entitled to attend and vote and most branches had conducted elections and Turkana Branch had delegates.

That public interest was in favour of the 2<sup>nd</sup> Respondent conducting the elections and a dissatisfied person will be at liberty to move the court as necessary.

### **Respondent's Submission**

1st and 2<sup>nd</sup> petitioners' submissions counsel submitted that by dint of section 31(4) of the Labour Relations Act, the Secretary General of a trade union or the Chief Executive Officer could be a person not engaged or employed in the sector concerned and the 1<sup>st</sup> petitioner was eligible to contest in the forthcoming elections. Moreover, the 1<sup>st</sup> petitioner was a fully paid member of the union.

As to whether the petitioner's application met the threshold for grant of Conservatory Orders, reliance was placed on **Gatirau Peter Munya V Dickson Mwenda & 2 other (2014) eKLR** on what constituted Conservatory Orders and urge that the court had discretion to grant the orders. Reliance was further placed on the sentiments of Odunga Judge (as he then was in **Kevin Mwiti & others Kenya School of law &**

**others (2015) eKLR** on *prima facie* case to submit that the petitioner had a constitutional issue in that the petitioners had a constitutional issue in that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had not made a decision on their eligibility to contest the desired positions in the forthcoming elections and could thus violate articles 36, 41 and 47 of the Constitution of Kenya.

Counsel urged that the election of a Secretary General was not tied to the sector under section 31(4) of the Labour Relations Act and both petitioners were union members. Counsel submitted that the petition before the court establishes a *prima facie* case since the issues raised were arguable.

On prejudice to the petitioners if the orders were not granted, counsel relied on the decision in **Centre for Rights Education and Awareness & 7 others V Attorney General HCCP No. 16 of 2021**.

On *prima facie* case to urge that the petitioners were apprehensive that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had already indicated that the petitioners were ineligible to contest.

Counsel submitted that failure to award the Orders sought would render the petition an academic exercise. On public interest and proportionality counsel submitted that in this case, it was filed in favour of this pending the elections until eligibility of the 1<sup>st</sup>

petitioner was determined as they can be rescheduled and the Respondents stood to suffer no prejudice.

Reliance was placed on **Kevin Mwiti & 2 others V Kenya School of Law (supra) and Satrose Ayuma & 11 others V Registered Trustees of Kenya Railways Staff Benefits Scheme (2011) eKLR** to urge that the petition had meet the threshold for grant of the orders sought.

### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' submissions**

As to whether Conservatory Orders ought to issue Reliance was placed on the sentiments of the court in the **Gatirau Peter Munya case (supra) on what the court should bear in mind and Nubian Rights Forum & 2 others V Attorney General & 6 others (2019) eKLR** and **Board of Management Uhuru Secondary School V City County Director of Education & 2 others (2015) eKLR** on the principles, namely *prima facie* case with likelihood of success enhancement of constitutional values, whether substratum or petition will be rendered nugatory if order not given and public interest.

Counsel submitted that under the law, the Respondents were bond to conduct elections in accordance with the constitution and one requirement for eligibility was at least 8 years of continues service as a teacher and member of KNUT a requirement the 1<sup>st</sup> petitioner did not have coupled with the fact that he was deregistered as a teacher by

the TSC and was thus not a member of the union and neither the termination of employment nor the deregistration had been reversed.

That the petitioners had no arguable case. Reliance was placed on Article III (10) of the 2<sup>nd</sup> Respondent's Constitution.

That the 1<sup>st</sup> petitioner stood to suffer no prejudice.

That the 1<sup>st</sup> petitioners could not attend the special delegates conference because he was not a *bona fide* member of the union.

Counsel, further submitted that the 2<sup>nd</sup> Respondent had made arrangements for the Delegates Conference and National elections venue and accommodation reserved for members and it would be highly prejudiced if the functions were suspended as public resources had been expended and it would serve a personal interest.

As to whether the court should usurp the roles of the Respondents in the elections, counsel submitted that it ought not to do so by dint of Article 41 (a) of the Constitution of Kenya and trade union ought to be left to proceed under its registered constitution and directives of the Registrar of Trade Unions and the latter acted accordingly vide notice dated 25<sup>th</sup> September, 2025 on election orders for branch and National elections and the court ought to exercise its discretion by not granting Conservatory Orders.

Reliance was placed on **Benjoh Amalgamated Ltd & another V. Kenya Commercial Bank Ltd (2014) eKLR** on timeously prosecutions of actions by litigants to urge that the 1st petitioner did not deserve Conservatory Orders.

On the *Proviso* to section 31 (1) of the Labour Relations Act, counsel submitted that section 31(4) of the Act, was conducted in permissive terms which gives the trade union room to exercise its right to determine its affairs.

That in any event, if the orders were not granted the 1<sup>st</sup> petitioner was still free to ventilate his grievances arising during the nomination process.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents Supplementary Submissions dated 31<sup>st</sup> March 2026 at 13.12 pm embellished the submissions provided earlier.

## **Analysis**

It is common round that the 1<sup>st</sup> petitioner was a registered teacher and served as an employed teacher from September 1993 until 29<sup>th</sup> October 2019 when he was deregistered by the Teachers Service Commission (herein after TSC) vide Gazette Notice No. 10382 and the decision in Civil Appeal No. 476 of 2019 **Hon. Wilson Sossion V Teachers Service Commission** delivered on 27<sup>th</sup> February 2026 the 1<sup>st</sup> petitioner's name was not reinstated on the Register of Teachers. I will revert to this issue later on in this ruling.

The only information disclosed about the 2<sup>nd</sup> petitioner is that she is a registered teacher employed by the employee at Harambee School in Makandara Sub-County in Nairobi was a fully paid-up member of the 2<sup>nd</sup> Respondent contested for the position of Executive Secretary KNUT Nairobi Branch elections held on 17<sup>th</sup> March, 2026 but was unsuccessful was vying for the position of Deputy Secretary General of the 2<sup>nd</sup> Respondent in the scheduled elections and was not a delegate.

It is equally not in contest that the 1<sup>st</sup> petitioner served as Executive Branch Secretary of the 1<sup>st</sup> Respondent and as its National Chair and later as Secretary General for about 8 years and resigned in June, 2021 following nomination as a member of Parliament in 2017 to represent workers. Also not in dispute is the fact that the 1<sup>st</sup> petitioner deposited the sum of Kshs.72,000.00 into the 2<sup>nd</sup> Respondent's account at the Kenya Commercial Bank on 7<sup>th</sup> November 2025 as union dues for 1<sup>st</sup> June 2022 to 1<sup>st</sup> June 2026 but it was returned to him and he deposited it again on 27<sup>th</sup> February, 2026.

Finally, it is common ground that the 1<sup>st</sup> petitioner wrote to the 1<sup>st</sup> Respondent two (2) letters declaring his candidature for the position of Secretary General, which the 1<sup>st</sup> Respondent had also declared interest. While the 1<sup>st</sup> petitioner avers and submitted that he was a member of the union fully paid and thus eligible to contest for the position, the 1<sup>st</sup> Respondent averred and Counsel submitted that he was neither a teacher nor a member of the union and was ineligible to contest in the forthcoming elections.

The 1<sup>st</sup> petitioner also averred that 1<sup>st</sup> and 2<sup>nd</sup> Respondents had publicly threatened his candidature on the premises that he was not qualified to run.

**The issue for determination are;**

- (i) Whether the petitioner had met the threshold for the grant of Conservatory Orders and an injunction.
- (ii) Whether the 1<sup>st</sup> petitioner was a member of the 2<sup>nd</sup> Respondent.
- (iii) Whether the 1<sup>st</sup> petitioner was eligible to vie for the position of Secretary General of the 2<sup>nd</sup> Respondent.

As to whether the petitioner had met the threshold for Conservatory Orders to issue to court is guided by the sentiments of Supreme Court in **Gotirau Peter Munya V Dickson Mwenda Kithinji & 2 others (2014d) eKLR** thus;

*“Conservatory Orders bear a more decided public law connotation: for these are orders to facilitate ordered 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 such private-party issued like “the prospect of irreparable harm” occurring during the pendency of a case or “high probability of success “in the applicant’s case for Orders of Stay. A conservatory Order ought to be granted on the interest merit of a case, bearing in mind the public and proportionate magnitudes and priority levels attributable to the relevant causes.”*

The centrality of public interest in an application for conservatory Orders was also underscored in **Alfred N. Mutua V Ethics and Anti-corruption Commission (EACC) & 4 others (2016) KECA 596 (KLR)** see also **Judicial Service Commission V Speaker of National Assembly & another (2013) eKLR** for the proposition that Conservatory Orders are remedies in *rem* not in *persona* and **Nubian Rights Forum & 2 others V Attorney General & 6 other (2019 eKLR** and **Board of Management of Uhuru Secondary School V City County Director of Education & 2 other (2015) eKLR** on the applicable principles including;

- (i) Arguable *prima facie* case Constitutional values suit being rendered nugatory and public interest.

In the courts view the remedy of injunction would have been sufficient to address all the grievances by the petitioners as they are generally in *persona*.

After a review of the averments by the petitioner and the documentary evidence annexed, the court is not persuaded that the petitioners had made a sustainable case for the grant of conservatory Orders or injunctive relief. Both reliefs are discretionary and the court is enjoined to exercise its discretion judiciously having regard to all the relevant circumstances of the case including public interest and enhancement of constitutional values among others.

Strangely, the petitioners were aware from 13<sup>th</sup> March 2026 that the nomination and elections would take place in Kisumu on 2<sup>nd</sup> and 3<sup>rd</sup> April 2026 respectively but did not file the instant application until 26<sup>th</sup> March, 2026 less than one (1) week before the scheduled process commenced at the communicated venue and all arrangements had been finalized by then.

As to whether the 1<sup>st</sup> petitioner was indeed a member of the 2<sup>nd</sup> Respondent, the court is guided by the 2<sup>nd</sup> Respondent's Constitution: which provides for membership under Article III which states *inter alia*;

1. Every registered teacher, certified licenced or authorised to teach in Public Primary School, in Kenya against whose Professional conduct no charge can be sustained shall have the right of admission to any of the Branches of the union upon payment of entry fees which amount;

*Shall be determined from time to time by the National executive Council as provided for in the Rules of the Union with other revies that may be stipulated by the particular branch which the teacher registers to join. Persons eligible for membership of the union shall be only those who are or have been regularly and normally engaged as teachers.*

2. Any other teacher of basic education teaching in a public school in Kenya who wilfully and knowingly applies to join the Kenya National Union of Teachers.
3. ...

4. Any teacher having been declared by the National executive Council ineligible shall remain ineligible until such time as the National executive Council may declare to admit his/her membership.
5. Upon admission, the Teachers full name shall be written in the Unions Nominal Roll showing the member's name in the Teacher's Register kept by the TSC of Kenya...  
  
The memes shall be provided with a membership and bearing his/her name, in full, address and such further particulars that may be necessary to attend easy identification of the member.
6. Every application for membership shall be accompanied by a remittance of Kshs.100 as entrance fee (beside which additions may be stipulated by the local Branchy) and paid to the treasurer. No person shall be admitted to the union or any of its branches, unless he/she has previously agreed to abide by the Rules of the union...
7. ...
8. ...
9. ...
10. One shall cease to be a member of the union if he/she has been dismissed and his/her certificate licence or authority to teach has been cancelled by the TSC except a member whose case is taken up as a trade dispute by the KNUT until the dispute is finalized and the solution is not in his/her favour.

Section 2 of the Labour Relations Act declines a trade union to mean;-

An association of employees whose principal purpose is to regulate relations between employees and employers including any employer's organizations.

Persons eligible for membership of a union are ununisable employees.

Under Article 41(4) (a) of the Constitution of Kenya, Erem Trade Union and every employer's organization has the right to determine its own administration, Programmes and activities.

A union Constitution sets out the basic principles that govern the association and gives it an identity and its provisions bind all those who join it. section 52 of the Labour Relations Act provides;

*Nothing in this part prevents a member of a trade union from paying any dues, levies subscriptions or other payments authorised by the constitution of the trade union directly to the trade union.*

Article 7 (b) of the 2<sup>nd</sup> Respondent's Constitution is consistent with the provisions of the law by providing that:

*"The subscription Fee shall, in as far as possible be collected through the check-off system."*

Strangely, the Petitioners provided no verifiable evidence of union membership, not even membership carols or copies of payslip.

However, the 2<sup>nd</sup> petitioner union membership is not contested. Although the 1<sup>st</sup> and 2<sup>nd</sup> Respondent agree that the 1<sup>st</sup> petitioner was a member of the union for many years, he had not involved in its affairs for over 5 years and was not paying subscription fees, which explains the deposit of Ksh.72,000.00 on 7<sup>th</sup> November, 2025 and 27<sup>th</sup> February 2026 which would appear to suggest that the 1<sup>st</sup> petitioner was not involved in the affairs of the union in anyway for along time. Most significantly, the 1<sup>st</sup> petitioner ceased to be a member of the union when he was deregistered as a teacher by the TSC in 2019 which is ably captured by Article III (10) of the 2<sup>nd</sup> Respondent's constitutions. This is because his authority to teach had been cancelled.

Under section 30(1) of the Teachers Service Commission Act, the commission is empowered to cause the removal of any person from the Register of Teachers and under section 30(5) of the Act, A person whose name has been removed from the register shall cease to be a teacher for purposes of this Act with effect from the date of such removal.

The averment that the holding by the Court of Appeal that the 1<sup>st</sup> petitioner's deregistration was procedurally unfair, reversed the deregistration could not avail the

1<sup>st</sup> petitioner as the court did not issue an order declaring the deregistration Valid or a nullity or make an order reinstating the 1<sup>st</sup> petitioner.

Similarly, the Court of Appeal was emphatic that;

*“our conclusion therefore is that while the Respondent demonstrated good and valid reasons for the appellant’s termination of employment gave notice of the said reason’s to the appellant granted him adequate opportunity to respond before the termination of his employment and the termination was to this extent not unlawful; the procedural infractions rendered the termination unfair. We, however note that the appellant never sought any damages or compensation in his petition in the ELRC and no basis was laid for any such relief..”*

Payment of union dues from June 2022 to June 2026, could not revive the 1<sup>st</sup> petitioner’s union membership.

On eligibility of the 1<sup>st</sup> petitioner to contest for the position of Secretary General of the 2<sup>nd</sup> Respondent, the provisions of section 34 of the Labour Relation Act are explicit that;

- (i) The election of officials of a trade union, employers’ organization or federation shall be conducted in accordance with their registered constitution.

Article IV (13) of the 2<sup>nd</sup> Respondent Constitution prescribes the eligibility content for National officials of the union in terms of length of service, payment of subscription.

In addition, section 33(c) of the Labour Relations Act, address the issue of subscription for voting members.

For unexplained reasons, the 1<sup>st</sup> petitioner while aware that he had not been paying union dues since 2022 deposited the sum of Kshs.72,000.00 in the 2<sup>nd</sup> Respondents account on 7<sup>th</sup> November, 2025 after Branchy and National elections votes had been notified to all unions by the Registrar of Trade Unions.

The 1<sup>st</sup> petitioner cited the Notice in his letter to the 1<sup>st</sup> Respondent dated 18<sup>th</sup> February, 2026 and 2<sup>nd</sup> March, 2026.

Puzzlingly, neither of the petitioner averred that they had complied with the procedural formalities attendant to participating in the Delegates Conference and/or elections other than the 1<sup>st</sup> petitions letter to the 1<sup>st</sup> Respondent which the 1<sup>st</sup> Respondent described as misplaced and devoid of purpose and intended to *bypass* the procedure prescribed by the constitution.

Having been a member of the 2<sup>nd</sup> Respondent, Branch Executive Secretary, Chairperson and Secretary General of the union, the 1<sup>st</sup> petitioner must have been

aware of the procedure of nomination and conduct of elections as opposed to uniting to the 1<sup>st</sup> Respondent.

Over and above based on the letter of 13<sup>th</sup> March, 2026, membership of the union and eligibility to participate in the forthcoming elections, the petitioners raised other issues including conduct of elections in Turkana and Rarieda, conduct of elections on a public holiday. Article XX (c) (2) of the 2<sup>nd</sup> Respondent's Constitution, violation of the freedom of association, nomination and election venue, notice dated 13<sup>th</sup> March, 2026.

Other than issues all the others could have been litigated earlier and those based on the letter ought to have been canvassed in court earlier to enable the court determine the petition prior to the proposed nomination and election dated but for unexplained reasons, the petitioner choose the last 6 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 1<sup>ST</sup> DAY OF APRIL, 2026.**

**DR. JACOB GAKERI  
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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

**DR. JACOB GAKERI**  
**JUDGE**