

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAKURU  
PETITION E011 OF 2026**

**BETWEEN**

TONGE YOYA .....PETITIONER

**VERSUS**

1. KENYA UNION OF DOMESTIC, HOTELS, EDUCATION  
INSTITUTIONS AND HOSPITAL WORKERS
2. ALBERT OBED NJERU
3. THE REGISTRAR OF TRADE UNIONS .....  
RESPONDENTS

**JUDGMENT**

1. The Petitioner filed an application dated 10th January 2026, seeking suspension of the 1st Respondent's quinquennial conference, slated for 20th February 2026, at Tom Mboya Labour College, Kisumu City.
2. Interim orders in favour of the Petitioner, issued on 18th February 2026.
3. The 1st and 2nd Respondents filed an application the following day, 19th February 2026, asking the Court to review and set aside the interim orders, to allow the conference take place on 20th February 2026.
4. The Court declined to review its orders, directing that the petition is mentioned on 12th March 2026.

5. On 12th March 2026, the Respondents were directed to file their response to the substantive petition.
6. Parties were to subsequently file and exchange their submissions on the petition, with Judgment reserved for 3rd April 2026.
7. 3rd April 2026 falls on Good Friday, which necessitated the Court to adjust the date for delivery of the Judgment, to 2nd April 2026.
8. The Petitioner filed submissions dated 20th March 2026, while the 1st and 2nd Respondents filed their submissions, dated 24th March 2026.
9. The two pending applications filed by the Parties, shall be treated as spent.

**Petition.**

10. The petition is dated 10th January 2026.
11. It is supported by the affidavit of the Petitioner, sworn on 10th January 2026.
12. The Petitioner states that he applied for position of Secretary-General of the 1st Respondent, on 19th January 2026.
13. He paid a prescribed nomination fee of Kshs.50,000, in accordance with the 1st Respondent's constitution.

14. He wrote a complaint to the 3rd Respondent, requesting that the 1st Respondent is compelled to issue a fresh notice on conduct of the national elections.
15. The existing notice, dated 19th January 2026, gave 28 days, blocking the Petitioner and other candidates from contesting in free and fair elections.
16. On 27th January 2026, he wrote to the 1st and 2nd Respondents, requesting for updated membership register, list and contacts of delegates to the conference, pursuant to Article 41 and 81 of the Constitution, Section 34[1] and [2] of the Labour Relations Act, Rule 20 of the 1st Respondent's constitution, and circular issued by the 3rd Respondent dated 25th September 2025, scheduling trade union elections countrywide.
17. The 1st and 2nd Respondents ignored the Petitioner's complaints, causing him to apprehend, that his name would not be on the ballot paper.
18. The Petitioner submits that the Respondents have breached: -
  - a. Article 81 of the Constitution, on free and fair elections.
  - b. Article 41 of the Constitution on right to fair labour practices.

- c. Article 35 of the Constitution on the right of access to information held by the state, or by other persons, required for protection of any fundamental right or freedom.
  - d. Section 34 [1] and [2] of the Labour Relations Act, requiring that trade union elections, are held in accordance with their registered constitutions.
19. The 2nd Respondent has continued to prepare for the unlawful national elections, without convening board meeting, for consideration of applications for nomination to the candidates who applied for various positions.
20. The 2nd Respondent has attempted to block the Petitioner from challenging him to the position of Secretary General, by denying him access to important documents.
21. The Petitioner prays for: -
- a. Declaration that the 1st and 3rd Respondents' circulars dated 19th January 2026 are irregular, unlawful, unconstitutional and hence null and void, *ab initio*.
  - b. Declaration that the 1st and 2nd Respondents violated the Petitioner's right to fair administrative action, right to access information, right to equality and fair administrative action.

- c. An order directing the Respondent to issue a fresh notice of quinquennial conference, between 1st April 2026 and 30th June 2026.
- d. An order directing the Respondents to make available and serve the Petitioner, with a copy of updated membership register as per branches, list of delegates and their contacts, not later than 60 days before the national elections.
- e. Alternatively, an order nullifying any purportedly held national elections in contravention of Articles 35 and 81 of the Constitution.
- f. The Respondents to pay damages to the Petitioner, for breach of procedural fairness in the process of organizing the opaque elections.
- g. Any other suitable reliefs.
- h. Costs of the Petition.

**Response.**

- 22. The 2nd Respondent, Secretary-General of the 1st Respondent, filed his replying affidavit sworn on 18th February 2026.
- 23. He states that elections should go ahead, as delay would create a constitutional crisis. The mandate of the national executive board, expires on 20th February 2026. The circular issued by the 3rd Respondent requires trade unions to hold elections after 5 years. The

cycle shall have expired if the 1st Respondent is restrained from holding its elections.

24. Notice of elections issued to the public and members, on 8th December 2025. The Petitioner tendered his application on 19th January 2026. Nobody has stopped him from participating in the elections, and vying for the position of Secretary General.
25. He applied, and immediately thereafter, on 21st January 2026, started writing complaints.
26. He erected campaign posters selling his candidature to members. He was not prevented from participating in the electoral process.
27. The petition is driven by malice, as the Petitioner is the chairman of a rival union, Kenya National Union of Domestic Workers. His intention is to frustrate the 1st Respondent, in conduct of its elections.
28. The Petitioner was aware about the elections, but waited until a day to the elections, to petition the Court.
29. He has not demonstrated how his constitutional rights have been violated, or are likely to be violated. He has approached the Court with unclean hands. The 1st and 2nd Respondents pray the Court to dismiss the petition.

**Petitioner's rejoinder.**

30. The Petitioner filed an affidavit sworn on 10th March 2026, in rejoinder to the 2nd Respondent's response.
31. His position is that he resigned from Kenya National Union of Domestic Workers on 13th March 2025. His eligibility to participate in 1st Respondent's elections, and vie for the position of Secretary General, was not objected to, when he submitted his application and paid the nomination fee.
32. The Petitioner urges the Court to find that his petition raises substantive issues of the Constitution and the Law. He needs at least 40 days to campaign in 40 branches. The Respondents should be ordered to comply with the law.
33. The Court has not traced any response filed by the 3rd Respondent.

**The Court Finds:** - \_

34. The Petitioner submitted his application to contest the position of Secretary General, on 19th January 2026.
35. He paid the nomination fee of Kshs. 50,000 on the same date.
36. The 1st Respondent accepted both application and nomination fee. The issue of the Petitioner's eligibility to participate in 1st Respondent's national elections, and to contest the position of Secretary General, is

not a valid issue. His membership of another trade union, did not prevent the 1st Respondent, from accepting his nomination.

37. He explains, and the Court accepts his explanation, that he resigned from the other trade union, on 13th March 2025.
38. Having submitted his application to contest the Secretary General's position on 19th January 2026, it is intriguing that the Petitioner had already drawn this petition earlier, on 10th January 2026.
39. Why would he draw a petition in advance of his nomination, and in advance of violations surrounding his candidacy, which relate to the period after nomination? Was there a cause of action as of 10th January 2026?
40. Why would the Petitioner be asking the Court, on 10th January 2026, to grant him a declaratory order, that the 1st and 2nd Respondents' circular, dated 19th January 2026, 9 days after the petition was drawn, is irregular, unlawful, unconstitutional, hence null and void *ab initio*?
41. The record indicates that the 1st Respondent's national board held a meeting on 8th November 2025, and resolved to hold the 1st Respondent's quinquennial conference, on 20th February 2026.
42. Branches were issued a 28-day notice, in accordance with Rule No. 5 of the 1st Respondent's constitution.

43. It is therefore rather intriguing, that the Petitioner prepared his Petition on 10th January 2026, in advance of his nomination, and the notice of quinquennial conference, dated 19th January 2026. Did he anticipate that there would be violations, even before he was nominated? The Respondents have conceded that the Petitioner is free to contest the position of Secretary General.
44. He has been campaigning since he submitted his nomination.
45. He informs the Court that he needs 40 days to campaign in all the 40 branches. It has been over 60 days, since he was nominated, and commenced his campaigns.
46. The 1st and 2nd Respondents have exhibited the Petitioner's campaign fliers.
47. The first bears a photo of the Petitioner. It bears the message: -
- “ Wakili Tonge Yoya for General Secretary, KUDHEIHA Workers Union [Better days ahead]”
- “United, Bold & Strong Union. Together we rise. Together we liberate from the chains of poverty. Vote wisely.”
48. The second flier, still bearing the bold image of the Petitioner, repeats the messaging in the first, promising in addition: -

- a. Salary increment from 100 to 150%.
  - b. Transparency & accountability.
  - c. Strengthening KUDHEIHA branches.
  - d. Timely collective bargaining agreements, across all sectors without delay.
  - e. Together, we rise to eradicate Njeru [2nd Respondent's] poverty in KUDHEIHA.
49. Both fliers refer to the contested position as that of General Secretary, while the pleadings refer to the position of Secretary General.
50. It is therefore clear that the Petitioner submitted his nomination successfully, and has from the date of submission, been campaigning openly and aggressively, in preparation for his pursuit of the position of Secretary General/ General Secretary.
51. The Petitioner's prayer for postponement of the national elections by up to 60 days to enable him access updated members' register, is not sincere.
52. He acknowledges that the circular issued by the 3rd Respondent, requires trade unions to complete their national elections between 1st April 2026 and 30th June 2026. Both Parties agree that the 1st

Respondent's national executive board's mandate would have expired after 5 years, on 19th February 2026.

53. It is not correct however, as submitted by the 1st and 2nd Respondents, that expiry would create a constitutional crisis. A constitutional crisis occurs where a government's foundational rules, laws or institutions, have broken down or suffered fundamental limitations. A constitutional crisis is a concept of political science, involving nation- states, rather than private organizations such as trade unions. The term is not invoked casually.
54. The 1st Respondent would perhaps experience a legal crisis, rather than a constitutional crisis, as apprehended. The 1st Respondent's constitution must have provision for management of transitions, and the register of union officials retained by the 3rd Respondent is not blank, during the period of transition. There is continuity, until new, elected officials are registered. There is no cloud of illegitimacy hovering over those in office. The 3rd Respondent issued an extended period, from 1st April 2026 to 30th June 2026, for conduct of trade union national elections, with the full knowledge that there must be some flexibility on the lapse of the 5-year electoral cycle, and it may not always be possible for all trade unions, to hold their elections on exactly the date the 5 years lapse. The rule is that elections are held within the cycle, rather than on the exact date the 5 years end, from the last elections. There is no constitutional or legal crisis in the interregnum, as apprehended by the 1st and 2nd Respondents.

55. It is however important that the 1st Respondent, having already completed its branch elections; having received and accepted nominations of candidates to various national offices; and having allowed the candidates, including the Petitioner herein, to sell their candidacy to members; is allowed to conduct and conclude its national elections as soon as practicable. A long electoral and transition period, carries the risk of institutional uncertainty. .
56. The demands by the Petitioner to be allowed to campaign for 40 days, and to be supplied documents at least 60 days before the elections are held, are unreasonable demands, which would impair the 1st Respondent's ability to conduct its elections within the prescribed period.
57. Section 25 of the Labour Relations Act requires the 3rd Respondent to retain a register of trade union branches and their officials. The names of 1st Respondent's branch officials and their details, can be obtained by the Petitioner from the 3rd Respondent. The Petitioner has not established that he was denied this information by the 3rd Respondent. It is not necessary to direct that the names and details are supplied by the 1st and 2nd Respondents.
58. One of the complaints raised by the Petitioner in his letters to the Respondents, was that the suspended conference was to take place at Tom Mboya College, where the 2nd Respondent serves as a board member. The complaint was not pursued in the petition, and nothing turns on it.

59. The submission by the Petitioner concerning Article 81 of the Constitution appears to the Court, to be misplaced.
60. The Article prescribes general principles applicable for the electoral system. The electoral system contemplated by the Article, is a specific electoral system, concerning elections to political offices such as the national assembly, senate, counties and the presidency. It does not extend to private organizations such as trade unions.
61. Trade Unions are mandated under Section 34 of the Labour Relations Act, to conduct their elections in accordance with their registered constitutions. Their electoral standards are normally tested through the Labour Relations Act and the trade union internal constitutions and rules. The electoral system governed by Article 81 of the Constitution, is a different electoral system. The Court has no reason to extend the principles of free and fair elections under Article 81 of the Constitution, to elections of trade unions. Section 34 of the Labour Relations Act, read with the constitutions of the relevant trade unions, suffices.
62. There is no foundation to the prayers for damages to be paid by the Respondents to the Petitioner, for breach of procedural rights.
63. The Court does not find merit to the petition. It is intriguing that the petition was prepared on 10th January 2026, even before the Petitioner was nominated as a candidate for the position of Secretary General, or

General Secretary. He has been allowed to participate in the ballot. He has been campaigning aggressively and openly, ever since he was nominated. There is no evidence that the Petitioner's right of access to register of members / delegates, has been curtailed. There is no evidence that the Respondents have placed impediments in the way of the Petitioner, in his search for the position of Secretary General / General Secretary.

64. The Court shall dispose of the petition, with the following **Orders**:-
- a. The petition in general has no merit.**
  - b. The Respondents shall, in light of the interim orders, issue a fresh notice of its quinquennial conference, to be held latest 30th June 2026.**
  - c. The Petitioner may extract the names of 1st Respondent's branch officials from the register retained by the 3rd Respondent.**
  - d. The Petitioner is at liberty to continue with his campaigns unhindered, and to participate in the national elections as a voter and candidate for the position of Secretary General / General Secretary.**
  - e. Pending applications by the respective parties shall be deemed to be spent.**
  - f. No order on the costs.**

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure]Rules, 2024, this 2nd day of April, 2026.

James Rika  
Judge

A handwritten signature in blue ink, appearing to read 'James Rika', enclosed within a light blue oval border.

