

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC CAUSE NO. E671 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

WILLIAM LENGOYIAP.....1ST
CLAIMANT

YVONNE MUTINDI MUSYOKA.....2ND
CLAIMANT

VS

WICKS NJENGA MWETHI.....1ST
RESPONDENT

**THE SECRETARY GENERAL OF KENYA UNION
OF POST PRIMARY EDUCATION TEACHERS(KUPPET)
.....2ND RESPONDENT**

**KENYA UNION OF POST PRIMARY EDUCATION
TEACHERS(KUPPET).....3RD**
RESPONDENT

TEACHERS SERVICE COMMISSION.....4TH
RESPONDENT

JUDGMENT

1 The Claimants instituted this claim vide a Plaint dated 15th July 2025 praying for judgment against the Respondents as follows: -

- a) A declaration that the 1 Respondent has been impersonating as a teacher and does not meet the requirements of KUPPET Constitution of 2017 Article*

7.0(a)(i) as read together with the Teachers service Commission Act 2(1).

- b) A declaration that the elections of the 1 Respondent in,2006,2011,2016 and 2021 was against the KUPPET Constitution and unlawful.*
- c) An order declaring the 1st Respondent's as a national treasurer is a nullity quashing and or nullifying the same.*
- d) A declaration that the 1st Respondent is serving illegally as Kuppet National Treasurer.*
- e) A declaration that the 2nd Respondent illegally approved the 1st Respondent to be a contestant in 2006,2011,2016 and 2021 Kuppet national elections.*
- f) A declaration be issued that the failure to provide information requested by the Petitioner vide the letters referenced TSC1/5/2025 and TSC2/5/2025 is unconstitutional in so far as it contradicts the constitutional requirements on access to information.*
- g) An order of mandamus do issue compelling the Respondent and/or any other responsible state/public officer to provide documents and information sought in the access to information request letters, specifically.*
- h) A declaration that there is a conflict of interest in the 1st Respondent's financial institution loaning the union, using union staff in private business and charging high interest rates.*

- i) An order for KUPPET trustees to shortlist 5 reputable Audit firms and table them at the KUPPET Annual Delegates; Conference for appointment of one audit firm to audit and table an audit report of all the financial dealings between KUPPET and Fast Growth Credit Limited and for directions on recoveries if any.*
- j) Cost of this claim be paid by the Respondents.*

Claimants' Case

- 2 The Claimants aver that in the 3rd Respondent's virtual elections of 2021, the 2nd Claimant was one of the proposers of the 1st Respondent and that the 1st Respondent provided, inter alia, his National Identity Card number 5697042.
- 3 It is the Claimants' case that for one to qualify to contest in the 3rd Respondent's elections, the contestant must be a teacher. They aver that Section 2(1) of the Teachers Service Commission (TSC) Act defines a teacher as a person trained as a teacher and registered as such, while Article 7.0(a)(i) of KUPPET's Constitution, 2017 defines a teacher as one of good conduct, reputation, and one who is certified, licensed, or authorized to teach.
- 4 The Claimants aver that the 1st Respondent's name is not in the register of the 4th Respondent and that he had been interdicted by the 4th Respondent as a teacher and is not licensed or authorized to teach in Kenya. They aver that by reason of such interdiction, the 1st Respondent does not

meet the requirements of good conduct, reputation or authorization to teach under Article 7.0(a)(i) of the 3rd Respondent's Constitution and ought not to have been cleared to contest the 3rd Respondent's elections.

- 5 They aver that the 4th Respondent provides an online search forum for the public to confirm whether a person is a registered teacher which was conducted using the 1st Respondent's identity card number 5697042, and that the portal returns the message that "*the identity card number is not associated to any registered teacher.*" They further aver that under Section 24(b)(2) of the 4th Respondent's Act, the register is a public document and has been availed online for ease of confirmation.
- 6 The Claimants aver that the 1st Respondent is not a registered teacher and has been illegally impersonating himself as a teacher from 2006 to date. Therefore, the 1st Respondent has been serving illegally as the National Treasurer of the 3rd Respondent from 2006 to date, which constitutes a continued illegality.
- 7 The Claimants aver that the 2nd Respondent, as the Secretary General, is the Executive Officer of the union pursuant to Article 11.3.0(a) of the 3rd Respondent's Constitution and is in charge of clearing aspirants to contest and publishing the list of contestants on the union notice board as provided in law.

- 8 They aver that the 2nd Respondent has been conspiring with the 1st Respondent to unprocedurally clear him to contest in the 3rd Respondent's national elections knowing that the 1st Respondent is not a teacher.
- 9 The Claimants aver that the 4th Respondent signed a Recognition Agreement with the 3rd Respondent committing it to second teachers elected as national officials and executive secretaries to serve the union on a full-time basis. They assert that the 4th Respondent illegally seconded the 1st Respondent to the 3rd Respondent knowing that he was not their employee nor a teacher.
- 10 The Claimants aver that on 12th May 2025, the 1st Claimant through his advocates wrote to the 4th Respondent requesting information on the registration status of the 1st Respondent and confirmation whether he had been seconded to the 3rd Respondent. The said letter was received but not responded to. On 22nd May 2025, the 1st Claimant wrote a second letter seeking the same information, but to date no response has been received and the letters referenced TSC1/5/2025 and TSC2/5/2025 remain unanswered.
- 11 The Claimants aver that the failure by the 4th Respondent to respond to the said requests in a timely manner is against the law. Further, the 4th Respondent has refused to

grant them access to information within its custody, yet access to information is a right which can only be limited through a legally sound justification.

- 12 They aver that the 1st Respondent owns a financial institution known as Fast Growth Credit Limited, which he uses to loan the union funds at an interest rate of 36% per annum while prevailing bank rates are between 14% and 35%, and that he pays himself through the said firm in an opaque manner. Additionally, the 1st Respondent has misused union staff by engaging them to source customers for his financial institution.
- 13 The Claimants aver that these actions are facilitated or abetted by the cooperation of the 2nd Respondent, who is a co-signatory to the union bank accounts and the authorizing officer, possibly for personal gain.
- 14 They aver that the 1st Respondent is conflicted in being both the union's financier through his company and the National Treasurer, while misusing staff and charging high interest rates, and that this constitutes a clear conflict of interest by the 1st and 2nd Respondents contrary to the Leadership and Integrity Act and the Labour Relations Act.

1st - 3rd Respondents' Case

- 15 The Respondents aver that the 1st Respondent is a duly registered teacher employed by the Teachers Service Commission since 1988 under Graduate Grade, as

evidenced by his letter of probationary appointment. It is their case that he qualified for the said employment upon obtaining a Bachelor of Education (Arts) degree.

- 16 They aver that the 1st Respondent's employment was confirmed on 8th June 1999 on permanent and pensionable terms and he was subsequently promoted in the year 2001 to Graduate Teacher Job Group 'L' with effect from 1st July 1999. In pursuit of professional development, the 1st Respondent undertook further studies between 2001 and 2003 with the approval of the Teachers Service Commission.
- 17 It is the Respondents' case that in 2001, the 1st Respondent was elected as Kiambu Branch Executive Secretary where he served for five years, and that in 2006 he was elected as National Treasurer of the 3rd Respondent, a position to which he was re-elected in 2011, 2016 and 2021, with his current term set to lapse in 2026.
- 18 The Respondents aver that upon completion of a Master of Education in Education Planning, the University of Nairobi confirmed the 1st Respondent's student status and completion of studies, and that thereafter he resumed teaching service until 2012 when he enrolled for a Master of Education (Educational Administration) at Kenyatta University under admission number E55/21134/2012.

- 19 They further aver that in some of these academic papers presented as evidence the 1st Respondent's name reads as Leonard Njenga Mwethi and that the names Leonard Njenga Mwethi and Wicks Mwethi Njenga refer to one and the same person, as clarified by affidavit.
- 20 The Respondents aver that the Claimants ought to cease and desist from what they term as clout chasing for political mileage. They admit paragraph 19 of the Memorandum of Claim only to the extent that the 2nd Respondent is the National Secretary General of the Union with duties as set out in the Union Constitution.
- 21 They aver that the allegations against the 2nd Respondent are unproven, defamatory and intended to tarnish his name, maintaining that he is a person of integrity and putting the Claimants to strict proof.
- 22 They deny the allegations under paragraphs 29 to 33 of the Plea, terming them defamatory, and demand an apology. They assert that they are law-abiding persons with a record of good corporate governance.
- 23 In response to the prayers sought, the Respondents aver that the claim discloses no cause of action against them, that the orders sought are untenable, and that the Claimants have approached the Court with unclean hands and are undeserving of the reliefs sought.

- 24 It is their case that the suit is retaliatory, arising from disciplinary proceedings instituted against the Claimants for alleged acts of gross misconduct and disrepute to the Union, including storming the office of the Registrar of Trade Unions and harassing officers therein. They further aver that the Claimants are agents or sympathisers of the former Assistant National Treasurer, Mr. Ronald Tonui, and are misusing the Court process to settle scores.
- 25 The Respondents contend that following the removal of the said Ronald Tonui from the Union records, the Claimants instituted the suit in a bid to unseat the 1st Respondent and create a vacuum in the Union Treasury, which would paralyse the Union's operations as all financial transactions are authorised through the Treasury.
- 26 They aver that the suit is incurably defective, frivolous, vexatious, an abuse of the court process, and a desperate attempt to destabilise the Union ahead of the 2026 elections, and that the claims are misconceived and lack both legal and factual basis.

4th Respondent's Case

- 27 The 4th Respondent avers that it is a Constitutional Commission established under Article 237(1) of the Constitution, with its mandate and functions provided therein and under the Teachers Service Commission Act.

- 28 It avers that its core functions include the registration of trained teachers, recruitment, employment and assignment of teachers in public schools, as well as their promotion, transfer and exercise of disciplinary control. Under Article 237(2)(a) of the Constitution and Section 23 of the TSC Act, it is mandated to register trained teachers and is therefore the lawful custodian of the Register of Teachers as contemplated under Section 24 of the Act.
- 29 It is the 4th Respondent's case is that the 1st Respondent, upon undergoing training at Kenyatta University, applied to be registered as a teacher vide an application dated 4th January 1988, and upon verification of the said application, he was duly registered and issued with a registration number, TSC No. 273299.
- 30 The 4th Respondent avers that since his registration, the 1st Respondent has remained in the Register of Teachers to date and has never been removed therefrom.
- 31 On the allegations that the 1st Respondent's name does not appear on the online Register of Teachers, the 4th Respondent avers that it maintains both an online and a manual register. All teachers registered prior to 2010 are retained in a manual register domiciled at its headquarters, while those registered after 2010 have been digitized and are available on the online database. Therefore, the 1st Respondent, having been registered in 1988, appears in the manual register and not the online

platform, and that access to the register is governed by the Access to Information Act and the Data Protection Act.

32 The 4th Respondent admits having received letters dated 12th May 2025 and 22nd May 2025 seeking confirmation of the 1st Respondent's registration status. However, due to the manual nature of the register and exigencies of work, it was in the process of inspecting and confirming the said status when the Claimants filed the present suit.

33 It is the 4th Respondent's case that it was in the process of availing the requested information before the Claimants hastily instituted the suit. Consequently, the suit discloses no reasonable cause of action against it and ought to be dismissed.

34 The 4th Respondent further avers that the Claimants prematurely invoked the jurisdiction of this Court without allowing it sufficient time to verify, conduct due diligence and undertake its internal administrative processes prior to responding to the inquiry.

Claimants' Submissions

35 The Claimants submitted on five issues: whether the name Mwethi Leonard Njenga and Wicks Leonard Njenga is the same person; whether the failure of the 4th Respondent to produce records confirming the name "Wicks Leonard Njenga" undermines the 1st Respondent's eligibility, credibility and the validity; whether the 1st Respondent is a

lawfully registered teacher as Wicks Leonard Njenga; whether the 1st Respondent is legally qualified to hold the position of National Treasurer; and whether the 4th Respondent's pleadings should be struck out for failure to comply with Rule 35 of the Employment and Labour Relations Court (Procedure) Rules requiring filing of a list of witnesses and witness statements.

- 36 On the first issue, the Claimants submitted that noting that the 1st Respondent appears as National Treasurer under the name Wicks Njenga Mwethi while the academic and professional documents relied upon bear the name Mwethi Njenga Mwethi; this discrepancy goes to the core of lawful registration, eligibility and credibility.
- 37 They submitted that Section 9 of the Registration of Persons Act, provides the statutory framework for change of name, requiring execution of a deed poll, publication in the Kenya Gazette and issuance of a new identity card. The 1st Respondent has not complied with this process, having produced no deed poll, gazette notice or updated identification to reconcile the names.
- 38 The Claimants relied on **M'Miti v Ndwiga [2025] KECA 2137 (KLR)** where the Court held that: *"Section 9 of the [Registration of Persons Act](#) (Cap 107) provides for the formal process of changing a name, which includes obtaining a Deed Poll, publication and issuance of*

a new ID card reflecting the change. The appellant did not demonstrate the legal process he pursued to effect the change of name. We therefore find that, in effecting the name change, proper legal process was not followed, the Land Registrar had no business effecting the change of name or rectifying the register with the documents presented by the appellant.”

- 39 They submitted that in the absence of clear and verifiable evidence reconciling the names, the Court ought to draw an adverse inference against the 1st Respondent, relying on ***Mukonya v Equity Bank Limited & another [2025] KECA 1720 (KLR)*** where inconsistencies in names were found to raise doubt as to identity. They urged the Court to find that the identity of the 1st Respondent under the two names has not been established.
- 40 On the second issue, the Claimants submitted that the 4th Respondent has failed to produce any official records demonstrating that the 1st Respondent appears in its registry under the name “Wicks Leonard Njenga,” and that no registration entries, certificates, database extracts or official correspondence have been provided.
- 41 They submitted that this omission is not a mere technicality but creates a material evidentiary gap, leaving the Court without a factual basis to verify whether the 1st Respondent legitimately holds or has ever used

the name Wicks Leonard Njenga. The absence of verifiable records prevents the Court from confirming the authenticity of documents submitted in support of teacher registration, professional qualifications, or eligibility to hold union office under that name.

42 It is the Claimants' submission that the 4th Respondent, being the statutory custodian of teacher registration records, bears the evidentiary responsibility of demonstrating the authenticity of any information attributed to persons registered under its authority. However, it has failed to produce any official records demonstrating that the 1st Respondent appears in its registry under the name "Wicks Leonard Njenga." Despite having exclusive custody and control of such records, the 4th Respondent has not presented registration entries, certified extracts from its database, official correspondence, certificates, or any other verifiable documentation to substantiate the assertion that the 1st Respondent is duly registered under that name

43 The Claimants submitted that under Section 112 of the Evidence Act, the burden of proving a fact especially within the knowledge of a party lies upon that party, and that the existence of teacher registration records is within the exclusive knowledge of the 4th Respondent. It was submitted that where a party with custody of documents fails or refuses to produce them, the Court is entitled to presume that such documents would be unfavorable to

that party if they were produced, relying on ***Mwangi v Mambo [2025] KEHC 8438 (KLR)***.

44 They argued that the absence of verifiable records prevents the Court from confirming the authenticity of documents relating to teacher registration, qualifications and eligibility.

45 On the third issue, the Claimants submitted that under the Teachers Service Commission Act, 2012, registration is a fundamental statutory requirement and a condition precedent to lawful teaching. Registration under the Act is not merely a procedural formality; it serves as a statutory safeguard designed to ensure that teachers possess the requisite academic qualifications, professional competence, and good moral character.

46 They submitted that the official Teachers Register maintained by the 4th Respondent constitutes the authoritative and definitive record of all persons lawfully registered as teachers. Therefore, inclusion in this register is the primary evidence of lawful entitlement to teach, while absence from the register raises serious questions regarding the individual's eligibility.

47 It is the Claimants' submission that a search of the register reveals no entry under the name "Wicks Leonard Njenga," and that such absence is highly material as the statutory framework makes registration a condition precedent to

lawful employment in the teaching profession. Where registration is a precondition for lawful service, the failure to appear in the official record strongly indicates non-compliance with statutory requirements.

48 They further submitted that no evidence has been produced to show that the 1st Respondent communicated or notified the 4th Respondent of any change of name or provided supporting documentation. They argued that the absence of such evidence raises legitimate questions regarding the authenticity of the name name “Wicks Njenga Mwethi” and whether the 1st Respondent’s identity has been properly recognized in accordance with the statutory and administrative requirements.

49 It is the Claimants’ submission that in the absence of such evidence, the court is entitled to draw a legitimate adverse inference that, if the 1st Respondent were properly registered, such evidence would have been produced. This principle has been upheld in ***Kimotho -v- KCB [2003] 1 E.A 108*** the court held that, *“adverse inference should be drawn upon a party who fails to call evidence in his possession. Failure by the appellant to testify only means one thing had the appellant or his driver testified the evidence would have adverse to them.”*

50 On the fourth issue, the Claimants submitted that the office of National Treasurer is a senior leadership position within the Union that carries significant responsibility over

the management, custody, and accountability of union finances. Given the importance of the role, the individual occupying the office must strictly comply with all constitutional and legal requirements governing eligibility for union leadership. Where credible concerns arise regarding the qualifications, identity, or employment status of a person holding such office, the Court is entitled to examine whether that individual is legally qualified to occupy the position

- 51 They submitted that the eligibility of the 1st Respondent to hold the office of National Treasurer is seriously in doubt due to unresolved questions regarding his employment status and professional credentials. Notably, the name “*Wicks Njenga Mwethi*” does not appear on the official verification portal maintained by the 4th Respondent, which serves as the primary registry used to verify the registration and employment status of teachers in Kenya. This absence raises legitimate concerns as to whether the 1st Respondent is a duly recognized teacher capable of holding office within the Union.

- 52 They relied on ***Mbuthia Macharia v Annah Mutua Ndwiga & another [2017] eKLR***, submitting that the Court held that while the legal burden of proof initially rests with the claimant, the evidential burden may shift during proceedings depending on the evidence presented. In this matter, once the Claimants raised credible concerns regarding the 1st Respondent’s identity, qualifications, and

registration status, the evidential burden shifted to the 1st Respondent to produce clear and verifiable proof confirming his eligibility.

53 They argued that the 4th Respondent failed to produce any official or verifiable documentation confirming that the 1st Respondent is registered under the impugned name, and that in the absence of such evidence, his eligibility remains unproven. They urged the Court to find that his tenure is irregular, unlawful and contrary to the governing legal framework.

54 On the final issue, the Claimants submitted that the 4th Respondent failed to comply with Rule 35(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 by not filing a list of witnesses and witness statements and serve copies of documents relied upon at the time of filing pleading.

55 They submitted that the Rule 35(1) imposes a mandatory duty on parties to disclose their witnesses and evidence at the time of filing pleadings, ensuring that cases proceed fairly and expeditiously. They cited ***Toppias & 4 others v Bomet County Government & another*** [2025] KECA 841 (KLR), where the Court of Appeal held that: *"The word "shall" when used in a statutory provision imports a form of command or mandate. The word shall in its ordinary meaning is a word of command which is normally given a compulsory meaning as it is intended to*

denote an obligation. The Longman Dictionary of the English Language states that "shall" is used to express a command or exhortation or what is legally mandatory."

- 56** It is the Claimants' submission that the 4th Respondent's pleadings suffer from material non-compliance with the applicable procedural rules governing pleadings before this Court. The defects are not merely technical but go to the competence and validity of the pleadings themselves, thereby prejudicing the Claimants and undermining the orderly administration of justice
- 57** The Claimants concluded by submitting that there exist serious and unresolved doubts regarding the identity, qualifications and eligibility of the 1st Respondent, arising from failure to reconcile names, absence from the official register, lack of proof of lawful registration and failure by the 4th Respondent to produce records and comply with procedural requirements. They urged the Court to uphold the rule of law, draw adverse inferences where appropriate, and grant the reliefs sought to ensure accountability, transparency and lawful governance within the Union.

1st - 3rd Respondents' Submissions

- 58** On cause of action, the Respondents submitted that under Section 107 of the Evidence Act, as affirmed by the Supreme Court in ***Raila Odinga & Others -vs- Independent Electoral and Boundaries Commission***

& Others [2017] eKLR, he who alleges must prove. They further submitted that in civil matters a party must prove its case on a balance of probabilities.

- 59 It was submitted that the Claimants' allegations are bare and unsubstantiated and that no causal link has been established between the alleged wrongdoing and the 1st, 2nd and 3rd Respondents. Therefore, the claim discloses no sustainable cause of action.
- 60 On whether the suit violates the Constitution of Kenya, 2010 and the Labour Relations Act, 2007 framework on trade unions, the Respondents submitted that the principle in **Anarita Karimi Njeru v Republic** requires that constitutional violations be pleaded with precision, a position reaffirmed in **Trusted Society of Human Rights Alliance v Attorney General & 2 Others**.
- 61 They submitted that the Claimants have failed to identify specific constitutional rights violated or demonstrate the manner of such violation, and that the claim fails the precision threshold.
- 62 On exhaustion of internal remedies, the Respondents submitted that the doctrine of exhaustion, as set out in **Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)** and reaffirmed in **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eKLR** that internal dispute resolution

mechanisms must be exhausted before approaching the Court,

- 63 They submitted that the KUPPET Constitution provides internal dispute resolution mechanisms which the Claimants ignored, rendering the suit premature, baseless and incompetent.
- 64 It was further submitted that Article 41 of the Constitution and Section 8 of the Labour Relations Act emphasize trade union autonomy and non-interference. They relied on ***Kenya Plantation & Agricultural Workers Union v Kenya Tea Growers Association [KTGA] [2016] KEELRC 559 (KLR)*** for the proposition that courts should be slow to interfere in internal union affairs absent clear illegality.
- 65 The Respondents submitted that no illegality has been demonstrated and that the suit is a witch-hunt intended to derail the union's national elections and invites unjustified judicial interference.
- 66 They further submitted, relying on ***CMC Aviation Limited v Mohammed Noor [2015] eKLR*** that the burden lies on the Claimants to prove unfairness or illegality, which burden they have failed to discharge, leaving their allegations unproven.

- 67 On reliefs sought, the Respondents submitted that this Court in ***Alphonse Maghanga Mwachanya V Operation 680 Limited [2013] eKLR*** held that courts will not aid parties whose conduct is tainted with misconduct.
- 68 It was submitted that the Claimants' suit is retaliatory, arising from disciplinary proceedings against them, and that their conduct disentitles them to equitable relief and amounts to an abuse of the court process.
- 69 The Respondents further relied on ***Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited*** to submit that courts must guard against frivolous litigation and misuse of judicial processes for ulterior motives.
- 70 They submitted that the suit is politically motivated and intended to destabilize union leadership.
- 71 It was submitted that granting the orders sought would prejudice the Respondents, disrupt union governance, create a leadership vacuum and undermine lawful operations, and that the balance of convenience tilts in their favour.
- 72 The Respondents submitted that the claim is frivolous, vexatious, premature and unsupported by law or evidence, and urged the Court to dismiss it.

4th Respondent's Submissions

- 73 The 4th Respondent submitted on four issue: whether the 1st Respondent is a registered teacher; whether the Commission's pleadings are properly on record; whether the Commission violated Article 35 of the Constitution; and whether the Claimant is entitled to the reliefs sought
- 74 On the first issue, the 4th Respondent submitted that it is a Constitutional Commission established under Article 237(1) of the Constitution of Kenya, 2010 with the mandate of registration of trained teachers, recruitment, employment, assignment, promotion, transfer and disciplinary control of teachers. Under Article 237(2)(a) of the Constitution and Section 23 of the Teachers Service Commission Act, it is mandated to register trained teachers and is the lawful custodian of the Register of Teachers under Section 24 of the Act.
- 75 The 4th Respondent submitted that it placed before Court a certified extract from the Register of Teachers demonstrating that the 1st Respondent was registered as a teacher in 1988 and has remained in the register to date. By producing the application for registration and the extract of the register, it discharged the burden of proof as required under Section 107 of the Evidence Act. Reliance was placed on ***Mati & another v Gicheru [2025] KEHC 2062 (KLR)*** where the Court held that: "It

is trite law that he who alleges must proof. The legal burden of proof is provided under Section 107 of the Evidence Act.....”

- 76 On the second issue, it submitted that the Claimants’ assertion that its pleadings are improperly on record is misplaced. Rule 35(2) of the Employment and Labour Relations Court (Procedure) Rules allows filing of a witness statement with leave of the Court, while Rule 80 empowers the Court to extend time. It was submitted that the Commission sought and obtained leave on 7th October 2025 before Justice Radido to file a witness statement, which was duly filed. Consequently, all its pleadings are properly on record.
- 77 On violation of Article 35 of the Constitution, the 4th Respondent submitted that the right of access to information under Article 35 is not absolute and must be exercised in accordance with the Access to Information Act, 2016. Additionally, Section 8 of the Act requires a request to contain sufficient detail to enable identification of the information sought.
- 78 It submitted that while it is admitted an official request was made in writing, the Claimants failed to provide critical identifiers, namely the 1st Respondent’s TSC number or identity card number, which are the unique identifier for teachers in Kenya. Due to lack of this critical identifiers, the Commission had to conduct manual search

which necessitated in-depth perusal of volumes of registers to ascertain the registration status of the 1st Respondent. Coupled with exigencies of work, it took the Commission almost 60 days from the date the information was sought to ascertain the status of the 1st Respondent.

79 The 4th Respondent submitted that before it could respond, the Claimants prematurely filed suit. Reliance was placed on ***Lempaa Vincent Suyianka v Commission on Administrative of Justice Selection Panel & another [2018] eKLR*** where the Court held that: *“While I find that it is not in doubt that the respondent was under an obligation, upon the request of a citizen, to provide information under Article 35(1) (a) of the Constitution, such information can only be supplied if the state holding the information is granted adequate time to respond to the request.”*

80 It was submitted that considering the circumstances of this case, the Commission was not accorded reasonable time to respond to the request for information. The Commission acted within its constitutional and statutory contours, the time frame was rational, reasonable and realistic in the circumstances. There is no evidence of bad faith, arbitrariness, or illegality on the part of the Commission.

81 On the final issue, the 4th Respondent submitted that the claim is without merit, premature and legally untenable. It

was submitted that the Claimants failed to discharge the burden of proof and that no violation of Article 35 has been established.

- 82 It was further submitted that the Commission acted within its constitutional and statutory mandate and in compliance with the law, and therefore the Claimants are not entitled to the reliefs sought.
- 83 I have examined all the averments and submissions of the parties herein. The claimant's case is that the 1st respondent is not qualified to be the 3rd respondents National Treasurer as he does not meet the requirements of KUPPET constitution as read with the TSC Act which provides that one is not qualified to be a union official unless one is a qualified teacher. They have averred that the 1st respondent is not a teacher *per se* as his name is missing in the 4th respondent's register of teachers.
- 84 The claimant averred that the 1st respondent was interdicted by the 4th respondent as a teacher and is not licensed or authorized to teach in Kenya and therefore does not meet the requirement of good conduct reputation as authorization to teach under article 7.0 (a) (i) of the 3rd respondents constitution.
- 85 The respondents have denied all the claimants averments. The 4th respondent who is the custodian of all teachers records produced a certified extract of their register of

teachers and stated that the 1st respondent was registered as a teacher in 1988 and has remained in the register since then to date.

- 86 The 4th respondent averred that the register for teachers registered prior to 2010 are retained in a manual register and so could not be found in the online platform which was searched by the claimants.
- 87 It is therefore true from the records of the 4th respondents that the 1st respondent is a qualified teacher and qualified to teach in Kenya and therefore the averments of the claimant lack evidential proof.
- 88 In the circumstances, the claim cannot stand and is accordingly dismissed with costs.

**Dated, Signed and Delivered Virtually at Nairobi
this 30th Day of April, 2026.**

HELLEN WASILWA

JUDGE