

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT O
AT NYERI

(Before Hon. Lady Justice Monica Mbarũ)

PETITION NO. E008 OF 2026

ANTHONY NDEGWA KINYUA..... 1ST PETITIONER

DAVIS NYAMWEYA OMOSA..... 2ND PETITIONER

VERSUS

KENYA UNION OF POST-PRIMARY EDUCATION

TEACHERS (KUPPET)..... 1ST RESPONDENT

THE REGISTRAR OF TRADE UNIONS..... 2ND RESPONDENT

JUDGMENT

The judgment herein relates to the petition filed on 30 March 2026 and the Notice of Preliminary Objections by the 1st respondent dated 7 April 2026.

Petition

The petitioners are seeking the following orders:

- i. A declaration that Article 8.2, 13.0(a) (iii) and 14.0 of the 1st respondent's constitution are unconstitutional, null and void to the extent that they violate the right to fair labour practices guaranteed*

- under Article 41 of the Constitution and Section 43(2) of the Labour Relations Act.*
- ii. A declaration that the requirement under article 8.2 and 13.0(a)(iii) of the KUPPET constitution that only “delegates as defined under article 8.2 of the union constitution” are eligible to contest for national union positions is unlawful, unreasonable, discriminatory and of no legal effect.*
 - iii. A declaration that the office of the Secretary General of the 1st respondent ought not to be restricted to ‘delegates’, elected branch officials, or members of the National Executive Board only, and that any person otherwise legally qualified is entitled to contest for the said office.*
 - iv. An order of certiorari quashing the letters dated 19 March 2026 issued by the 1st respondent rejecting the petitioners’ applications to contest for the positions of Secretary General and National Organising Secretary, respectively.*
 - v. An order of mandamus compelling KUPPET to immediately clear and allow the petitioners to contest in the upcoming national elections for the positions of secretary general and national organising secretary.*
 - vi. Declaration that the nomination fees prescribed under Article 14 of the KUPPET constitution are unlawful, unconstitutional, excessive and*

- discriminatory against non-incumbent candidates, vying for the 1st respondent national seats.*
- vii. An order of prohibition restraining the 1st respondent, its officials, agents or any person acting on its behalf from enforcing article 8.2, 13.0(a)(iii) and 14.0 of the union constitution in a manner that excludes or discriminates against the petitioners from participating in the upcoming elections.*
 - viii. General damages for the infringement of the petitioners' constitutionally protected rights to fair labour practices, equality and freedom from discrimination and for the inconvenience caused by the 1st respondent's unlawful actions.*
 - ix. An order do hereby issue compelling the respondents to comply with the relevant constitutional provisions and statutory law.*
 - x. Interest on (vii) and (ix) above at court rates.*
 - xi. Any other relief that the court may deem just and expedient to grant.*

The petitioners are paid-up members of the 1st respondent. The 1st respondent is the officer under the Labour Relations Act (LRA). The 2nd respondent is a state department within the Ministry of Labour.

The petition arises from the facts that, through a letter dated 19 March 2026, the 1st respondent rejected the petitioners' applications to contest for the positions of secretary general and national organising secretary, respectively, in the

upcoming national elections to be held on 18 April 2026 at the Kasarani Gymnasium in Nairobi.

The petition is that the rejection of the applications made by the petitioners was that they had not met the requirements of the KUPPET constitution at article 8.2(a), (b) (i) (ii), (e) and 14.0 which states that they were not elected branch officials or a member of the NEB and that they had not paid the nomination fee by the set deadline date.

The 1st respondent, through a notice dated 9 March 2026, invited qualified delegates wishing to contest the various positions provided in the 1st respondent's constitution to obtain nomination forms and to pay the requisite fee by 16 March 2026. The 1st petitioner, keen to contest the elections, wrote to the 2nd respondent on 7 March 2026 for directions and interpretation of his eligibility to contest for the office of the Secretary General pursuant to section 31 of the LRA. The 2nd respondent responded by letter dated 10 March 2026, reiterating that elections of trade unions under the LRA are governed by the respective constitutions, and thus invited the petitioner to be nominated in accordance with the union constitution.

The 1st petitioner submitted his application to participate in the election and attached his nomination payment for the branch elections. He had previously unsuccessfully contested for the position of executive secretary in the 1st

representative Nyeri branch and had thus paid the nomination fee of Ksh. 200,000.

The 1st respondent, through a letter dated 19 March 2026, rejected the 1st petitioner's application on the basis that he was not eligible for election.

The 2nd petitioner suffered the same fate. His wish to contest for the position of national organising secretary was rejected on the basis that he was not eligible, despite contesting for branch elections at the 1st respondent, Murang'a branch. For the branch elections, he had paid Ksh. 200,000, but was unsuccessful.

The petition is that, having contested the branch elections, the petitioners had paid the nomination fees and hence should be allowed to participate in the annual elections of the 1st respondent. However, in letters dated 19 March 2026, the 1st respondent rejected their applications on the grounds of ineligibility.

The petition is that the respondents have acted outside the law by denying the petitioners the opportunity to participate in the elections. The eligibility criteria are contrary to section 31 of the LRA. Secretary General of a trade union may be a person not engaged or employed in the sector concerned, which extends the eligibility criteria beyond that provided in the 1st respondent's constitution.

The 1st respondent constitution imposes the nomination fees for the various union positions, ranging from Ksh. 500,000 for the national chairperson and SG to KSh. 50,000 for the assistant secretary junior secondary position. This is a

disproportionately and unreasonably high amount compared to other trade unions of similar cadre, like Kenya National Union of Teachers (KNUT), KMPDU, and Kenya National Union of Nurses (KNUN), whose nomination fee is Ksh. 2,000. These nomination fees are unreasonable and do not reflect the standard of a teacher's pay slip, where the highest paid earns ksh. 163,758 under the current CB. The 1st respondent's highest position is that of chairperson, and SG is required to pay a nomination fee of Ksh. 500,000 for the election. The petitioners, unlike the incumbent officials, had to pay exhibit fees for the branch election, only to be required by the 1st respondent to resign and pay nomination fees before the national elections.

Non-incumbent candidates must pay the nomination fee at the branch elections before they can contest for the various branch seats. They must win at the branch level before being eligible to contest at the national elections. They must resign from their branch seat 31 days before the national elections. They must pay another nomination fee. In contrast, the incumbent officials are not subject to these requirements. They are placed at an unfair advantage compared to other candidates, such as the petitioners.

The petition is premised on the provisions of Articles 2, 22, 23, 162, 165, 258, 36, 41, and 47 of the Constitution. The petitioners further rely on section 31 of the LRA, which allows them to stand for elections in the 1st respondent union. The petitioners' case is that the rejection of their applications to participate in

the elections violates their constitutional and legal rights. This denies them fair administrative action and fair labour relations. The orders sought to be issued.

The petitioners filed their Supporting Affidavits to support the petition.

In reply to the petition, the 1st respondent filed Notice of Preliminary Objections:

1. The issues canvassed in support of the petition are *res judicata*, the same having been directly and substantively in issue between, inter alia, the parties claiming under the same title in **Kinyua v Secretary General, Kenya Union of Post Primary Education Teachers (KUPPET) & another [2025] KEELRC 3753 (KLR)**.
2. The suit is *sub judice* as the instant issues are similar as those before the **Nairobi Employment and Labour Relations Court the case of ELRCPET/E106/2026: Nancy Chelangat & another v KUPPET & another; Maurice Akello Misoru & 8 others (interested parties)**, that is ongoing before a court of competent jurisdiction and was filed prior to the instant petition.

Parties filed written submissions on the petition and the objections.

On the objections, the 1st respondent submitted that the petition is filed contrary to the principles of *res judicata* and *sub judice*. The petitioners applied for nomination for the positions of secretary general and national organizing secretary respectively. Their bids were rejected by the 1st respondent on the

basis that the petitioners had not met the requirements for nomination under article 8.2.0(e) and 14.0(a) d (f), being that they were not members of the national executive board (NEB) or any branch executive committee and had not paid the requisite nomination fees of Ksh. 500,000 and Ksh. 300, 0000 respectively. The petitioners seek the court to quash the decision for the 1st respondent.

However, the petition is *res judicata* contrary to section 7 of the Civil Procedure Act as held in **Kenya Commercial Bank Ltd & another v Muiri Coffee Estate Ltd & 3 others [2016] KESC**. The doctrine of *res judicata* is a doctrine of substantive law, whose essence is that where the legal rights of the parties have been determined, the edict stands as the conclusive statement as to these rights. The doctrine is similarly applicable to matters of all kinds, including constitutional rights.

Thus, the elements necessary to prove *res judicata* were addressed in **John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & infrastructure & 3 others [2021] KESC**. For *res judicata* to be invoked, the following must be demonstrated:

- a) There is a former judgment or order which is final.
- b) The judgment or order was on merit.
- c) The judgment or order was rendered by a court of equal jurisdiction over the subject matter and the parties.

d) There must be between the first and the second action identical parties, subject matter and cause of action.

The petition is *res judicata* because the issues canvassed are the same as were materially and substantively in issue between the 1st petitioner and the respondents in **Kinyua v Secretary General, Kenya Union of Post Primary Education Teachers (KUPPET) & another [2025] KEELRC 3753 (KLR)**.

Whereas the 1st petitioner was the lone petitioner, the respondents were the same. The matter was heard on the merits, and there is no appeal. The *res judicata* elements in the John Florence Maritime Services Ltd case are addressed. The petition was found lacking in merit and dismissed in a judgment delivered on 18 December 2015. Hence, the second element is addressed.

The judgment was delivered by a judge of the court. The same issues cannot be heard again by a court of the same jurisdiction. The parties were the same against the same respondents. Under section 7 of the Civil Procedure Act, to avoid duplication of suits, the *res judicata* principle applies.

The earlier petition challenged the constitutional amendments to the KUPPET constitution. The instant petition reiterates the same constitutional amendments without raising any new issues. The petitioners allege, as previously done, that articles 8.2, 13.0(a) (i) and (iii), and 14 of the 1st respondent constitution contravene article 41 of the constitution and section 34(2) of the LRA. These

are the verbatim references in the earlier petition in **Kinyua v Secretary General, KUPPET & another**.

In **Mwikali & another v Mutungi & 3 others [2026] KECA**, the court held that the doctrine of res judicata applies not only to issues raised in the first suit but also to all issues that, by reasonable diligence, the parties ought to have raised in the first suit. Introducing new causes of action or parties does not remove a claim from the ambit of res judicata. The addition of the 2nd petitioner in this case is not sufficient.

The 1st respondent submitted that the petition is *sub judice*. The petition is filed after a similar case involving the same parties. In **Nkamasiai & another v Juhudi Kilimo Co. Limited & another [2026] KEHC**, the court held that *sub judice*, being a statutory limitation to the court's authority to proceed, is jurisdictional and can be raised as a preliminary objection.

The existence of another case is an objective, verifiable fact, not a matter of admitting and weighing evidence. In **Kenya Bankers /associate v Kenya Revenue Authority [2019] eKLR**, the elements of *sub judice* were addressed to be:

- a) Existence of two suits.
- b) Direct and substantive similarity of issues.
- c) Same parties or parties litigating under the same title.

d) Pendency before courts of competent jurisdiction.

In this case, there exists Nairobi ELRC PET/E104/2026, **Nancy Chelangat & another v KUPPET & another; Maurice Akello Misori & 8 others (interested parties)**, formerly **Nakuru ELRC Petition E018 of 2026**, which relates to similar facts. The petitioners herein have raised the same issues. The earlier suit is seeking orders that:

- i. A declaration that article 8.2.0(e) of the constitution of KUPPET is unconstitutional, null and void to the extent that it restricts eligibility to contest national elections exclusively to members of the NEB and branch executive committees.
- ii. A declaration that article 7.0(a)(ii), 12(b) and 13.0(a)(iii) of the constitution of the 1st respondent, in so far as they permit persons who have retired from teaching service to retain membership within the union, are inconsistent with the Labour Relations Act and are therefore unconstitutional, null and void to that extent.
- iii. An order severing the unconstitutional portion of article 7.0(a)(ii), 12.9B0, 13.0(a)(ii) and (iii) and 8.2.0(e) while preserving the remainder of the 1st respondent's constitution.

These petitions are a replica of each other. Only filed by different persons. The petitioners allege that they were locked out of the nomination process and that this was unconstitutional and unlawful. The matter is pending determination by

the court. The elements in *Kenya Bankers Association v Kenya Revenue Authority* have been established, and it is clear that, in totality, this petition is sub judice.

The 1st respondent submitted that the petition is without merit and that the allegations made are unsupported by proof. The Affidavit and application in support of the petition are inadmissible.

The petitioners submitted that the petition discloses a clear and separate suit and relates to their applications to participate in the 1st representative elections set for 18 April 2026. The doctrine of res judicata under section 7 of the Civil Procedure Act does not allow the filing of a suit between the same parties under the same title. However, a new suit based on different facts is allowable. IN 2025, there was the test suit in **Kinyua v Secretary General, KUPPET & another [2025] KEELRC**, and the sole petitioner was the 1st petitioner herein. The 2nd petitioner was not a party, hence res judicata does not apply.

The cause of action is fundamentally different. The earlier petition challenged the procedures used at the 2024 annual delegates' conference for amending the union constitution. The instant petition arises from a fresh administrative decision denying the petitioner a fair chance to participate in the union elections.

The petitioners submitted that section 6 of the Civil Procedure Act, on the sub judice rule, bars a party from filing a suit on the same matter and on the same facts that have been addressed by the same parties. In the case of **Nancy Chelanga & another v KUPPET & another ELRC Petition No. E104 of 2026**, the petitioners are different from the current petitioners. The other petition concerns the Nakuru delegate representation, while this petition concerns the eligibility and nomination fees imposed by the representative for the national elections. There is nothing similar between the two suits.

The 1st respondent, SG, has admitted in his affidavit that the petitioners are contesting the eligibility to vie for the positions of SG and national organising secretary. There are specific prayers sought in this regard, hence the petitioners' case is different from any other. To support the petition, the basis is Articles 2, 3, 10, 19, 20, 22, 23, 27, 38, 41, 47, 162, 258, and 259 of the Constitution. The petitioners also invoke the application of sections 30 and 34 of the LRA and the Fair Administrative Actions Act. The demand to pay a nomination fee of Ksh. 500,000 for the position of SG and Ksh. 300,000 for the national organising secretary is a discriminatory and unfair labour practice. There is an unequal application of the eligibility criteria because the incumbent is not required to meet the same standards.

The petitioners submitted that the respondents' objections should be dismissed and the petition allowed with costs.

Determination

The petitioners have made a case that the respondents have violated their rights in their application to participate in the 1st respondent elections. The 1st petitioner applied for the position of SG while the 2nd petitioner applied for the position of national organising secretary. Their applications were rejected by letters dated 19 March 2026 on the grounds that they did not meet the eligibility criteria set out in the 1st respondent union constitution. The constitution requires that one vie for the position of SG or national organising secretary; one must be an elected branch official or a member of the NEB. The petitioners vied for various positions at the branch level in Nyeri and Murang'a, respectively, but they were unsuccessful.

The 1st respondent, in turn, filed the Replying Affidavit of Akelo Misoro and the Notice of Preliminary Objections. The gist of the objections is that the instant suit is *res judicata* and *sub judice* because similar issues as herein were heard in **Kinyua v Secretary General, Kenya Union of Post Primary Education Teachers (KUPPET) & another [2025] KEELRC 3753 (KLR)** and the instant issues are similar as those before the **Nairobi Employment and Labour Relations Court the case of ELRCPET/E106/2026: Nancy Chelangat & another v KUPPET & another; Maurice Akello Misoro & 8 others (interested parties)**, that is ongoing before a court of competent jurisdiction and was filed prior to the instant petition.

Indeed, the res judicata rule and principle are applied under section 7 of the Civil Procedure Act to bar multiplicity and re-litigation of suits over the same subject by the same parties. In **John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others** [2015] KECA 472 (KLR) the court held that:

“The doctrine of res judicata has two main dimensions: cause of action res judicata and issue res judicata. Res judicata based on a cause of action, arises where the cause of action in the latter proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. Cause of action res judicata extends to a point which might have been made but was not raised and decided in the earlier proceedings. In such a case, the bar is absolute unless fraud or collusion is alleged. Issue res judicata may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, and one of the parties seeks to re-open that issue.”

These two dimensions are therefore necessary factors while addressing the res judicata doctrine. The court must be alive to the cause of action having been

addressed previously or a cause of action that might have been made but was not raised or decided in the previous suit.

The 1st petitioner admits that he previously filed a suit against the respondents following a challenge to the 1st respondent union's constitution and the procedure applied at the 2024 annual delegates' conference in amending the union constitution. In this petition, the issue in dispute is the eligibility criteria for participation in the national elections of the union, the 1st respondent.

Indeed, the 2nd petitioner was not a party in the previous suit. The cause of action as addressed above is fundamentally and distinctly different. Although the issue and amendment of the 1st respondent's constitution were in issue and the election eligibility criteria ought to have been addressed, the ripeness of the matter arose following the call for election, which only became apparent with the rejection of the application to vie for the positions of SG and national organising secretary by the petitioners, respectively.

The concept of res judicata operates to prevent causes of action, or issues, from being re-litigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings, which is not the case in this petitioner. See **Richard Wefwafwa Songoi v Ben Munyifwa Songoi [2020] KECA 942 (KLR)**

The *res judicata* doctrine does not apply.

With regard to the suit being *sub judice*, the purpose of this legal principle is to avoid multiplicity of suits by the same parties over the same issues as addressed under section 6 of the Civil Procedure Act. The 1st respondent's case is that the instant issues are similar as those before the **Nairobi Employment and Labour Relations Court, the case of ELRCPET/E106/2026: Nancy Chelangat & another v KUPPET & another; Maurice Akello Misoru & 8 others (interested parties)**, that is ongoing before a court of competent jurisdiction and was filed prior to the instant petition.

It is apparent that, from the said impugned constitution of the 1st respondent, KUPPET union, different causes of action could arise, as the constitution treats affected parties differently. The invocation of the impugned constitution by itself in different cases does not render the matter *sub judice*. In any event, the challenge in the present petition concerns the constitutional provisions governing the eligibility criteria for petitioners seeking to vie for the positions of SG and national organising secretary. The petitioners were candidates in the Nyeri and Murang'a branch elections, where they paid a fee of Ksh. 200,000. The referenced suit is distinct and concerns the branch elections in Nakuru.

The proposition that the petition is *sub judice* has no basis.

On the petition, as outlined above, the main cause of action relates to the provisions of Article 8.2, 13.0(a) (iii) and 14.0 of the 1st respondent's constitution, Article 41 of the Constitution and Section 43(2) of the Labour Relations Act. The petitioners contest that under article 8.2 and 13.0(a) (iii) of the KUPPET constitution, only "delegates as defined under article 8.2 of the union constitution" are eligible to contest for national union positions, which is unlawful, unreasonable, discriminatory and of no legal effect.

The 1st respondent asserts that it has adhered to its constitution as required under the LRA. The elections called for the union are lawful and legitimate.

The petitioners admit that every trade union is permitted under section 34 of the LRA to conduct its elections in accordance with its constitution.

34. Election of officials

- (1) The election of officials of a trade union, employers' organization or the federation shall be conducted in accordance with its registered constitution.**

In **Mweresa & 6 others v Kenya Medical Practitioners Pharmacists and Dentists' Union & 6 others [2026] KEELRC 895 (KLR)**, the court reiterated that every trade union's elections are regulated under its constitution. In **Alwala v Kenya University Staff Union [2023] KEELRC 3246 (KLR)**, the court emphasised that in regulating the affairs of a trade union, the primary document is the constitution.

In this case, the petitioners acknowledge that in the 1st petitioner’s petition, **Kinyua v Secretary General, KUPPET & another [2025] KEELRC, he challenged the amendment to the union** constitution. This matter was comprehensively addressed by the court. The KUPPET constitution was given a clean bill of health and registered with the Registrar of Trade Unions. Indeed, as noted above, each part of the KUPPET constitution comes alive with events and ripeness, particularly during the elections, as the petitioners refer to. There is an eligibility criterion for the SG and national organising secretary positions. Going through the motions of the nomination process, each candidate is able to review the advantages and disadvantages of each article.

In this case, the petitioners fault the provisions of Article 8.2, 13.0(a) (iii) and 14.0 of the 1st respondent’s constitution as being unconstitutional and that they violate the right to fair labour practices guaranteed under Article 41 of the Constitution and Section 43(2) of the Labour Relations Act. The case is that the requirement under article 8.2 and 13.0(a)(iii) of the KUPPET constitution that only “delegates as defined under article 8.2 of the union constitution” are eligible to contest for national union positions is unlawful, unreasonable, discriminatory and of no legal effect. That the office of the Secretary General of the 1st respondent ought not to be restricted to ‘delegates’, elected branch officials, or members of the NEB only, and that any person otherwise legally qualified is entitled to contest for the said office.

However, each union may have its own constitution. For elections, section 34 of the LRA allows each union to follow its constitution. It is not the prerogative of the court to determine the modalities of how a trade union should engage its electoral process or the conduct or identification elected officials. in **Kenya Union of Pre-Primary Education Teachers v County Public Service Board, Vihiga County Government & another; Salaries and Remuneration Commission (Interested Party) [2024] KEELRC 2096 (KLR)** the court held that, unless a union constitution does not outline the modalities for elections or the provisions are audited and found to be contrary to the law or the Constitution, 2010 the court can interfere with the process.

In this case, the 1st respondent's constitution outlines the eligibility criteria for the various positions, including those seeking office as SG and national organising secretary. This is not discriminatory and an unequal process has not been applied, as the eligibility criteria were addressed in advance, even before the call for elections was issued. The 1st petitioner, having been the primary party in **Kinyua v Secretary General, KUPPET & another [2025] KEELRC**, was well guided by the court. There is no appeal.

Equally, as addressed above in **Kenya Union of Pre-Primary Education Teachers v County Public Service Board, Vihiga County Government & another; Salaries and Remuneration Commission (Interested Party) [2024] KEELRC 2096 (KLR)** and in the case of **Kenya Petroleum Oil**

Workers Union & another v Registrar of Trade Union

[2021] KEELRC 1470 (KLR), each trade union is bound under its constitution.

Unless there are valid reasons, the court should uphold the union elections premised under its constitutional provisions.

The petitioners' contestations that the eligibility criteria and payment requirements are discriminatory and unequal have been brought to their attention in advance. The 1st respondent, through its elected leaders, did not amend the union constitution after the call for elections. There was an audit of the constitution, and it has since been registered with the responsible officer, Registrar of Trade Unions.

The orders sought by the petitioner cannot suffice. The declarations sought at the gist of the petitioner, thus addressed, the same cannot issue.

The petitioners admitted that the 1st respondent's elections have since been held. Taking into account the cause of action addressed above, the 1st respondents' elected officials now in place have the opportunity to revisit the constitution and invite the members to participate and share their views on the various parts for review, as appropriate. For the elections, the court finds that the respondents applied the provisions under the union constitution, which is lawful and valid.

The petition is without merit and is hereby dismissed. Each party shall meet its costs.

Delivered in open court at Nairobi, this 8th day of May 2026

**M. MBARŪ
JUDGE**

In the presence of:

Court Assistants: Catherine and Kemboi

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