

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**

**ELRC PETITION NO. E005 OF 2026**

*(Before Hon. Lady Justice Hellen Wasilwa, J)*

**PETER O. NGOGE T/A O.P. NGOGE &  
ASSOCIATES  
ADVOCATES.....PETITIONER**

**VS**

**TAILORS & TEXTILES WORKERS UNION.....1<sup>ST</sup>  
RESPONDENT**

**REGISTRAR OF TRADE UNIONS.....2<sup>ND</sup>  
RESPONDENT**

**LABOUR COMMISSIONER.....3<sup>RD</sup>  
RESPONDENT**

**JUDGMENT**

1 By a Petition dated 9<sup>th</sup> January 2026, the Petitioner sought for the following orders:

- 1) *A declaration that by unlawfully denying the Petitioner herein the legal right to pay a non-refundable sum of Kshs. 250,000 to the 1<sup>st</sup> Respondent herein and vie as an outsider and/or as non-member for the post of the General- Secretary of the 1<sup>st</sup> Respondent herein, the 1<sup>st</sup> Respondent contravened Articles 10,25,27,28,29,41(c) and 47 of the Constitution, Rule 11(f) of the Constitution of the 1<sup>st</sup> Respondent and*

*Article 16 of the United Nations Basic Principles on the Role of Lawyers.*

- 2) Orders of Mandamus be issued forthwith and directed at the Respondents herein jointly and severally to permit the Petitioner herein to vie for the post of the General-Secretary of the 1<sup>st</sup> Respondent during the 2026 election cycle of the Trade Unions in Kenya upon depositing with the 1<sup>st</sup> Respondent herein a non-refundable fee of Kshs. 250,000 as stipulated under Rule 11(f) of the Constitution of the 1<sup>st</sup> Respondent constitution.*
- 3) Orders of Certiorari be issued to Remove to this Honourable Court for the purposes of Quashing the outcome of any branch elections or elections of the National officials of the 1<sup>st</sup> Respondent herein which might have been conducted unlawfully and clandestinely under the 1<sup>st</sup> Respondents current General-Secretary during the pendency of these Proceedings and/or after unlawfully and with a lot of impunity denying the Petitioner herein the Legal Right to vie for the post of the General- Secretary of the 1<sup>st</sup> Respondent herein in the forthcoming 2026 election cycle as stated above.*
- 4) Orders of prohibition be issued directed at the 2<sup>nd</sup> Respondent and the 3<sup>rd</sup> Respondent herein not to preside over the 1<sup>st</sup> Respondents purported elections and/or not to validate the same or Register any of the*

*new officials of the 1<sup>st</sup> Respondent herein until this case is heard and determined.*

*5) The Petitioner be awarded the sum of Kshs 5 Billion as Assessed General damages against the 1<sup>st</sup> Respondent herein for curtailing the Petitioners fundamental Rights as stated above with a lot of impunity.*

*6) The Costs of this Petition be awarded to the Petitioner.*

### **Petitioner's Case**

- 2 The Petitioner avers that the 1<sup>st</sup> Respondent dismissed his numerous requests, which were made in good faith, seeking to join the 1<sup>st</sup> Respondent and to vie for the position of General Secretary, without assigning any plausible reasons. He contends that the said refusal is evident from various correspondences exchanged between himself and the 1<sup>st</sup> Respondent.
- 3 It is his case that the said conduct contravened his constitutional right to associate with or join the 1<sup>st</sup> Respondent as guaranteed under Articles 10 and 41(c) of the Constitution, particularly in light of Rule 11(f) of the 1<sup>st</sup> Respondent's Constitution which permits non-members and outsiders to vie for national office.
- 4 The Petitioner further avers that the denial of his right to vie for the position of General Secretary was unlawful and amounted to discrimination. He asserts that the 1<sup>st</sup>

Respondent, being a public entity, subjected him to mental anguish and degrading treatment, thereby violating Articles 10, 25, 27, 28, 29, 41(c) and 47 of the Constitution.

5 It is the Petitioner's case that the 1<sup>st</sup> Respondent also contravened Articles 10 and 41(c) of the Constitution, as well as Rule 11(f) of its own Constitution, by denying him the opportunity to pay the prescribed sum of Kshs. 250,000 and consequently participate in the election for the position of General Secretary.

6 The Petitioner further contends that he is apprehensive that the current General Secretary of the 1<sup>st</sup> Respondent, with the intention of evading competition, is clandestinely organizing sham branch elections without notifying bona fide members and the public, following the denial of his candidature. He avers that this necessitates urgent intervention by this Honourable Court.

7 In the premises, the Petitioner urges this Court to allow the prayers sought in both the Petition so as to prevent the same from being rendered nugatory.

### **1<sup>st</sup> Respondent's Case**

8 In opposition to the petition, the 1<sup>st</sup> Respondent filed a replying affidavit dated 20<sup>th</sup> January 2026, sworn by its National General Secretary, Rev. Joel Kandie Chebii.

- 9 The 1<sup>st</sup> Respondent avers that whereas it is true that the Petitioner addressed several letters to the Union expressing his interest in vying for the position of General Secretary, the same were duly responded to by its Advocates on record.
- 10 It is the 1<sup>st</sup> Respondent's case that its Union elections are conducted strictly in accordance with Section 34 of the Labour Relations Act as well as Rule 11 of the Union Constitution.
- 11 The 1<sup>st</sup> Respondent contends that the Petitioner does not qualify to vie for or hold any position within the Union for the reasons outlined in the responses issued to his letters. It asserts that the said position does not amount to discrimination or unfairness as alleged by the Petitioner.
- 12 The 1<sup>st</sup> Respondent further avers that the Petitioner has no right to impose himself upon the Union by seeking to hold an office in an entity with which he has no connection and/or relationship whatsoever.
- 13 The 1<sup>st</sup> Respondent thus urges this Court to find that the petition is misconceived, devoid of merit and baseless in law, and to dismiss the same, as no legal breaches or violations have been committed on its part.

### **Petitioner's Submissions**

- 14 It is the Petitioner's submissions that the issue for determination is whether he is qualified to associate, join, vie for and hold office in the 1<sup>st</sup> Respondent Union, the Respondents having taken the position that he does not qualify without furnishing any reasons, which position he submits is unconstitutional.
- 15 The Petitioner submitted that, as a citizen of Kenya, an Advocate of the High Court of Kenya and a Human Rights Defender, he is a "worker" within the meaning of Articles 10, 36 and 41 of the Constitution of Kenya, 2010 and is therefore entitled to associate with and join the 1<sup>st</sup> Respondent Union and to vie for the position of General Secretary. It was submitted that this right extends to contesting for union office together with other candidates.
- 16 It was further submitted that the Respondents unlawfully blocked him from depositing the sum of Kshs. 250,000 as required for non-members seeking to contest under Rule 11(f) of the Constitution of the 1<sup>st</sup> Respondent. The Petitioner argued that the said Rule expressly permits non-members to vie for the position upon payment of the prescribed fee, and that the Respondents' actions contravened Articles 10, 36 and 41 of the Constitution as well as Section 34 of the Labour Relations Act.
- 17 The Petitioner submitted that, as a Human Rights Defender who has over the years litigated and promoted the welfare of workers both locally and before

international forums, he falls within the category of persons protected under Articles 36 and 41 of the Constitution and is thus entitled to participate in trade union activities, including vying for office.

- 18 He submitted that by blocking the Petitioner from associating and joining the 1<sup>st</sup> Respondent Union and vying for the post of the General-Secretary, the Respondents herein have gone against the sound legal principles laid in ***Forum for Good Governance and Human Rights v Public Service Commission & 4 others; Central Organization of Trade Unions (COTU-K) & 2 others (Interested Parties) [2025] KEELRC 83 (KLR)***, where the Court affirmed that “Workers” right to form, join or participate in the Activities and programs of a Trade Union in line with Article 41 (2) of the Constitution of Kenya 2010.
  
- 19 The Petitioner submitted, relying on ***Nganga v Law Society of Kenya & 2 others [2025] KECA 1384 (KLR)***, that the Respondents’ actions of blocking him from associating, joining and vying for the position of General Secretary were aimed at warding off competition in a democratic state contravenes the his legal right to associate and join a trade union of his choice and the right not to be discriminated against and thus violated his rights under Articles 10, 27, 28, 29, 36 and 41 of the Constitution.

- 20 Additionally, it was submitted that the Petitioner's professional activities as an Advocate and Human Rights Defender align with the objectives of the 1<sup>st</sup> Respondent and the broader labour movement. The Petitioner argued that the Respondents' actions contravened various international instruments, including the United Nations Declaration on Human Rights Defenders, the ICCPR, the ICESCR and the Universal Declaration of Human Rights, which, together with Article 36 of the Constitution, protect the right to association for both employed and self-employed persons.
- 21 On the statutory framework, the Petitioner submitted that Section 31(4)(a) of the Labour Relations Act is instructive, and quoted the provision as follows: *"Notwithstanding the provisions of subsection (1) the general secretary of a trade union or the chief executive or association secretary of an employers' organisation may be a person not engaged or employed in the sector concerned."*
- 22 It was submitted that the above provision means that the term "non-members" under Rule 11(f) of the 1<sup>st</sup> Respondent's Constitution includes persons not directly engaged in the industry covered by the Union, and thus debunks the 1<sup>st</sup> Respondent's contention that only unionisable employees within the sector may qualify to contest.

- 23 The Petitioner argued that the Respondents' position, predicated on Section 31(1) of the Labour Relations Act, is overly rigid and inconsistent with Section 31(4)(a), and that by denying him the opportunity to vie and by accusing him of intermeddling, the Respondents acted arbitrarily and unlawfully.
- 24 It is the Petitioner's submissions that the Respondents' actions curtailed his rights under Articles 10, 27, 28, 29, 36, 41 and 47 of the Constitution and violated Sections 31(4)(a) and 34 of the Labour Relations Act, thereby warranting the intervention of this Court and the grant of the reliefs sought in the Petition.

### **1<sup>st</sup> Respondent's Submissions**

- 25 The 1<sup>st</sup> Respondent submitted on two issues: whether the Petitioner is lawfully qualified to vie for the position of the General Secretary in the 1<sup>st</sup> Respondent Union; and whether the Petitioner is entitled to the remedies or orders sought in the Petition.
- 26 On the first issue, the 1<sup>st</sup> Respondent submitted that the evidence on record clearly demonstrates that the Petitioner is not and has never been a member of the Union, and as such, he is not qualified to vie for the position of General Secretary. It was submitted that the Petitioner, through letters dated 8<sup>th</sup> October and 6<sup>th</sup> November 2025, expressed his interest in contesting, and

was duly notified that he could not vie for the position on account of his non-membership.

- 27 It is the 1<sup>st</sup> Respondent's case that the Union is established to serve its duly registered members within a specified industry or sector in accordance with its Constitution, and that the Petitioner, being neither a member nor an official, is an outsider with no locus to interfere with or participate in the Union's administrative elections.
- 28 The 1<sup>st</sup> Respondent further submitted that its elections are conducted in compliance with Section 34 of the Labour Relations Act and Rule 11 of its Constitution. It was argued that the reference to "non-members" under Rule 11 does not extend to third parties, but rather to persons eligible to be members within the industry covered by the Union. In this regard, it was submitted that the Petitioner is neither a unionisable employee within the relevant sector nor eligible for membership, therefore, his attempt to vie for office is unlawful.
- 29 It was submitted that the Union's actions were lawful and in accordance with both the law and its Constitution, and that the Petitioner has no legal right to vie for or hold a position in a Union with which he has no connection or relationship whatsoever.
- 30 On remedies, the 1<sup>st</sup> Respondent submitted that the Petition is misconceived, devoid of merit and baseless in

law, as no legal breaches or violations have been established against it, and therefore the Petitioner is not entitled to any of the orders sought.

- 31 In support of its position, the 1<sup>st</sup> Respondent relied on ***Muthama Ngumbi & 2 others v Tailors and Textiles Workers Union & another [2021] eKLR***, where the Court held that the petitioners had not proved any violation of their rights under Article 36 of the Constitution or the Labour Relations Act and were not eligible to vie for union positions, and consequently dismissed the Petition.
- 32 Reliance was also placed on ***Francis Amina Juma v Registrar of Trade Union & another [2018] eKLR***, where the Court found that the petitioner had failed to demonstrate any constitutional violations and had not rebutted the respondent's position that he was not a member of the union, and was therefore ineligible to vie for the position of General Secretary by virtue of the Constitution of the Respondent Union, leading to dismissal of the Petition with costs.
- 33 I have examined all the averments and submissions of the parties herein. The main issue for determination by this court is whether the respondents breached any rights of the petitioner by denying him right to participate in its elections as a Secretary General of the 1<sup>st</sup> respondent.

34 The 1<sup>st</sup> respondents averred that the petitioner is neither a member of its union and neither is he qualified to vie for any post within their union and therefore his quest was unjustified.

35 I have considered article 41 of the constitution which provides as follows:

**” (1) Every person has the right to fair labour practices. (2) Every worker has the right— (a) to fair remuneration; (b) to reasonable working conditions; (c) to form, join or participate in the activities and programmes of a trade union; and (d) to go on strike. (3) Every employer has the right— (e) to form and join an employers organisation; and (f) to participate in the activities and programmes of an employers organisation.**

36 The constitution is clear that any person can join and participate in the affairs of a union of his or her own choice. This means that the petitioner is and would be free to join a union of his choice.

37 Article 41(4) of the constitution however also provides that every trade union and employer’s organization has a right to determine its own administrative programs and activities and also organize itself. My reading and understanding of this provision is that though the petitioner can join a union of his own, he can however join in governed by the organization of that union. Indeed, every union has an organogram. It has joining instructions and every leadership structure. Anybody willing to join

must thus adhere and follow the rules and regulations within unless they are unconstitutional. There is no indication that the petitioner sought to join the union as a member and was denied. All he sought was to be the union Secretary General which the respondent aver he is not qualified by virtue of his non membership of the union.

- 38 The petitioner has not controverted this averments and his averments and submissions do not point out any constitutional violation by the respondents herein. These prayers are unsustainable and the petition cannot stand as a whole. The petition must therefore fail and is thus dismissed accordingly. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi  
this 4<sup>th</sup> Day of May, 2026.**

**HELLEN WASILWA**

**JUDGE**

