



**Nyambane & another v Kenya County Government Workers Union & 3 others (Petition E013, E014 & E015 of 2024 (Consolidated)) [2025] KEELRC 970 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 970 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**PETITION E013, E014 & E015 OF 2024 (CONSOLIDATED)**

**J RIKA, J**  
**MARCH 28, 2025**

**BETWEEN**

**ZEPHANIAH OCHIENG NYAMBANE ..... 1<sup>ST</sup> PETITIONER**

**KENYA UNION OF WATER AND SEWERAGE EMPLOYEES . 2<sup>ND</sup> PETITIONER**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... 1<sup>ST</sup> RESPONDENT**

**NAKURU WATER AND SANITATION SERVICES COMPANY LIMITED**  
**[NAWASSCO] ..... 2<sup>ND</sup> RESPONDENT**

**ROBA S. DUBA ..... 3<sup>RD</sup> RESPONDENT**

**JOHN NDUNDA ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. There are 3 Petitions, as indicated above, which were consolidated at various stages in the proceedings.
2. Some Parties appear interchangeably as Petitioners and Respondents, making it difficult upon consolidation, to have consistency of identification and representation.
3. The Court proposes to give a summary of the individual Petitions, in order to have some clarity in the record.
4. From the outset, it is important to note that all the 3 Petitions, arise from the territorial war, between the Kenya County Government Workers Union and the Kenya Union of Water and Sewerage Employees.
5. The Kenya County Government Workers Union is a successor to the Kenya Local Government Workers Union, which prior to water reforms of 2002, and subsequent devolution of Government under the [Constitution](#), represented all the Unionisable Employees of Local Governments.



6. The Kenya Union of Water and Sewerage Employees, was formerly National Union of Water and Sewerage Employees, and is a beneficiary of the Water Act 2002, which provided for decentralization of water services. Most failed utilities were seen to be embedded in Local Governments, and the water reforms were intended to correct these failures, and ensure the attainment of Sustainable Development Goal No. 6. The goal aims at ensuring availability and sustainable management of water and sanitation for all, by the year 2030.
7. New water and sanitation companies were created, away from the Local Governments. The water departments in the Local Governments were absorbed into the new water companies, and the Local Government Workers in those water departments, largely were taken up, or were intended to be taken up, by the newly registered Kenya Union of Water and Sewerage Employees.
8. The Petitions do not present entirely fresh disputes. Disputes of similar nature, have been litigated and determined in the past.

#### **Petition No. E013 of 2024**

9. This Petition is filed by Zephania Ochieng' Nyambane, against Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company Limited [NUWASSCO].
10. Nyambane states that he is an Employee of the 2<sup>nd</sup> Respondent. He argues that he is entitled to be represented by a competent Union of his choice.
11. He submits that, the E&LRC [Nairobi] in CBA dispute No. 34 of 2020, involving the Kenya County Government Workers Union, Nairobi Water and Sewerage Company Limited and National Union of Water and Sewerage Employees, held that the Kenya County Government Workers Union, is not the right Union to represent the water sector.
12. The Court in the CBA dispute above, declined to register a CBA concluded between the Kenya County Government Workers Union and Nairobi Water and Sewerage Company Limited, upholding objection raised by National Union of Water and Sewerage Employees.
13. Nyambane is aggrieved by a letter dated 28<sup>th</sup> June 2024 written by Hon. Roba S. Duba, General Secretary of the Kenya County Government Workers Union to the Managing Director of Nakuru Water and Sanitation Services Limited, proposing a courtesy call on 2<sup>nd</sup> July 2024.
14. The letter indicated that Duba would be calling on the Managing Director, to discuss labour matters "touching on the welfare of your employees, as social partners, and thereafter address members of staff who are our members..."
15. Nyambane submits that Duba continues to act in defiance of the order of the Court in the CBA dispute, which ushered his Union out of the water services sector, and is acting in contravention of Nyambane's rights and freedoms, under Article 41 of the Constitution.
16. His prayers are: -
  - a. A declaration that the meeting slated for 2<sup>nd</sup> July 2024, or on any other day but on the same agenda, is unconstitutional and an opaque enterprise, as it is in contravention of an existing Court order.
  - b. Declaration that the order obtained in Nairobi E&LRC CBA No. 34 of 2020, deprives the Kenya County Government Workers Union, the capacity to represent Employees of the water companies in any capacity.



- c. Declaration that the purported meeting and any other allied activities scheduled currently, or in the future, between the Kenya County Government Workers Union and Nakuru Water and Sanitation Water Services Company Limited are a nullity, and the same cannot give rise to any legally binding resolution.
  - d. Costs to the Petitioner.
  - e. Any other suitable order.
17. The Managing Director of Nakuru Water and Sanitation Services Company Limited, James Ng'ang'a Gachathi, swore a Replying Affidavit on 3<sup>rd</sup> July 2024.
  18. He supports the Petition, relying on the Ruling of the E&LRC Court Nairobi, on the CBA dispute. He states that the proposed meeting would be unconstitutional. The Kenya County Government Workers Union was barred by the Court from representing Employees in the water and sanitation services companies. He acknowledges receiving the letter from Duba, asking for scheduling of a courtesy call, to discuss labour matters, and for Duba to thereafter address staff.
  19. Gachathi underscores that upon the separation of the water companies from Local Governments, Employees working for water departments became eligible to be members of the newly established National Union of Water and Sewerage Employees [NUWASE].
  20. The Kenya County Government Workers Union, however, has refused to let go, purporting to continue representing Employees of the water companies. This conduct is in violation of the Employees' rights under Article 41 of the *Constitution*.
  21. The Kenya County Government Workers Union, opposes the Petition, through the Affidavit of its General Secretary Roba S. Duba, sworn on 12<sup>th</sup> July 2024.
  22. He submits that Employees of the water companies, ought to be allowed to freely join Unions of their choice. The Ruling in CBA No. 34 of 2020, trivializes this constitutional right.
  23. At the time the Ruling was made, the Kenya County Government Workers Union represented over 90% of the Unionisable Employees of Nakuru Water and Sanitation Services Company.
  24. The Ruling is not a Judgment in rem, but in personam, confined to registration of the CBA between the Parties therein. It does not have a global application, affecting non-parties.
  25. Duba states that his Union filed an application to review the CBA Ruling, on 21<sup>st</sup> May 2024. He states that Nairobi Water and Sewerage Company Limited, has no relationship with Nakuru Water and Sanitation Services Company Limited.
  26. The Ruling in the CBA dispute was informed by the subsistence of a Recognition Agreement and CBA, between Nairobi Water and Sewerage Company Limited and National Union of Water and Sewerage Employees.
  27. The Kenya County Government Workers Union has a valid Recognition Agreement with Nakuru Water & Sanitation Services Company Limited. The two entities have subsequently registered a CBA. It was registered at Nakuru on 23<sup>rd</sup> November 2021, after the Ruling on the CBA at Nairobi.
  28. The Managing Director, Nakuru Water and Sanitation Services Company Limited, confirmed in his letter dated 2<sup>nd</sup> August 2023, that the CBA has been implemented.
  29. Nyambane is in fact, a member of the Kenya County Government Workers Union, and has been a beneficiary of the CBA between the Kenya County Government Workers Union and his Employer.



30. Duba states that if his Union, is in violation of orders made in the CBA Ruling at Nairobi, the Petitioners ought to have instituted contempt proceeding in the particular proceedings at Nairobi, instead of making serial Petitions at the Court in Nakuru. His Union is the only one with 50+1 majority at the Nakuru water company.
31. Duba states that, the meeting scheduled for 2<sup>nd</sup> July 2024 did not take place, as it was disrupted by goons organized by Nyambane. Nyambane happens to be the Kenya County Government Workers Union, Chairperson, Nakuru County. He and the goons attacked and injured Union officials who were organizing the meeting, a disruption which was brought to the attention of the Police.
32. The Kenya County Government Workers Union urges the Court to dismiss Petition E013 of 2024.

**Petition E014 of 2024.**

33. This Petition is filed by the Nakuru Water and Sanitation Services Company Limited. It is against the Kenya County Government Workers Union, Hon. Roba S. Duba and John Ndunda.
34. All the Parties except John Ndunda, are participants in Petition E013 of 2024. They are described in Petition E013 of 2024. Ndunda is described as the Deputy General Secretary of the Kenya County Government Workers Union.
35. The Petitioner herein, concedes that it entered into a CBA with Kenya County Government Workers Union, which was registered in Court.
36. Based on the Ruling of the E&LRC Nairobi, in CBA No. 34 of 2020, the Kenya County Government Workers Union does not have the legal capacity to negotiate and execute labour agreements with water services companies.
37. The Petitioner's CBA, with the Kenya County Government Workers Union, was signed per incuriam.
38. The Petitioner submits that the CBA has not fully been implemented. The CBA regulates salary increment under clause 4.0. It pegs salary increment on the Petitioner achieving water billing of Kshs. 100,000,000 in the 1<sup>st</sup> and 2<sup>nd</sup> years, and Kshs. 110,000,000 in the 3<sup>rd</sup> year of the CBA implementation.
39. The Petitioner states, at paragraph 23 of the Petition, that the impugned CBA is a binding instrument to both Parties.
40. It states that the Kenya County Government Workers Union, has threatened industrial action, based on lack of full implementation of the CBA.
41. The Petitioner urges the Court to nullify the CBA, as it is founded on nothingness, in light of the Kenya County Government Workers Union, having been adjudged to lack the legal capacity to represent Unionisable Employees in water services companies.
42. It is submitted further that, the Salaries and Remuneration Commission was not consulted, in negotiation and execution of the CBA. The Union has not submitted the dispute for conciliation, before threatening to strike.
43. The Petitioner prays for the following orders: -
  - a. Declaration that the Kenya County Government Workers Union, is not the rightful Union to represent Employees of water companies.
  - b. Declaration that as a result of [a] above, the CBA entered into by the Petitioner and the said Union, is a nullity before the law, was signed per incuriam, and is therefore unenforceable.



- c. Declaration that in the absence of the declaration sought in [b] above, the threshold for increment of salaries as outlined in the CBA has not been met and as such, the impending strike based on the failure of implementation would be an illegal enterprise founded on nothingness.
  - d. Declaration that the impending strike as communicated by the said Union, in a letter dated 22<sup>nd</sup> July 2024 is a nullity and the same be prohibited.
  - e. Declaration that the said Union ought not to purport to be a representative of Employees of water companies, since that is in contravention of existing Court orders, that have neither been challenged nor varied.
  - f. Declaration that Duba and Ndunda [3<sup>rd</sup> and 4<sup>th</sup> Respondents herein] have breached the law and therefore escapists [sic], hence unfit to be Union officials of the said Union.
  - g. Costs to the Petitioner.
  - h. Any other suitable orders.
44. General Secretary Duba swore a Replying Affidavit on 22<sup>nd</sup> August 2024. He restates most of his submissions contained on Petition E013 of 2024.
  45. He states that the Petitioner failed to submit itself for conciliation, and has persistently engaged in attempts focused on scuttling the CBA, executed and registered before the Court. The Petitioner is approbating and reprobating, by alleging that the Respondent Union did not have the capacity to execute the CBA, while also submitting that the Respondent Union declined to discuss, or engage in conciliation over the same CBA.
  46. Duba concedes that his Union called the strike, owing to the failure by the Petitioner to implement the CBA in full. He restates that the CBA is founded on a valid Recognition Agreement, concluded between his Union and the Petitioner. These labour contracts were not rescinded by the Ruling of the E&LRC, sitting at Nairobi.
  47. Duba confirms that the Parties agreed on salary increment in their CBA, pegged to increase in water revenue, as submitted by the Petitioner. The Petitioner has however not exhibited documents, to show that the targets in water revenue have not been met, to warrant review of clause 4.0 of the CBA.
  48. In dispute, Duba states, is implementation of salary increments in the 2<sup>nd</sup> and 3<sup>rd</sup> year of the CBA. The increment for the 1<sup>st</sup> year was implemented. The Union demands implementation of the 2<sup>nd</sup> and 3<sup>rd</sup> year salary increments. He states that the Petitioner has misapprehended decisions made elsewhere by various Courts, touching on representation of Employees, in the water services sector. He repeats the same explanation in Petition E013 of 2024, on why the Court declined to register the CBA at Nairobi- that the Objector and the Interested Party had a Recognition Agreement and had executed CBA, preceding the fresh CBA, that was being placed before the Court by Duba and his Union.
  49. Duba discloses further, that his Union has previously negotiated, executed and registered in this Court, CBAs with other water companies, including Mombasa Water Company, Othaya and Mukurwe-ini Water Company, and Murang'a West Water Company.
  50. No objection on these CBA registrations, was raised by any Employer, the Government or by any Trade Union.
  51. The Respondents urge the Court to find that the Petition herein is an attempt to evade CBA obligations, and decline the Petition with costs.



52. Ndunda filed a Replying Affidavit, which he swore on 17<sup>th</sup> October 2024. He joins himself fully, with the position articulated by his General Secretary, Duba.
53. He confirms that his Union and the Petitioner, have a valid Recognition Agreement and CBA. The Petitioner and its Managing Director did not raise any objection on the Union's legal capacity, during negotiation, execution and registration of the CBA.
54. Ndunda confirms that settlement of the dispute between his Union and the Petitioner, was frustrated by the Petitioner. The Petitioner disrupted a meeting scheduled between the Parties on 2<sup>nd</sup> July 2024. It employed goons who denied the Union and its officials access to the meeting venue, and physically assaulted Ndunda, injuring him.
55. To allow the Petition would severely abrogate the constitutional rights and freedoms of the Petitioner's Unionisable Employees to associate and be represented by a Trade Union of their choice, under Article 41 of the Constitution.
56. Ndunda calls upon the Court to dismiss Petition E014 of 2024 with costs to the Respondents.

**Petition No. E015 of 2024.**

57. The 3<sup>rd</sup> and last Petition, is presented by Kenya Union of Water and Sewerage Employees, against Kenya County Government Workers Union, and Nakuru Water and Sanitation Services Company Limited.
58. The identities of these Parties are disclosed in the other Petitions, and need no elaboration.
59. The Petition is founded on the Affidavit of the Petitioner's Secretary General Elijah Otieno Awach, sworn on 2<sup>nd</sup> August 2024.
60. There is no consistency in our Trade Unions, on the use of the title 'Secretary General' and 'General Secretary.'
61. Duba is the General Secretary of his Union, while his Counterpart in the Petitioner herein, Awach, is the Secretary General.
62. Section 2 of the Labour Relations Act, 2007 recognizes the General Secretary of a Trade Union, not the Secretary General.
63. The late Hon. George Muchai [peace be upon him], a consummate Trade Unionist, who served as Deputy to COTU-K Secretary-General, and was himself General Secretary of the Bakery, Confectionery, Food Manufacturing and Allied Workers Union, used to submit that there is only one Secretary General in the Trade Union Movement- the COTU-Kenya Secretary General, and that all the others, are General Secretaries.
64. He did not however clarify what law his submission was based on, but suffice it to say that Section 2 of the Labour Relations Act, recognizes General Secretary, as opposed to Secretary General.
65. Secretary General Elijah Otieno Awach, associates himself fully with the position taken by Nakuru Water and Sanitation Services Company Limited, and its Managing Director in the other Petitions, that the Ruling on the CBA by the E&LRC Nairobi, established that his Union, not the Kenya County Government Workers Union, is the right Union to represent Employees in water services companies.
66. He clarifies that his Union was formerly known as National Union of Water and Sewerage Employees [NUWASE].



67. There are other decisions of the Courts, beside the Ruling in CBA No 4 of 2020, confirming that the right Union to represent Employees of water services companies, is the Petitioner herein.
68. He cites Nairobi E&LRC CBA EO22 of 2020, Kenya County Government Workers Union v. Embu Water and Sewerage Company Limited & Kenya Union of Water and Sewerage Employees and Court of Appeal in Civil Appeal No. 18 of 2013, National Union of Water and Sewerage Employees & 3 Others v. Nairobi Water and Sewerage Employees Limited [2018] e-KLR.
69. Awach submits that the CBA concluded between the Kenya County Government Workers Union and the Nakuru Water and Sanitation Services Limited, was signed per incuriam and is not a valid labour contract.
70. He states that his Union and Nakuru Water and Sanitation Services Company Limited, have a valid Recognition Agreement, executed on 12<sup>th</sup> January 2007, before the Kenya County Government Workers Union, alleged to have executed a Recognition Agreement with the same Employer. The Agreement stipulates that it remains valid and in force, until it is terminated by both Parties. It has not been terminated.
71. The Kenya County Government Workers Union is an interloper, who has usurped representation of the Employees of Nakuru Water and Sanitation Services Company Limited.
72. The Petitioner prays for the following orders: -
- a. Declaration that the CBA entered into by the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company Limited, on 12<sup>th</sup> October 2021, was signed per incuriam and contrary to existing Court orders and that the same is not valid before the law.
  - b. Declaration that the purported demand by Kenya County Government Workers Union, requiring full implementation of the impugned CBA, is anchored on an illegality and the same is not valid before the law.
  - c. Declaration that the Kenya County Government Workers Union, does not have the capacity to represent Employees of water services companies as declared by various Court decisions, and consequently, it did not have the requisite authority to enter into the said CBA.
  - d. Declaration that the actions of Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company Limited to enter into the CBA, without regard to existing law on the rightful union to represent the Employees of water companies, greatly subjected the said Employees to prejudice and therefore violated their rights under Article 41 of the Constitution.
  - e. Declaration that the Kenya County Government Workers Union, ought to comply with the various Court decisions, estopping and restraining it, from purporting to represent Employees of the water services companies.
  - f. Costs to the Petitioner.
  - g. Any other suitable order.
73. The Managing Director, Nakuru Water and Sanitation Services Limited, James Gachathi swore an Affidavit on 9<sup>th</sup> December 2024, again supporting the Petition, for the same reasons, he supports Petition E013 of 2024 and Petition E014 of 2024. It is not necessary to rehash those reasons.



74. Duba filed a Replying Affidavit sworn by himself, on 22<sup>nd</sup> October 2024. He terms the Petitioner herein as a busybody. It is not privy to the CBA concluded between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company Limited. It cannot enforce the CBA, seek orders restraining its enforcement, or seek declaratory orders with respect to the CBA.
75. The Petitioner is being used by Nakuru Water and Sanitation Services Company Limited, to escape its liability under the CBA. The Petitioner is in collusion with Nakuru Water and Sanitation Services Company Limited. It would not know about correspondence exchanged between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company Limited, if it was not in collusion with the latter.
76. Duba states that at the time his Union signed a Recognition Agreement with the water company, it had a majority of Employees, as members. It retains a majority. The Petitioner has not disclosed the number of Employees it has, as members.
77. The Petitioner acknowledges that the CBA in place is binding on the Parties. It beats logic why the Petitioner turns around to challenge the same CBA.
78. Duba states that decisions of the various Courts cited by the Petitioner, went against his Union, because it was the view of the Courts, that the involved water companies had already executed Recognition Agreements with National Union of Water and Sewerage Employees, at the time the Kenya County Government Workers Union, sought registration of CBAs concluded with the same water companies.
79. Duba trashes the Petition as vexatious and an abuse of the process of the Court.
80. It was agreed that the consolidated Petitions are considered and determined, on the strength of the Affidavits and Submissions on record. They were last mentioned before the Court on 30<sup>th</sup> January 2025.
81. The issues are whether: -
  - a. The meeting proposed to be held between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company Limited, is unconstitutional.
  - b. The Ruling in Nairobi E&LRC CBA No. 34 of 2020, deprives the Kenya County Government Workers Union, the capacity to represent Employees of water companies.
  - c. The CBA concluded between Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company Limited, was signed per incuriam, and is unenforceable.
  - d. The conditions for salary increment, clause 4.0 of the CBA, have been satisfied, and the Kenya Government Workers Union justified in threatening to take industrial action based on non-implementation in full, of the salary increment clause.
  - e. Duba and Ndunda are unfit to be Union Officials.
  - f. An order for costs is merited.

**The Court Finds: -**

82. Proposed meeting. It is hard to see how the letter dated 28<sup>th</sup> June 2024, proposing a meeting between General Secretary Duba, and the Managing Director, Nakuru Water and Sanitation Services Company, can amount to an opaque enterprise, and result in violation of any of the Parties' constitutional rights.



83. The Kenya County Government Workers Union, at the time of the proposed meeting, had an executed and registered CBA, with the Nakuru Water and Sanitation Services Company Limited.
84. For the 2 Parties to engage in collective negotiations, birthing the CBA, they were required by the law to have executed, and had indeed executed, a Recognition Agreement.
85. None of the Parties deny that the Kenya County Government Workers Union, had members, who were Employees of the Nakuru Water and Sanitation Services Company Limited.
86. Duba states in his Replying Affidavits that his Union, has over 90% of the Nakuru Water and Sanitation Services Company Limited Unionisable Employees, as its members. This overwhelming majority, has not been contested by any of the Petitioners. The Kenya Union of Water and Sewerage Employees, has not contested this, and has not exhibited a list of its own members, even as a minority, working for Nakuru Water and Sanitation Services Company Limited.
87. Even Nyambane, one of the Petitioners herein, is said by Duba, to be a member of the Kenya County Government Workers Union. He does not deny that he is a member. He appears to have been enlisted by his Co-Petitioners to disrupt his Union, the Kenya County Government Workers Union, in its representation of the Unionisable Employees of Nakuru Water and Sanitation Services Company.
88. Nyambane has been a beneficiary of meetings held between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company. There probably were multiple such meetings held, culminating in the CBA whose terms and conditions, Nyambane and others, have been enjoying. How would another meeting, result in violation of anyone's fundamental rights and freedoms?
89. The Petitioners submit that Employees were intending to go on strike at the instigation of their Union, on account of their salaries increment clause in the CBA, not being implemented in full.
90. Why would Duba be in violation of the Constitution, by meeting the Managing Director, to discuss labour matters involving his members?
91. The intended strike action, the unfulfilled implementation of the CBA, and even the right and relevance of the Kenya County Government Workers Union, to represent the Employees of the Nakuru Water and Sanitation Services Company, are subjects that reasonably would warrant the proposed meeting, and would benefit from a discussion between Duba's Union and the Employer.
92. The Petitioners appear to trivialize the Constitution, in their thinking that the Constitution can be weaponized, in this ongoing internecine trade union war, to bar the Kenya County Government Workers Union from engaging with its members, who are Employees of the water services company.
93. Nyambane and the Managing Director, appear not to have discounted the submission by the Kenya County Government Workers Union, Duba and Ndunda, that they turned violent, at the meeting scheduled to be held at the workplace on 2<sup>nd</sup> July 2024.
94. None of them dispute that, Deputy General Secretary Ndunda, was assaulted and injured on the material date by goons, who had been marshalled by Nyambane, to scuttle the meeting.
95. the Constitution of Kenya should not be used as a weapon, in the hands of goons, to harm fellow trade unionists, with whom they disagree.
96. The Court does not think that Duba and his Union were barred by any decision of the Courts, cited by the Petitioners, from meeting the Managing Director of any water company.



97. Labour Relations are not exclusive or static, and ILO Conventions, the Industrial Relations Charter, the [Labour Relations Act](#), and the [Constitution](#) of Kenya, are products of constant social dialogue, and they in turn, demand that the social partners are engaged constantly in social dialogue.
98. The meeting proposed by Duba was no more than a call for social dialogue. How would the Nakuru Water and Sanitation Services Company, overcome the challenges it was encountering on implementation of the CBA, without having social dialogue with the partner with whom it co-authored the CBA?
99. The prayer by the Petitioners to find that the letter by Duba calling for a meeting with the Managing Director, is unconstitutional, amounts to trivialization of the [Constitution](#), or what Thomas Jefferson characterized as ‘twistification of the Bill of Rights’, in his letter to James Madison [25<sup>th</sup> May 1810, reprinted in *Marshall v. Jefferson*, the political background of *Marbury v. Madison* 161 [D. Dewey ed. 1970].
100. Nyambane is simply engaging in ‘twistification of the Bill of Rights,’ when he submits that, the proposed meeting would gravely prejudice his right to fair representation by a competent trade union, under Article 41. Why did he subscribe to the Kenya County Government Workers Union, even chaired its Branch at Nakuru, and come to Court alleging that the same Union is not competent to represent him?
101. This is the same ‘twistification,’ manifest throughout the Affidavit of Managing Director Gachathi, sworn on 3<sup>rd</sup> July 2024. He appended his signature to the Recognition Agreement, alongside Duba, on 2<sup>nd</sup> December 2014. He granted Kenya County Government Workers Union recognition, over 10 years ago. He has led his company in negotiating, executing and registering with the Court, a CBA. When did he come to the realization, that the Kenya County Government Workers Union was a violator of the [Constitution](#)?
102. In his paper ‘Trivialization of the Bill of Rights: One Historian’s View of How the Purpose of the First Ten Amendments Have Been Defiled’ Vol. 31[1980-1990] Bicentennial Perspectives, Robert A. Rutland cautions about the danger of invoking the [Constitution](#) in pursuing whimsical ideas, where not even a real right is involved.
103. The allegation by the Petitioners, that by writing a letter, Duba violated their Constitutional rights, which the Court is called upon to protect, appears to the Court to fall in this category of Petitions, where the [Constitution](#) is invoked in pursuit of whimsical ideas, where not even a real right is involved. It is an abuse of constitutionalism by private citizens and institutions, which is no less galling, than the abuse of constitutionalism by autocrats, to undermine democracy.
104. If Gachathi did not wish to meet Duba, why not simply write back and say, ‘sorry sir, you are not welcome,’ instead of engaging goons to scuttle the meeting, and thereafter coming to Court and trivializing the [Constitution](#)?
105. Access of Trade Unions to workplaces, is regulated under Section 56 of the [Labour Relations Act](#), 2007. Employers are required to provide for reasonable access of Trade Unions to their members, working within their enterprises. This provision for access is normally specified in Recognition Agreements.
106. Clause 2 [j] of the Recognition Agreement executed between the Kenya County Government Workers Union and the Nakuru Water and Sanitation Services Company, dated 2<sup>nd</sup> December 2014, granted the Union the right of reasonable access, to the workplace.



107. Duba wrote to the Managing Director, that he intended to discuss labour matters with the Managing Director, and thereafter, engage the staff.
108. Clause 2[j] above requires the Union to make a prior request to the Managing Director for the meeting; and the request should be granted by the Managing Director in writing.
109. Duba acted in accordance with the *Labour Relations Act*, and the Recognition Agreement. It was for the Managing Director to write back, accepting the request or declining it, instead of enlisting goons, to chase away what were perceived as enemies, from the workplace.
110. The doctrine of constitutional avoidance requires that this Court, will not normally consider a constitutional question, unless the existence of a remedy depends on it. If a remedy is available to the applicant, under some other legislative process or some other legal basis, the Court will usually decline to determine whether there has been in addition, a breach of the Bill of Rights. [see SG v. Standard Media Group & 3 others [2022] KEHC 13633 [KLR]. The doctrine seeks to buffer the *Constitution* from trivialization and “twistification.”
111. The Petitioners, if aggrieved by the letter requesting for a meeting from Duba, had remedy in the *Labour Relations Act*. Nakuru Water and Sanitation Services Company, has a Recognition Agreement with the Kenya County Government Workers Union, defining how issues arising between the Parties are to be handled. Gachathi had the remedy of simply writing back to Duba, declining the proposed meeting. Why bother the *Constitution*?
112. Ruling in Nairobi E&LRC CBA No. 34 of 2020. The dispute involved Kenya County Government Workers Union, Nairobi Water and Sewerage Company Limited and National Union of Water and Sewerage Employees.
113. The Kenya County Government Workers Union sought to register a CBA concluded between it, and the Nairobi Water and Sewerage Company Limited.
114. The dispute did not involve Nakuru Water and Sanitation Services Company Limited. Nairobi Water and Sewerage Company Limited is a different entity from Nakuru Water and Sanitation Services Company.
115. These are different Employers, with the freedom to enter into labour contracts, with Trade Unions they deem, as the most representative and relevant to their workplaces.
116. The CBA dispute at Nairobi, did not deal with the Recognition Agreement or Recognition Agreements, executed by Nakuru Water and Sanitation Services Company.
117. It did not deal with the CBA concluded between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company.
118. The Court at Nairobi in the CBA dispute No. 34 of 2020, did not involve representation of the Unionisable Employees of Nakuru Water and Sanitation Services Company, 90 % of whom are incontestably, said to be members of the Kenya County Workers Government Union.
119. Is the Court to nullify the freedom of association of 90 % of the Unionisable Employees of Nakuru Water and Sanitation Services Company, based a CBA Ruling, to which neither they, nor their Employer, was a party to? Is the Court to direct that this overwhelming majority of Unionisable Employees, are no longer to be represented by the Union they have chosen to belong to, because a Ruling of the Court in Nairobi, found that Kenya Union of Water and Sewerage Employees, with no



- known members at Nakuru Water and Sanitation Services Company, is the most relevant Union in the water services sector?
120. Water companies in the country do not have a common Recognition Agreement or CBA with one Trade Union. They are not an association, or group of Employers, which negotiate a common CBA for all Employees of water companies, in all corners of the country.
  121. Duba listed a number of water companies in the country, including Mombasa Water, Othaya-Mukurweini and Murang'a West, with whom his Union has executed CBAs with.
  122. There are Employees and Employers, who perhaps have a historical association with the Kenya County Government Workers Union, rooted in the Union's past representation of the former Local Government water department Employees.
  123. Perhaps the County Government Workers Union, being an old Union in the Labour Movement, is better equipped, attractive, and networked, and able to reach and represent a larger percentage of Employees in the current devolved units, and their associated utility vehicles.
  124. The right and freedom of association of these Employees, the right to belong to a trade union of their choice, must be placed above the claim of any Union, to a blanket right to collectively represent them.
  125. It would not be prudent to encourage trade union monopoly, without minding the ability of individual Unions, to reach all Employees who need representation in all corners of the country.
  126. Water companies are individual entities, and like other Employers have the freedom to associate. Their Employees likewise, have the freedom to join and leave Unions.
  127. The Ruling in CBA No. 34 of 2020, and other Rulings cited by the Petitioners, did not nullify existing Recognition Agreements and CBAs concluded by the Kenya County Government Workers Union, with different water companies.
  128. Section 54 of the *Labour Relations Act*, requires that an Employer shall recognize a Trade Union for purposes of collective bargaining, if that Trade Union represents the simple majority of Unionisable Employees at the workplace.
  129. Nakuru Water and Sanitation Services Company, granted the Kenya County Government Workers Union recognition, based on this Union's establishment of a simple majority, submitted to be in fact, currently, an overwhelming majority at 90 % of the total Unionisable Employees.
  130. What the Courts have stated in the decisions relied upon by the Petitioners, is that in a dispute involving the question, which is the most relevant Union to represent Employees of the water companies, Kenya Union of Water and Sewerage Employees, is the most relevant.
  131. But being the most relevant, does not automatically entitle any Trade Union to the sole collective bargaining agency right; the Trade Union must establish that it has a simple majority of Unionisable Employees, working for the relevant Employer.
  132. A judicial declaration of relevance, is not a judicial grant of the right of representation.
  133. If this was the intention of the law, that the Union declared as the most relevant in an industry or sector, acquires automatic sole collective bargaining agency right of representation, by virtue of such judicial declaration, there would be no need to recruit members, once a Trade Union is adjudged to be the relevant, sole player in a particular industry or sector.



134. Kenya Union of Water and Sewerage Employees would simply walk into the premises of water services companies, demand to, and sign Recognition Agreements. Employees would have no say on their trade union membership, their right and freedom of association.
135. Being declared the most relevant Trade Union in an industry or sector, does not obviate the requirement that the Trade Union has recruited the largest number of Unionisable Employees, or that it sustains that majority of membership, to continue to be genuinely representative, and to continue to be recognized.
136. The Court must respect the right and freedom of Employees to belong, or not belong, to Trade Unions, and should not grant any Trade Union an open-ended right of representation.
137. The concept of trade union monopoly, where Trade Unions claim the right to represent Employees solely on the basis of their industrial relevance, rather than numerical strength at the workplace, a concept commonly expressed in the maxim “one industry, one union,” belongs to the past, before the promulgation of the Constitution in 2010.
138. The Court does not therefore think, that the Ruling in Nairobi E&LRC CBA dispute No. 34 of 2020, has the effect of nullifying the Recognition Agreement and CBA, executed between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company.
139. It was not intended by any Court that Kenya Union of Water and Sewerage Employees, converts the Unionisable Employees of Nakuru Water and Sanitation Services Company into its own members, without recruiting them.
140. The Court of Appeal Judgment in National Union of Water and Sewerage Employees & 3 Others v. Nairobi Water and Sewerage Company Limited [2016] e-KLR, is not understood by this Court, to have determined that Kenya Union of Water and Sewerage Employees, is the rightful Union in representation of Employees of water services companies, as submitted by the Managing Director Gachathi, at paragraph 6 of his Affidavit, sworn on 24<sup>th</sup> July 2024.
141. The Court of Appeal was called upon to determine whether, a Judge of the newly established E&LRC, had jurisdiction to set aside ex debito justitiae, orders given by 2 previous Judges of the predecessor Industrial Court of Kenya; whether the new Judge of the E&LRC erred in making sweeping statements, that the then Kenya Local Government Workers Union, was the appropriate Union to represent Employees of Nairobi City Water and Sewerage Services Company; whether the E&LRC Judge erred in consolidating matters and in staying the consolidated matters, pending the resolution of one issue.
142. The Court of Appeal found that the E&LRC Judge erred, by making an order of consolidation, without undertaking precautionary procedural steps. The Court held also, that there was no legal basis for the Judge of the E&LRC to review and set aside suo motu, decisions made by Judges of the predecessor Industrial Court of Kenya.
143. On the last issue, and most relevant to the current Petitions, the Court of Appeal stated that, “we find nothing in the said provisions [Sections 54, 57, 58 and 59 of the Labour Relations Act] that mandated the E&LRC or its predecessor, to revisit a concluded and duly registered CBA, and then to interfere with it suo motu.”
144. The decision seems to support the submission that, this Court does not have the mandate, to revisit the CBA concluded between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company. The Petitioners have urged the Court to interfere with the CBA, arguing



that the Kenya County Government Workers Union, lacked capacity as declared by the E&LRC in the CBA dispute at Nairobi, and that the CBA was founded on nothingness, hence unenforceable. The Court of Appeal ruled against the Court's mandate, in revisiting and interfering with, concluded CBAs.

145. Nowhere in the Judgment, did the Court of Appeal rule that the National Union of Water and Sewerage Employees, or its successor, is the rightful Union to represent Employees of water companies, or that the said Union, enjoys a sole and automatic collective bargaining agency right countrywide, without the need of recruiting members, and establishing and sustaining a majority of recruited members.
146. The Court of Appeal, in *Mombasa Maize Millers Limited v. Bakery, Confectionery, Food and Allied Workers Union* [2018] e-KLR; and the E&LRC in *Kenya Export, Floriculture, Horticulture and Allied Workers Union and 2 Others; Cabinet Secretary for Labour and Social Protection and Another* [Interested Parties] [2021] KEELRC 1021 [KLR], held that there is always a presumption that the existing Recognition Agreement is valid, and that the presumption can only be rebutted through cogent evidence, such as resignation of Employees from the recognized Union.
147. The Kenya County Government Workers Union has a Recognition Agreement, executed with Nakuru Water and Sanitation Services Company, on 2<sup>nd</sup> December 2014.
148. It submits that it has about 90% of the Unionisable Members. Kenya Union of Water and Sewerage Employees has not submitted that it has recruited any Employees, but waves at the Court various decisions from the Courts, concerning relevance of representation.
149. None of the 90% of the members belonging to Kenya County Government Workers Union, are alleged to have resigned from their Union.
150. None of the Petitioners raised objection at the time Kenya County Government Workers Union sought, and was granted recognition, by Nakuru Water and Sanitation Services Company in 2014. There was no dispute shown to have been presented at any forum, on that recognition.
151. For recognition to be granted, the Employer must have been satisfied as required by the law, that the Union had secured a simple majority of its Unionisable Employees.
152. The Kenya Union of Water and Sewerage Employees, exhibits in its Petition, a copy of a Recognition Agreement, executed between National Union of Water and Sewerage Employees and Nakuru Water and Sanitation Services Company Limited, on 12<sup>th</sup> January 2007.
153. It did not offer an explanation why this Recognition Agreement, was not presented and argued before the Court, when the CBA was registered on 23<sup>rd</sup> November 2021.
154. It is not shown that this archival Recognition Agreement, was presented to any Court, in objection to the execution of the Recognition Agreement, between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company.
155. It would seem that the Kenya Union of Water and Sewerage Employees predecessor [NUWASE], executed the Recognition Agreement and went into slumber. NUWASE and its successor, do not seem to have retained a majority of membership, which they would be presumed to have had in 2007, when granted recognition.
156. By the time of the second Recognition Agreement, there is no record of any dispute filed, contesting that the Kenya County Government Workers Union, enjoyed a majority of the members.



157. A presumption of validity of the 2007 Recognition Agreement would perhaps have been made in favour of Kenya Union of Water and Sewerage Employees, if there was objection made, at the time Kenya County Government Workers Unions sought recognition.
158. Once the Kenya County Government Workers Union was granted recognition, the only presumption that could be made, is that the Kenya Union of Water and Sewerage Employees had lost its majority of union membership at the particular workplace, and ceded ground to the new entrant.
159. It must be noted that in seeking, and being granted recognition in 2014, the Kenya County Government Workers Union was not exactly a new entrant, in a virgin territory; it had for many years, as observed from the outset, represented Unionisable Employees of the former water departments, in the defunct Local Governments.
160. Recognition Agreements are not static, and a Recognized Union must continue recruiting, to retain majority of the membership.
161. There is no CBA shown to have been negotiated and concluded, between National Union of Water and Sewerage Employees and Nakuru Water and Sanitation Services Company.
162. Why would Nakuru Water and Sanitation Services Company Limited in any event, grant 2 different Trade Unions recognition, and expect the Court to invalidate one Agreement, in favour of the other?
163. The Recognition Agreement exhibited by Kenya Union of Water and Sewerage Employees, executed in 2007, is historical.
164. It can only establish that there have been 2 Trade Unions, legally recognized by the particular Employer. It does not annul, or in any way limit, the validity of the Recognition Agreement, executed later between Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company.
165. The law does not bar an Employer from recognizing multiple Trade Unions. Different Trade Unions may be required to represent Employees who are qualified in different trades and skills, within the same enterprise.
166. Electrical Trades Workers Union could represent electricians in a water services company. Kenya Engineering Workers Union could represent engineers in a water services company. Environmental technicians in water services companies, can be represented by Environmental Health Practitioners Union. Different collective bargaining units, in a water services company, can be represented by different Trade Union. It is therefore possible to have multiple Recognition Agreements, in one enterprise. This in the view of the Court, militates against trade union monopoly, where one Union, claims to be the sole representative of all Unionisable Employees, at a workplace. Freedom of association demands that there is a degree of flexibility, on the right of representation.
167. The presence of the Recognition Agreement signed in 2007, does not justify a declaration by the Court, that the Recognition Agreement executed subsequently, in 2014 by the same Employer with a different Trade Union, is invalid.
168. Nakuru Water and Sanitation Services Company would know why it granted 2 different Unions, recognition rights. It does not appear that the 2 different Unions were granted recognition to represent different collective bargaining units.



169. If the Court was being called upon to rule on which is the most valid of the 2 Recognition Agreements, the most recent would appear to be. The 2007 document is archival material, which has not birthed any CBA for decades. It is a dead letter document, which lost its practical effect, and legal force, decades ago.
170. It is a document not supported by the existence of a current majority of membership of Unionisable Employees, in favour of Kenya Union of Water and Sewerage Employees. It is an Agreement which has been overtaken by events, a new Union having recruited a majority of the Unionisable Employees; been granted recognition; and executed a CBA which is partly implemented. It is not therefore persuasive, for Secretary General Awach, to posit that his Union has a Recognition Agreement with Nakuru Water and Sanitation Services Company, which states that it would only come to an end, by mutual termination of the Parties. The Kenya County Government Workers Union has a similar Recognition Agreement, with the same clause on termination.
171. In the view of the Court, the Recognition Agreement of 2007, is archival material, which lost its validity, the minute Nakuru Water and Sanitation Services Company, entered into a relationship with the Kenya County Government Workers Union.
172. Even assuming that a dispute has now belatedly arisen, on the right of the Kenya County Government Workers Union to be recognized by Nakuru Water and Sanitation Services Company, or concerning de-recognition of the Union, Section 54 [6] of the *Labour Relations Act*, requires that the dispute is referred to conciliation, in accordance with the provisions of Part VIII of the Act. This provision underscores the principle of constitutional avoidance.
173. The Petitioners have not sought conciliation, or even approached the National Labour Board, to de-recognize Kenya County Government Workers Union.
174. CBA executed per incuriam? The County Government Workers Union and Nakuru Water and Sanitation Services Company registered CBA, RCA No. 157 of 2021. A certificate of registration issued on 23<sup>rd</sup> November 2021.
175. The Petitioners argue that the CBA was negotiated, executed and registered per incuriam. This Latin phrase, refers to a decision taken through lack of care, and is applied within the common law system of judicial precedent. A finding of per incuriam, means that a previous Court Judgment has failed to pay attention to relevant statutory provisions, or precedent.
176. It is not normally applied to contracts, and it is doubtful that a CBA was negotiated, executed and registered per incuriam.
177. If the Petitioner's position is that the CBA executed between the Kenya County Government Workers Union and Nakuru Water and Sanitation Services Company, is invalid or voidable for lack of legal capacity to contract, on the part of Duba's Union, the position is not founded on the law and available facts.
178. Nakuru Water and Sanitation Services Company granted Kenya County Government Workers Union recognition, in 2014.
179. Section 54 of the *Labour Relations Act* states that recognition is granted, for purposes of collective bargaining. Section 57 states that once recognition is granted, Parties shall conclude a CBA, setting the terms and conditions of all Unionisable Employees, covered by the Recognition Agreement.
180. The CBA registered with the Court on 23<sup>rd</sup> November 2021, was negotiated, executed and registered with the Court, pursuant to recognition granted in 2014.



181. Gachathi and his management team, do not allege that they were under some form of disability, duress or undue influence, when they granted Kenya County Government Workers Union recognition, and went on to engage in collective bargaining, resulting in the CBA dated 23<sup>rd</sup> November 2021.
182. The capacity of the Kenya County Government Workers Union, to negotiate, execute and register the CBA, was founded on Sections 54 [1] and 57 [1] of the *Labour Relations Act*.
183. That capacity was not affected by the finding and declaration of Courts in other judicial pronouncements, that the Kenya Union of Water and Sewerage Employees, is the most relevant Union to represent the Employees of the water companies.
184. Unlike in Nairobi CBA No. 34 of 2020, Kenya Union of Water and Sewerage Employees, did not present any objection before the Court at Nakuru, when the CBA was registered.
185. It faithfully went on to implement the CBA, until it felt the financial weight of full implementation of the CBA, and conjured ways of avoiding full implementation, by co-opting others in presentation of these series of Petitions.
186. Section 59 of the *Labour Relations Act*, states that a CBA, binds for its duration, the Parties to the CBA; all Unionisable Employees employed by the Employer, Group of Employers or Employers' Organization party to the CBA; or, the Employers who are, or become members of an Employers' Organization party to the CBA, to the extent that the CBA relates to their Employees.
187. A CBA continues to be binding on an Employer or Employees who were parties to the CBA at the time of its commencement, and includes members who have resigned from that Trade Union, or Employers' Association.
188. The formal validity of a CBA under Section 49 [4] of the *Labour Relations Act*, is that that the CBA is in writing, and signed by the CEO of any Employer or the National Secretary of an Employers' Association party to the CBA or by their designates; and signed of the other part, by the General Secretary of any Trade Union party to the CBA, or his designate.
189. Importantly, Section 59[5] of the *Labour Relations Act* stipulates that, CBAs become enforceable and shall be implemented upon registration by the E&LRC, and are enforceable, from the date agreed to by the Parties.
190. The E&LRC is guided by Section 60 of the *Labour Relations Act*, on registration of CBAs. The Court shall not register a CBA which conflicts with the *Labour Relations Act*, or any other law; or one that does not comply with directives concerning wages, salary levels and other conditions of employment issued by the Cabinet Secretary for Labour.
191. The Court may refuse to register a CBA after hearing representations made by all the Parties, which is what the Court did, in Nairobi CBA No. 34 of 2020.
192. There was no objection in Nakuru E&LRC RCA No. 157 of 2021, raised by any party. There is no justification in the Petitioners' submissions that the CBA was executed and registered per incuriam. It was a formally and substantively valid CBA, negotiated, executed and registered by legally capacitated parties, under the *Labour Relations Act*. As held by the Court of Appeal in the decision cited at paragraph 140 of this Judgment, this Court does not have the mandate to revisit, and interfere with, concluded [and in this dispute, partly implemented] CBAs
193. Conditions under the CBA for salary increment. Nakuru Water and Sanitation Services Company was not able to implement in full, clause 4.0 of the CBA.



194. The clause states that all eligible Employees [grade 1-5], would be paid, with effect from 1<sup>st</sup> July 2021, an increment of Kshs. 8,000 monthly in the 1<sup>st</sup> year.
195. In the 2<sup>nd</sup> year, beginning 1<sup>st</sup> July 2022, the Employees would enjoy an increment of Kshs. 12,000 in monthly salary. This was dependent on the company achieving an average water billing of Kshs. 100,000,000 in March –June 2022.
196. The 3<sup>rd</sup> increment was for Kshs. 12,000 monthly, with effect from 1<sup>st</sup> July 2023. This increment depended on the company achieving an average water billing of Kshs. 110,000,000 for March –June 2023.
197. Nakuru Water and Sanitation Services Company paid Employees an increment of Kshs. 8,000 monthly as agreed for the 1<sup>st</sup> year.
198. For the 2<sup>nd</sup> year, it paid half the increment at Kshs. 6,000 monthly. It did not pay anything for the 3<sup>rd</sup> year.
199. The defaults in the 2<sup>nd</sup> and 3<sup>rd</sup> years, resulted in the Kenya County Government Workers Union and its membership, threatening industrial action, leading to these Petitions.
200. The Court has no evidence, to justify the grant of an order sought by the company, to the effect that it did not achieve the average water billing targeted under the CBA, and therefore is unable to implement the remainder of the salary increments.
201. There are no water revenue reports, to support this prayer. If Nakuru Water and Sanitation Services Company is unable to meet its obligations in full under the CBA, the CBA and the Recognition Agreement provide Parties an avenue for discussion and settlement. They could have held a sitting, and restructured the implementation timelines, or the water revenue collection targets.
202. Instead, Nakuru Water and Sanitation Services Company, led by Gachathi, frustrated social dialogue, refused to meet Duba and with its Co-Petitioner Nyambane, instigated the violent ejection of Kenya County Government Workers Union Officials, from the workplace.
203. The submissions about the CBA not having the endorsement of the SRC has no merit. The Court would have declined registration of the CBA, if it suffered formal or substantive infirmities. This argument concerning the SRC is diversionary, aimed at availing Nakuru Water and Sanitation Services Company additional reason, to repudiate obligations that were validly created through the CBA.
204. If an Employer is not able to implement a CBA in accordance with the agreed timelines, there is always a recourse to readjustment of terms, including extension of the implementation timelines, within the collective bargaining structure. There is no labour contract which is cast in bronze, and the door of social dialogue, is never closed.
205. It is illogical to approach the Court, with submissions such as advanced by the Petitioners, that the CBA was founded on nothing, and therefore is unenforceable. Was not the CBA implemented half-way?
206. Nakuru Water and Sanitation Services Company has an obligation to implement the CBA it registered with the Kenya County Government Workers Union, in full. If the CBA is not fully implemented, there is nothing that would prevent the Union from calling its members to industrial action, in accordance with the *Labour Relations Act*. The Court certainly does not have ground to issue a blanket order, declaring any impending strike a nullity and prohibited, as sought by Nakuru Water and Sanitation Services Company Limited.



207. Duba and Ndunda unfit to be Officials of their Union? The last issue is whether Duba and Ndunda are unfit to be Officials of their Trade Union.
208. Duba is the General Secretary, and Ndunda his Deputy. The 2 were elected by their Union members, in accordance with their Union constitution, under Section 34 of the [Labour Relations Act](#).
209. They are registered as Officials, by the Registrar of Trade Unions. No questions about the validity of their election, have been raised with the Registrar of Trade Unions. They are not disqualified under any circumstances mentioned in Section 31 of the [Labour Relations Act](#), from being Officials of their Union.
210. An Employer does not have any voting right, on election of Trade Union Officials. An Employer has no business pursuing removal of Trade Union Officials from Office, through orders such as are sought by Nakuru Water and Sanitation Services Company, declaring Duba and Ndunda unfit to hold office.
211. Trade Unions have the right to elect their own officials, and the right to plan and organize their administration, under Section 8 of the [Labour Relations Act](#). It is a right that is entrenched in the [Constitution](#) under Article 41. ILO Convention No. 87, Freedom of Association and Protection of the Right to Organize, Article 3 [1] states that, Workers' and Employers' Organizations, shall have the right to draw up their constitutions and rules; to elect their representatives freely; to organize their administration and activities; and to formulate their programmes.
212. Article 3[2] of the ILO Convention states that, public authorities shall refrain from any interference, which would restrict this right, or impede the lawful exercise therefore.
213. Nakuru Water and Sanitation Services did not play a part in the election of Duba and Ndunda. It does not have a role on their recall, if they are unfit to continue service. It must be left to the members of Kenya County Government Workers Union, to determine at the ballot, if Duba and Ndunda are fit to continue serving, or whether they should be voted out.
214. This last prayer, where an Employer seeks to have Trade Union Officials elected by the Union membership, declared unfit to hold office, is a clear manifestation of trivialization and "twistification" of the [Constitution](#) by the Petitioners. The Petitioners are invoking the [Constitution](#), for a whimsical pursuit, the removal from office of Trade Union Officials, who they do not have any colour of right under the [Labour Relations Act](#), in placing in, or removing from, office.
215. In conclusion, none of the Petition is merited. The Nakuru Water and Sanitation Services Company entered into legal obligations with 2 different Trade Unions. If it is encountering difficulties meeting certain of these obligations, it is inappropriate to encourage one of its social partners to rise up against another social partner, under the guise of constitutionalism.
216. The Kenya Union of Water and Sewerage Employees, in presentation of these Petitions, espoused yellow trade unionism. It acted like a company Union, serving the interest of the Employer, in scuttling a CBA validly concluded by the Employer and another Union. Labour contracts are entered into, to be implemented. The CBA concluded with the Kenya County Government Workers Union, is valid and to be implemented. If the Nakuru Water and Sanitation Services Company, wishes to be rid of any recognition obligations, the correct recourse is in the [Labour Relations Act](#).

**It is Ordered: -**

- a. The Consolidated Petitions are declined.



- b. Costs shall be paid to Kenya County Government Workers Union, in Petition E013 of 2024 by the Petitioner Zephania Ochieng' Nyambane.
- c. Costs shall be paid to the Kenya County Government Workers Union, Hon. Roba S. Duba and John Ndunda, in Petition No. E014 of 2024, by Nakuru Water and Sanitation Services Company Limited.
- d. Costs shall be paid to the Kenya County Government Workers Union, in Petition No. E015 of 2024, by the Petitioner Kenya Union of Water and Sewerage Employees.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

**JAMES RIKA**

**JUDGE**

