



Ochieng v Ishaq & 2 others; Union of Kenya Civil Servants (Interested Party) (Constitutional Petition E064 of 2025) [2025] KEELRC 2045 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2045 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E064 OF 2025**

**B ONGAYA, J
JULY 10, 2025**

BETWEEN

LAWRENCE NYAGUTI OCHIENG PETITIONER

AND

ALISOKOR MOHAMUD ISHAQ 1ST RESPONDENT

TOM MBOYA ODEGE 2ND RESPONDENT

TITI BWANA 3RD RESPONDENT

AND

UNION OF KENYA CIVIL SERVANTS INTERESTED PARTY

JUDGMENT

1. The petitioner filed the Petition dated 14.04.2025 in person. The petitioner prayed for:
 - a. A declaration that the 1st, 2nd and 3rd respondents are unlawfully occupying the positions of National Chairperson, Secretary General and 1st Vice Chair of the interested party respectively.
 - b. An order be and is hereby issued declaring the occupation of the National Office by the 1st, 2nd and 3rd respondents null and void.
 - c. An order be and is hereby issued requiring the interested party to replace the vacant positions pursuant to Article 5 of its constitution within three months.
 - d. An order be and is hereby issued requiring the interested party to surcharge and cause the 1st, 2nd and 3rd respondents to pay all monies paid to them in form of allowances or salaries since their assumption of office on 05.09.2021.
 - e. The cost of this application be borne by the respondents.



2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition. The petitioner's case is as follows:
 - a. The promulgation of *the Constitution* of Kenya, 2010 necessitated the adoption of a new constitution by the interested party, to conform with the new constitutional dispensation.
 - b. Delegates were invited to the 5th delegates' conference held on 09.12.2010 where the new constitution of the Union was adopted.
 - c. The adopted constitution was subsequently registered by the Registrar of Trade Unions on 08.02.2011.
 - d. At the time of adoption of the new constitution, the respondents were officials and were therefore eligible to complete their term under the new constitution that was adopted and registered on 08.02.2011.
 - e. The 1st, 2nd and 3rd respondents sought re-election to the national office under the new constitution in 2011.
 - f. A subsequent election was held in 2016, wherein the respondents sought for re-election and were successfully re-elected for a second time.
 - g. The petitioner contends that after the second re-election, the respondents exhausted their eligibility to run for another re-election and should have served their last term of office.
 - h. The elections held in 2021 was a third re-election of the respondents.
 - i. The petitioner states that as national officials, the respondents had an obligation to uphold good governance and propagate the objectives of the Union impartially.
 - j. The respondents were responsible for clearing those who were to contest to national positions but instead took advantage of the trust bestowed upon them to clear themselves, even though they were not eligible to contest.
 - k. The petitioner states that the respondents have cumulatively and collectively earned at least thirty two million in allowances since they occupied the national offices.
 - l. It is the petitioner's case that the respondents are fraudulently and illegally in office contrary to article 11(1) and (2) of *the constitution* of the Union.
3. The 2nd Respondent filed his Replying Affidavit sworn on 12.05.2025 and drawn by Okong'o Wandago & Company Advocates. It was urged and stated thus:
 - a. The respondent was elected as an official of the union on 05.09.2021 as contemplated by section 31 of the *Labour Relations Act*, 2007 and has a right to serve for a period of five years until the next election.
 - b. The petitioner's assertion that the respondent should not have participated at the last union elections held in 2021 as a candidate, has not been established through evidence and arises from the petitioner's distortion of facts and misinterpretation of the union's constitution.
 - c. That every pre-election issue was litigated and resolved in the judgment that was rendered on 31.08.2021 in Nairobi ELRC Petition No. E114 of 2021 and said decision paved way for the union elections to be conducted on 05.09.2021.



- d. The current version of *the constitution* of the union became operational after the 12.11.2015 after its adoption following amendments which were undertaken through resolution of the national special delegates' conference.
 - e. The first election under this constitution was held on 27.10.2016 which was followed by the second election on 05.09.2021 at which the respondent was first re-elected, leaving him with a chance for 2nd re-election in 2026 in the event he wins the trust of the members come 2026.
 - f. The petitioner has a personal grudge and vendetta against the respondent.
 - g. The outcome of union elections which was conducted and held on 05.09.2021 ought to be respected and not to be invalidated for non-existent breaches which do not affect the results.
 - h. The last election of officials of the union was fully conducted in accordance with the registered constitution and which constitution does not contain a provision that discriminates between incumbents and other candidates in elections.
 - i. A notice of the election of officials was served upon the registrar in the prescribed form within 14 days of the completion of the election and no issue was raised and therefore these proceedings are an afterthought and made after a period of prolonged delay.
4. The 1st respondent filed a Replying Affidavit on his own behalf and that of the interested party, sworn on 02.05.2025 and drawn by Roba & Associates Advocates. It was stated and urged as follows:
- a. The instant petition is contrary to the doctrine of constitutional avoidance as the petitioner already has a remedy elsewhere under the interested party's constitution.
 - b. The instant petition is fatally defective and incompetent for failure by the petitioner to set out with the required level of specificity and particularity the constitutional rights contravened or constitutional provisions violated by the respondents.
 - c. By a resolution of the interested party's national special delegates conference held on 12.11.2015, the interested party got a new amended constitution which consequently repealed and replaced the interested party's earlier constitution registered by the Registrar of Trade Unions on 08.02.2011.
 - d. The 2015 amended constitution became the new, operable constitution of the interested party that governed all its activities and programs, including the election, assumption of office, tenure of office and vacation of office of the interested party's elected national officials.
 - e. The petition is a misunderstanding and misinterpretation of the interested party's constitution by the petitioner, and the implication of the subsequent amendments to the same.
 - f. The petitioner's reference to the 2011 constitution of the interested party as being the reference point as far as the election, assumption of office and vacation of office of its officials is misguided.
 - g. Under the 2011 constitution of the interested party, there were no limits on the terms of office of the union's national officials and this informed the amendments of 12.11.2015 hence any such limitation under article 11 thereof would, pursuant to article 32(2) of the union's 2015 constitution only come into force from the first elections under the new constitution and not before.



- h. Pursuant to article 32(1) of the interested party's constitution as amended by the resolution of the national special delegates conference of 12.11.2015 the provisions of the new constitution of the interested party herein regarding the election of union officials, assumptions and vacation of office came into force on 19.11.2015 when the registrar of trade unions approved and registered the amendments.
 - i. The five year limitation of the term of office of the union officials begun to run after the elections held on 27.10.2016.
 - j. The removal and/or suspension of national officials of a trade union is not within the purview and/or competence of court but the organs of the union, which in the instant case are the national executive board and the advisory council pursuant to article 12 of the interested party's constitution.
 - k. Fraud must be pleaded, particularized and proved to a standard higher than on a balance of probabilities, which the petitioner has failed to do in the instant petition, hence his claim that the respondent fraudulently obtained the position of chairperson of the interested party is an unsubstantiated allegation.
 - l. The petitioner being a member of the interested party, ought to have challenged the respondent's nomination and eventual elections to the office of chairperson before the relevant organs of the union, filed a complaint with the Registrar of Trade Unions and/or challenged his election in time before this honourable court through an election petition and hence cannot be heard to be asking the Honourable Court to declare the respondent's position vacant and replace him more than four years into his term.
 - m. The election of officials of the interested party of 2021 were conducted in accordance with the interested party's registered constitution as required under section 34(1) of the [Labour Relations Act](#), 2007 and the petitioner, if aggrieved ought to have challenged the same before the Honourable Court before or immediately after the same was certified by the registrar of trade unions, which he failed to do and hence the instant petition has been brought too late in the day.
 - n. The petitioner is intent on using the Honourable Court to unlawfully and unprocedurally remove validly elected officials of the interested party through the back door ostensibly in a bid to settle his personal and political scores with the said officials as a sour loser having himself vied for the position of organizing secretary in 2021 and lost.
 - o. The petitioner has failed to exhaust the available internal dispute and grievance resolution mechanisms provided for under the interested party's constitution 2015.
5. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns that the petition must fail because of the following findings and reasons:
- a. The respondents and interested party appear to establish that the constitutional amendments limiting the number of times a serving member of the union may be eligible for re-election was introduced in the union's re-amended constitution that was registered on 19.11.2015. To that extent the petitioner appears misconceived about the application of the clause to the respondents who were re-elected at the union elections of 2021.
 - b. As submitted for the 1st respondent and the interested party, the petition is chained by the principle of avoidance in that the reliefs sought are none of the envisaged or potential reliefs for enforcement of the Bill of Rights or other constitutional provisions. The petitioner has failed



to show the primary claim that is founded upon a constitutional violation that entitled him to move the Court by way of the instant petition.

- c. Further, the respondents and interested party have shown that Article 12 of the union constitution vests in the National Executive Board and Advisory Council with the authority to resolve disputes concerning the tenure of office bearers and to discipline national officials of the union. It appears to the Court that the petitioner ought to have exhausted that internal union procedure in view of the allegations of misconduct alleged in the petition. While the petitioner has submitted that the internal mechanisms have failed or are incapable of the implementation, then it would be a case to be allowed to proceed. However, it is that the principle of avoidance is really established as against the petitioner in view that a statutory appeal procedure is being evaded as found later in this judgment. In any event, the impossibility of invoking the internal procedure must be established by evidence that the allegations against the respondents cannot indeed be resolved by the interested party's internal procedures set out in union constitution. In furtherance of trade union autonomy, the Court holds that it would be crucial to uphold the internal processes.
- d. The Court observes that the challenged officials were registered by the Registrar of Trade Unions after the 2021 elections and in accordance with section 35 of the *Labour Relations Act*, 2007. Section 30 of the *Labour Relations Act*, 2007 provides thus "Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial Court against that decision within thirty days of the decision." The Court finds that the proper path for the petitioner to challenge the outcome of the 2021 elections was to appeal against the decision of the Registrar of Trade Unions registering the respondents whose election and registration is impugned or challenged. Thus, the petition is indeed trapped by the principle of avoidance and want of compliance of the procedure prescribed by the Court for approaching the Court.
- e. Accordingly, the case as urged and submitted for the respondents and the interested parties will succeed in view of the foregoing findings.
- f. The Court has considered that the petitioner and the respondents are all members of the interested party trade union and no orders on costs.

In conclusion the petition is hereby dismissed with no costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 10TH JULY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

