



University Academic Staff Union (UASU) & another v Attorney General & another; Kenyatta University Chapter Election Board & 19 others (Interested Parties) (Employment and Labour Relations Petition E157 of 2023) [2024] KEELRC 210 (KLR) (9 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 210 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E157 OF 2023
AN MWAURE, J
FEBRUARY 9, 2024

BETWEEN

UNIVERSITY ACADEMIC STAFF UNION (UASU) 1ST PETITIONER
UNIVERSITIES ACADEMIC STAFF UNION (UASU) NATIONAL SECRETARY
GENERAL 2ND PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT
REGISTRAR OF TRADE UNIONS (RTU) 2ND RESPONDENT

AND

KENYATTA UNIVERSITY CHAPTER ELECTION BOARD INTERESTED
PARTY
UNIVERSITIES ACADEMIC STAFF UNION (UASU) KENYATTA UNIVERSITY
CHAPTER INTERESTED PARTY
LABOUR COMMISSIONER INTERESTED PARTY
LEMOOSA PETER LETOTIN INTERESTED PARTY
OBONYO MARK MAKORI INTERESTED PARTY
CALVIN KAYI INTERESTED PARTY
MAGERO FIDELIUS BUNYASI INTERESTED PARTY
ITOLONDI WILFRIDA ARNODAH INTERESTED PARTY
MAKOKHA GEORGE LUKOYE INTERESTED PARTY
KANDIRI JOHN MUGO INTERESTED PARTY
MAGORE GEORGE OMONDI INTERESTED PARTY



MOHAMED DEKOW SHALLOW	INTERESTED PARTY
KATAM ELIZABETH JEROP	INTERESTED PARTY
BETT SHADRACK	INTERESTED PARTY
OWOUR IRENE AWOUR	INTERESTED PARTY
ONG'NG'A HUDSON OUKO	INTERESTED PARTY
OWILI FLORENCE AKINYI	INTERESTED PARTY
MUTHONI MAINA FLORENCE	INTERESTED PARTY
NGAO GLADYS KASIVA	INTERESTED PARTY
DR FRANKLINE KABURU KINOTI	INTERESTED PARTY

JUDGMENT

Introduction

1. The Petitioner filed the Petition herein dated 9th August 2023.

Petitioners' Case

2. The Petitioners aver that the 1st Petitioner in 2021 went through its election cycle; the 2nd Interested Party being one of its chapters established under Article 19 (a) of the UASU Constitution was scheduled to hold its election in line with Article 19 (g) read together with Article 14 of its constitution.
3. The Petitioners aver that the elections took place on 25th March 2021 during the 2nd Interested Party's Annual General Meeting (AGM) which was presided over by the then Nairobi County Labour Officer, Mr Tsimuli and a Form Q was filed for registration with the 2nd Respondent on 26th March 2021.
4. The Petitioners aver that from the returns declared and filed for registration through the Form Q declared the following members had been elected:
 - a. Lemos Peter Letotin – Chairman
 - b. Itolondo Wilfrida Arnodah – Vice chairman
 - c. Clavin Kanyi – Secretary
 - d. Magero Fidelius- Deputy Secretary
 - e. Magore George – Treasurer
 - f. Gladys Ngao- Deputy Treasurer
 - g. Kandiri John Mugo – Organising Secretary
 - h. Awour Irene Owuor - Delegate
 - i. Gerry Ayieko - Delegate
 - j. Caleb Kirui - Delegate
 - k. Florence Owili - Delegate



- l. Stephen Monanda – Delegate
 - m. Godfrey Macharia - Delegate
 - n. Muiya Munyao - Delegate
 - o. Katama Elizabethe Jerop – Trustee
 - p. Dekow Mohamed – Trustee
 - q. Jackline Nyerere – Trustee
 - r. Stephen Nzoka – Committee Member
 - s. Patrick Mbugi – Committee Member
 - t. Joseph Gimunta Mahiri – Committee Member
5. The Petitioners aver that some members of the chapter felt aggrieved with the outcome and challenged this in court by filing Nairobi ELRC Petition No E043 of 2021 which was accompanied with a Notice of Motion. Arising from the Notice of Motion, the court granted one ex parte conservatory order pending the determination of the substantive petition being:
- Pending hearing and determination of the Application interparties, a conservatory order is granted directing the 4th Respondent (Registrar of Trade Unions) not to register the names of candidates who were declared winners in the elections of the UASU Kenyatta University held on 25th March 2021.
6. The Petitioners aver that the judgment in Nairobi ELRC Petition No E043 of 2021 consolidated with Nairobi ELRC Petition No E093 of 2021 was delivered on 20th August 2021. The court nullified the election results conducted on 25th March 2021 and ordered the 1st and 2nd Respondent to update the Chapter’s voter’s register and upon updating and inspection of the register by members and with concurrence of the 3rd and 4th Respondents, the Chapter shall hold fresh elections within 60 days from the date of judgment.
7. The Petitioners aver that aggrieved by the judgment, the 2nd Interested Party and its Secretary filed Nairobi Civil Appeal Number E534 of 2021 at the Court of Appeal together with an application seeking to stay the judgment and orders granted in Nairobi ELRC Petition No E043 of 2021 consolidated with Nairobi ELRC Petition No E093 of 2021. The court through a ruling dated 22nd July 2022 declined to grant an order to stay the judgment. The appeal is still pending hearing and determination at the Court of Appeal.
8. The Petitioners aver that during the pendency of the stay of execution application, the petitioners in Nairobi ELRC Petition No E043 of 2021 filed an application seeking the court to cite for contempt of court against the former officials of the 2nd Interested Party. This application was recently dismissed through a ruling delivered on 31st July 2023.
9. The Petitioners aver that considering the election held on 25th March 2021 was nullified by the court, the 2nd Interested Party lacked leadership and the 1st Petitioner resolved through its National Delegates Conference (NDC) held on 17TH December 2021 that the National office, through the 2nd Petitioner takes over the management of the 2nd Interested Party’s affair pending resumption of normalcy.
10. The Petitioners aver that the 1st Petitioner moved to organise fresh elections as required by the judgment in Nairobi ELRC Petition No E043 of 2021 and it put necessary arrangements to have the elections



- held on 15th September 2022. The Election Board put in place a schedule of activities to help in planning and conduct the elections.
11. The Petitioners aver that the petitioners in Nairobi ELRC Petition No E043 of 2021 moved to court and obtained an order staying it from holding the AGM and consequent elections planned, however, upon hearing all the parties, the court dismissed the application through a ruling delivered on 24th February 2023.
 12. The Petitioners aver that the former petitioners in Nairobi ELRC Petition No E043 of 2021 declined to participate in the elections when the Elections Board invited aspirants to pick the nomination papers.
 13. The Petitioners aver that upon collective failure of some members to intentionally to pick nomination papers and submit themselves as candidates in the elections, the only people who picked and returned their nomination papers became the only candidates in the respective positions that they submitted.
 14. The Petitioners aver that the 2nd Petitioner issued a notice to the 2nd Interested Party's members for a resumption of the AGM previously stayed and the same was to be held on 27th February 2023 at Kasarani to culminate the fresh elections as required through the judgment delivered in Nairobi ELRC Petition No E043 of 2021.
 15. The Petitioners aver that from the elections, the 4th – 19th Interested Parties were elected into office. The 2nd Petitioner then registered the aforesaid as the new officials of the 2nd Interested Party which was declined by the 2nd Respondent on 8th June 2023.
 16. The Petitioners avers that the 2nd Respondent's failure to register the 2nd Interested Party's officials is a contravention of Article 36 (1) of the Constitution of Kenya 2010 to the extent that its consequence is making the 2nd Interested Party non-operational.
 17. The Petitioners aver that by unlawfully refusing to register the duly elected officials, the 2nd Petitioner has denied the 2nd Interested Party's members the right to join in the activities of the 1st Petitioner, a trade union. This contravenes the provisions of Article 41 (2) (c) of the Constitution and as a result the Petitioners are entitled to a remedy enforceable by this court.
 18. The Petitioners aver that the 2nd Respondent indicated in their letter dated 8th June 2023 that one of the reasons she refused to register the 2nd Interested Party's duly elected officials was because she received objections from a group led by one Franklin Kaburu. The petitioners aver that by entertaining these objections, the 2nd Respondent converted their role into that of a dispute resolution body hence usurping the powers of the court.
 19. The Petitioners aver that in the letter, the 2nd Respondent purported to identify and highlight the supposed illegalities that were committed during the 2nd Interested Party's elections conducted on 27th February 2023. The 2nd Respondent acted ultra vires as she usurped the powers of the Employment and Labour Relations Court which is clothes with the jurisdiction to interpret the law.
 20. The Petitioners aver that even the 2nd Respondent informed them that she declined to register the officials because she supposedly received information from one Sheikh Abdullahi Bundid informing her that he had conducted a parallel set of election on 27th February 2023, which statement constitutes constitutional and legal irregularity. Sheikh Abdullahi was former chair of election board of the 2nd interested party.
 21. The Petitioners aver that the 2nd Respondent contention that there was no confirmation that the chapter members from all campuses voted is misplaced insofar as the 1st Petitioner's constitution



does not envisage several AGMs being held concurrently, therefore, requiring a different standard contravenes section 34(1) of the *Labour Relations Act*, 2007.

22. The Petitioners aver that the 2nd Respondent in her letter threatened to suspend or deregister the 2nd Interested Party out of failure to hold elections. The Petitioners aver that the 2nd Interested Party not only conducted elections which the 2nd Respondent has unlawfully failed to register the officials, but the 2nd Respondent has no power to deregister or suspend the 2nd Interested Party.
23. The Petitioners aver that the elections had only single candidates for the positions available therefore, ballot papers can never be printed where the candidates are unopposed. The 2nd Respondent acted in contravention of Article 47 of *the Constitution* which entitles everyone to fair administrative action.
24. The Petitioners aver that the 2nd Respondent's unlawful refusal to register the officials on the allegations that it issued a notice lasting 3 days is a misrepresentation as the notice ran for 20 days. The notice period ran from 25th August 2022 to 6th September 2022 and again from 24th February 2023 to 27th February 2023 giving a total of 15 days and not 3 days as misrepresented by the 2nd Respondent. The Petitioners complied with constitutional threshold of not less than 14 days' notice period as provided under Article 19 (d) and (g) of the union's constitution.
25. The Petitioners aver that the 2nd Respondent directed the 2nd Interested Party to hold fresh elections within the next 60 days. The date of the elections ought to have been held at court's further directions as court had already ruled as part of the terms of the court judgment challenged on the appeal before the Court of Appeal. Further, the 2nd Respondent acted ultra vires as it usurped the powers of courts as enshrined by Article 159(1) of *the Constitution*.
26. The Petitioners aver that it attained the quorum of one third in the meeting because 988 members were eligible to vote and 351 attended and participated in the AGM.

Respondents' Case

27. In opposition to the Petition, the Respondents filed replying affidavits dated 11th October 2023.
28. The Respondents aver that the 2nd Respondent received a letter from Onesmus Maluki on 8th September 2022 seeking concurrence on the voters register of UASU, Kenyatta Branch, however, there was no Registrar in office as the term of contract of the former Registrar expires in June 2022. Therefore, it was not possible to respond or provide concurrence of the voters register as ordered by the Court.
29. The Respondents aver that the court stopped the elections slated for 15/9/2022 and the election did not take place. The Petitioners then appointed a new Election Board pursuant to Article 14 and 19 (e) of the Union's registered constitution. The Board then comprised of Sheikh Abdullahi Bundid (Chairperson), Father Boniface Kariuki (Member) and Rev Esther Kariuki (Member).
30. The Respondents aver that the Petitioners in defiance of the Judgment in ELRC Pet No. E043/2021, reconstituted the Elections Board and nominated officials from the national office as members of the Board in contempt of the judgment.
31. The Respondents aver that the 2nd Petitioner appointed the Commissioner of Labour to preside over the elections slated for 15/9/2022. This conduct is in contempt of the court's judgment given on 20/8/2021 as the elections were to be conducted by the Elections Board (the 3rd Respondent in ELRC Pet No. E043/2021) not the Commissioner of Labour.



32. The Respondents aver that section 34 (1) of the [Labour Relations Act](#) provides that election of trade union officials shall be conducted in accordance with its registered constitution. The 1st Petitioner's registered constitution does not provide for conduct of the elections of the Union by the Commissioner of Labour but by an Electoral Committee/ Commission. The Petitioner did not involve the Elections Board which was the 3rd Respondent in ELRC Pet No. E043/2021 contrary to the judgment delivered on 20/8/2021.
33. The Respondents aver that the voters register was not updated as per the court order and neither the Election Board (the 3rd Respondent in ELRC Pet No. E043/2021) conducted the elections and also 2nd Respondent did not give their concurrence in regard to the register forwarded on 9/9/2022.
34. The Respondents aver that the voters register would have ensured that only members who are not in arrears of the Union's subscriptions for more than thirteen weeks would be eligible to vote as provided under section 33 (c) of the [Labour Relations Act](#).
35. The Respondents aver that the Branch elections could not proceed immediately after delivery of the ruling on 24/2/2023 as the voters' register had been updated in September 2022, over 5 months before. This was necessary to update the register after delivery of the ruling to confirm eligibility of the members to participate in the elections. During the period of 5 months, some members ceased being members of the Union through death, termination, dismissal, resignation or retirement from employment.
36. The Respondents aver that members who had not expressed interest to contest may have expressed interest after the ruling made on 24/2/2023. Further, some members who may not have been eligible to contest in September 2022 may have become eligible to contest after 24/2/2023.
37. The Respondents aver that the 2nd Respondent states that it received a notice of change of names of officials (Form Q) dated 28/2/2023 seeking registration of officials elected on 27/2/2023. However, vide a letter dated 8/6/2023, the 2nd Respondent refused to register the change of officials based on the reasons provided therein which are lawful and in accordance with section 35(4) of the [Labour Relations Act](#).
38. The Respondents aver that if the Petitioners were aggrieved by the aforementioned decision, they ought to have preferred an appeal to this court as provided under section 30 of the [Labour Relations Act](#) and section 12(5) of the [Employment and Labour Relations Court Act, 2012](#). The appeal is required to be filed within 30 days of the decision, however, the Petitioner did not prefer an appeal hence this petition is incompetent and bad in law and should be dismissed.
39. The Respondents aver that the Petition shows the subject matter is an appeal against the decision of the 2nd Respondent made on 8/6/2023 but veiled as a constitutional petition.
40. The Respondents aver that the UASU Kenyatta University chapter held two elections on 27/2/2023; one presided over by the Commissioner of Labour and another by the initial Election Board chaired by Mr Sheikh Abdullahi Bundid, the 3rd Respondent in ELRC Pet No. E043/2021.
41. The Respondents aver that the 2nd Respondent received an application for registration of election officials from Mr Sheikh Abdullahi Bundid. It refused to register the officials vide a letter dated 8/6/2023 which was in accordance with section 35(4) of the [Labour Relations Act](#).
42. The Respondents aver that the 2nd Respondent received an objection to the registration of the application for change of officials made by the Petitioners dated 28/8/2023 from Kaburu Frankline



Kinoti. It was considered in its decision not to register the Petitioner's Notice of Change of Officials (Form Q) by the Petitioners dated 28/2/2023.

43. The Respondents aver that the 2nd Respondent informed the Petitioners that there was another election held on the same day by a separate group of members from the union from UASU Kenyatta University Branch and also forwarded the objection from Frankline Kinoti, the election report and other documents filed by the Chairman of the initial Election Board.
44. The Respondents aver that this court has no jurisdiction to entertain and determine the compliant but the same ought to have been instituted at the High Court if their rights/ fundamental freedoms have been violated, denied or infringed upon.
45. The Respondents aver that the 2nd Respondent is empowered under section 28(2) of the Labour Relations Act to cancel or suspend the registration of a trade union, employer's organization or federation where inter alia the trade union, employer's organization or federation is operating in contravention of the provisions of the Labour Relations Act by failed to conduct elections in accordance with the requirements of the Act. This extends to cancellation or suspension of registration of branches.
46. The Respondents aver that the court cannot prevent the 2nd Respondent from exercising the powers donated to it by statute as it is tantamount to interfering with its regulatory mandate granted under the law.
47. The Respondents aver that before cancelling or suspending the registration of a trade union, the 2nd Respondent is required under section 28(3) of the Labour Relations Act to issue a 2-month notice of intention to suspend or cancel the registration and consider representations made by the union.
48. The Respondents aver that the 2nd Respondent is yet to issue the said notice hence this petition is premature.
49. The Respondents aver that in the event the 2nd Respondent cancels or suspends the registration of the Branch, the 1st Petitioner will be entitled to file an appeal against the said decision under section 30 of Labour Relations Act and section 12 (5) of the Employment and Labour Relations Court Act, 2012.
50. The Respondents aver that the 2nd Respondent did not vary the terms of the judgment or usurp the powers of the Court as provided under the Constitution as alleged by the Petitioners. The 2nd Respondent having been a party in ELRC Pet No. E043/2021 and its regulatory mandate was entitled to direct the Union to carry out fresh elections as per the judgment in the said case.
51. The Respondents aver that the Petitioners have not exhausted the remedies and mechanisms provided under the Labour Relations Court in the event that they were aggrieved by the decision of the 2nd Respondent taken under the Act.

4th - 13th and 15th – 19th Interested Parties' Case

Interested Parties Submissions

52. The Interested Parties' aver that the 4th to 19th Interested Parties were elected unopposed to various positions during the 2nd Interested Party's elections held in accordance with the 1st Petitioner's constitution during its AGM on 27th February 2023.
53. The Interested Parties aver that some aggrieved members of the 2nd Interested Party challenged the outcome of the elections in court through Nairobi ELRC Petition No. E043 of 2021.



54. The Interested Parties aver that in its judgment the court nullified the elections held on 25th March 2021 and ordered the 2nd Interested Party to hold fresh election within 60 days from the date of judgment. Therefore, Form Q submitted to the 2nd Respondent for registration became non registrable hence the officials elected on 25th March 2021 were never registered.
55. The Interested Parties aver that in the said judgment, the court ruled that the mandate of the former officers expired on the day of election and as a consequence the immediate former officials lacked mandate to represent the Chapter. Aggrieved, they appealed to the Court of Appeal by filing Nairobi Civil Appeal Number E534 of 2021 which is still pending for hearing.
56. The Interested Parties aver that after the ruling of 22nd July 2022, the 2nd Petitioner issued a notice for convening the 2nd Interested Party's AGM on 15th September 2022 and the decision was communicated to its members by the 2nd Petitioner vide a letter dated 25th August 2022.
57. The Interested Parties aver that in preparation of the fresh elections, the 1st Petitioner appointed the chapter's Election Board to organise the elections. The Elections Board then released a schedule of activities culminating into the fresh elections.
58. The Interested Parties aver that the Election Board invited all interested aspirants to pick, fill and return the nomination papers which were followed by reminders.
59. The Interested Parties aver that through a letter dated 7th September 2022, the 1st Interested Party circulated a provisional list of persons who had been nominated for various position to members of the 2nd Interested Party and on 9th September 2022, the Board circulated the final list. Each of the duly nominated candidates did not have competitors, therefore, became elected unopposed at the scheduled AGM.
60. The Interested Parties aver that the AGM slated for 27th February 2023 was meant to lead to holding of fresh elections as required pursuant to the judgment delivered in Nairobi ELRC Petition No. E043 of 2021. The election was conducted and presided over by the Assistant Commissioner for Labour.
61. The Interested Parties aver that the elections did not involve casting of votes because each position had attracted only one candidate hence each of the nominated candidates were declared elected unopposed.
62. The Interested Parties aver that the 2nd Respondent did not acknowledge receipt of Form Q on 28th February 2023 and made no communication until 8th June 2023, when she wrote a letter to the 2nd Petitioner giving reasons for her refusal to register the names in the said Form.
63. The Interested Parties aver that 101 members of the 2nd Interested Party participated in the election of 27th February 2023 at Kasarani presented a written petition to the 2nd Respondent requesting her to register the 2th to 19th Interested Parties which there was no response.

3rd Interested Party's Case

64. The 3rd Interested Party avers that it received a request from the 2nd Petitioner to have the office to serve as a returning officer in its elections slated for 15th September 2022. It then appointed, Grace Mweresa, an Assistant Commissioner of Labour to serve as the presiding Officer during the 2nd Interested Party's fresh elections.
65. The 3rd Interested Party avers that the 1st Interested Party informed it that the provisional register was shared with members through emails on 2nd September 2022, through WhatsApp, university notice boards and UASU Kenyatta University office for purpose of verification.



66. The 3rd Interested Party avers that it was assured by the 1st Interested Party that all issues raised by the 2nd Interested Party's members was resolved and an updated memo was shared with them on 6th September 2022. It then invited all parties from both the Petitioners and Respondents' sides in Nairobi ELRC Petition No. E043 of 2021 to verify the register of voters.
67. The 3rd Interested Party avers that some members of the 1st and 2nd Interested Party attended the meeting on 14th September 2022 to verify the register and none raised any complaints or issues. However, none of the former petitioners in Nairobi ELRC Petition No. E043 of 2021 attended the meeting.
68. The 3rd Interested Party avers that sometime on 24th February 2023, the 2nd Petitioner communicated that the application temporarily stopping the holding of elections had been dismissed and orders vacated and the elections had been rescheduled for 27th February 2023. Since the requisite preparation of the elections had been finalised in September 2022, it then proceeded to preside over the fresh elections at Moi Sports Centre, Kasarani.
69. The 3rd Interested Party avers that the elections were conducted in accordance with the terms of Article 14 of the UASU Constitution.
70. The 3rd Interested Party avers that the AGM was attended by 351 members out of 988 members hence met the one-third threshold quorum provided in the 1st Petitioner's constitution, therefore the election proceeded as planned. All members in attendance participated in the elections and were eligible since their subscriptions were not in arrears as required by the 1st Petitioner's constitution.
71. The 3rd Interested Party avers that no ballot papers were printed because none of the contested positions attracted more than one candidate, hence all candidates stood elected unopposed.

20th Interested Party's Case

72. The 20th Interested Party avers that the purported "Repeat election" done at a Hotel in Kasarani was a sham. The 2nd Petitioner herein handpicked his cohorts who are the "unopposed elected leaders" and went ahead to declare them as winners, yet they never observed the election Rules as set under the UASU Constitution.
73. The 20th Interested Party avers that there was no free and fair election conducted on 27th February 2023 and confirms that there were no ballot papers printed or any votes cast. How did the members cast their votes if there were no ballot papers and yet again the positions were unopposed?

Petitioners' Submissions

74. The Petitioners submitted that the judgment of this court in Nairobi ELRC Petition No. E043/2021 was to the effect that the mandate of the 1st and 2nd Respondent had lapsed therefore, the holders of those offices ceased being officials of the said chapter and they became ordinary members of the Union without additional responsibilities. Further, the former officials of the 2nd Interested Party's have no obligation to organise the fresh elections as a consequence of the nullification of the elections held on 25th March 2021.
75. The Petitioners submitted that section 34 (1) of the *Labour Relations Act* obligates elections of trade unions to comply with their own constitutions, meaning the legal conundrum at the 2nd Interested Party's chapter had to be resolved in compliance of its Constitution. Article 6 of the 1st Petitioner constitution establishes the National Delegates Council (NDC) which the highest decision making organ was convened on 17th December 2021 to deliberate on the situation and taking cognisance that



- the 2nd Interested Party had no office yet there were pending issues to be handled, the NDC resolved to have the 1st Petitioner take over its affairs pending resumption of normalcy.
76. It was then submitted for the Petitioners that the NDC resolution meant the 1st Petitioner took over the management of the 2nd Interested Party affairs including its day to day affairs by its National Executive Committee (NEC) pursuant to Article 7 of the 1st Petitioner's constitution, NEC is the governing body of the Union. This meant NEC had taken over the obligation of organising the fresh elections decreed by the judgment delivered on 20th August 2021.
77. The Petitioner submitted that NEC appointed an Election Board, set the date of the 2nd Interested Party's AGM for 15th September 2022 which was to culminate into the elections and pursuant to the 2nd Respondent's direction directing trade unions to utilise the office of the Commissioner of Labour for purposes of election, NEC wrote to the 3rd Interested Party requesting them to preside over the elections.
78. The Petitioner submitted that there was no other way they would have complied with the court orders other than through the compliance measures taken and were validated through the ruling delivered on 31st July 2023. By this court not finding the Respondents in contempt, the role of the Petitioner in the management of the 2nd Interested Party's affairs including organising the conduct of the election, already received judicial seal of approval through the ruling.
79. The Petitioners submitted that the fresh elections on 27th February 2023 was in full compliance with the 1st Petitioner's constitution, pursuant to section 34(1) of the [Labour Relations Act](#), 2007 as well as the judgment of this court delivered on 20th August 2021.
80. The Petitioners submitted that the 2nd Respondent has no power under the law to refuse to register Form Q filed for registration subsequent to the fresh elections held unless there is an order of the court stopping such registration. Reliance was placed on *Clay Odari & 2 Others V Kenya Petroleum Oil Workers Union & 8 Others* [2018] eKLR.
81. The Petitioners submitted that the 2nd Respondent acted ultra vires her powers as provided under section 34 (4) of the [Labour Relations Act](#) hence her decision to refuse to register Form Q relating to the 2nd Interested Party, therefore, became null and void ab initio.
82. The Petitioners submitted that section 35 of the [Labour Relations Act](#), 2007 are only applicable to the circumstances of a change of officials in a trade union, as a result, the said section was completely inapplicable to the circumstances of a fresh election such as the instant case. Section 34 and 35 of the [Labour Relations Act](#) cannot be applied interchangeably because they relate to different circumstances as held in *Dr. Magare Gikenyi J. Benjamin v County Government of Nakuru & 4 others* [2020] eKLR.
83. The Petitioners submitted that by placing reliance upon the supposed letter of objection by the 20th Interested Party, the 2nd Respondent acted ultra vires her powers donated by section 35(4) of the [Labour Relations Act](#). The letter was illegal and immaterial and the 2nd Respondent lacked any lawful basis to place her reliance on it as it constitutes an incompetent way to challenge results of an election of a trade union.
84. The Petitioner submitted that the 1st Interested Party accorded all members of the 2nd Interested Party reasonable opportunity to know its calendar of activities and the 2nd Petitioner's notice was unambiguous and no one can impugn the outcome of the elections merely because the officials were elected unopposed, unless there is evidence pointing to illegal actions of the 1st Interested Party.



85. The Petitioners submitted that Article 10 of *the Constitution* prescribes values of good governance, integrity, transparency and accountability for all state offices including the 2nd Respondent. The 2nd Respondent disregarded these principles when she falsely stated the voters register had not been updated. The voters register was updated and the information relayed to all members beside the 2nd Respondent who failed to act on the same.
86. The Petitioners submitted that the Respondent's decision to unjustifiably refuse to register the 2nd Interested Party's officials denied the 1st Petitioner and the Chapter the right to administer the activities of the trade union as well as determine its own programmes.
87. The Petitioner submitted that the 2nd Respondent's excuse that the presiding officer's report did not indicate whether voters from all campuses participated in the election yet all voters were eligible to participate in the election. Further, her refusal to register the officials on the fact that ballot papers were not printed and no ballots cast are unreasonable and irrelevant owing to the fact the candidates were unopposed. This violated the Petitioner's right to a fair, reasonable and lawful administrative action under Article 47 of *the Constitution*.
88. The Petitioners submitted that the 2nd Respondent's reliance on one sided, unfounded and unreasonable claims by a few members of the chapter to refuse the registration of the officials violated the provisions of Article 27 (1) and (2) of *the Constitution* which guarantee every person the right to equal benefit and protection of the law. This decision was discriminatory as it relied on baseless allegations which the 2nd Respondent raised as mere excuses instead of verifying their veracity.
89. The Petitioners submitted that the efforts by parties to stop the fresh election failed and the courts dismissed their applications. The fresh elections had to be held since, the presiding officer appointed, register updates, members contesting had been listed and list circulated. Importantly, the court lifted conservatory orders against the 2nd Interested Party from holding its elections, therefore, the elections met the threshold prescribed in law and in accordance to the directions of the court.

4th -13th and 15th -19th Interested Parties' Submissions

90. The Interested Parties submitted that Article 19 (f) of UASU constitution, provides that the Chapter Executive Committee shall be responsible for each chapter subject to the control of NEC. Article 6 (b) provides that the NDC shall be the supreme authority of the union. During the UASU NDC on 17th December 2021, the 1st Petitioner was directed to ensure the 2nd Interested Party issues were resolved expeditiously. This directive was implemented when NEC under the leadership of the 1st Petitioner organised the 2nd Interested Party's elections that took place on 27th February 2023.
91. The Interested Parties submitted the 2nd Respondent acknowledged the aforementioned fact under paragraph 25 of her replying affidavit dated 11th October 2023 where she stated UASU KU Branch being a branch of UASU does not operate independently of the head office. This means in the absence of chapter leadership, the national office takes over the operation of the chapter until such time when new leaders are elected, therefore, the claim by the 20th Interested Party that the Petitioners have continuously intermeddled in the affairs of the 2nd Interested Party is unfounded, obnoxious.
92. The Interested Parties submitted that Article 14 (g) of the UASU constitution provided that the returning officer shall be an independent person/body identified by NEC, therefore, the choice of the labour commissioner as the presiding officer did not offend the UASU constitution. The election was conducted as per the law and in accordance with the court orders of 20th August 2021.



93. The Interested Parties submitted that the judgment delivered on 20th August 2021 in ELRC Pet No. E043 of 2021 consolidated with ELRC Pet No. E093 of 2021 stripped off mandate of the immediate former UASU KU Chapter to organise the repeat election.

20th Interested Party's Submissions

94. The 20th Interested Party submitted that the Petitioners lack locus standi in instituting this suit as they were not parties in ELRC Petition No. 043/2021 or Civil Application E498 of 2021 wherein the Applicants sought for stay of the judgment rendered in ELRC Petition No. 043/2021.
95. The 20th Interested Party submitted that the Petitioners have no legal mandate to purport to take over the affairs of the 2nd Interested Party herein over the repeat election. Contrary to the assertions of the Petitioners, there lacks any resolution by the Petitioners to have the 1st Petitioner take over the affairs of the 2nd Interested Party.
96. The 20th Interested Party submitted that the Petitioners are forum shopping having failed at the Court of Appeal, they have filed this Petition in a bid to have this Court review the decision delivered in ELRC Petition No. 043/2021.
97. The 20th Interested Party submitted that the court in its judgment dated 20th August 2021 in ELRC Petition No. 043/2021 directed the 2nd Interested Party to conduct fresh elections within 60 days from the date thereof. Prior to the holding of the ordered repeat elections, the voters' register was to be updated and inspected by the members and only then with the concurrence of the 3rd and 4th Respondents therein namely UASU Chairman, Kenyatta University Chapter Elections Board and the Registrar of Trade Unions respectively, would the Kenyatta University UASU Chapter hold the fresh elections within the stipulated timeframe of 60 days.
98. The 20th Interested Party submitted that in preparation of the repeat elections, no ballots were printed nor cast to anybody. Further, the 2nd Respondent was not involved in or informed of the scheduled repeat elections since the voter register had not been updated. As a result, the elections were not held within the timeframe given by the court and have never been conducted to date.
99. The 20th Interested Party submitted that the judgment in ELRC Petition No. 043/2021 directed the 2nd Respondent not to register any officials of the 2nd Interested Party hence the refusal of the 2nd Respondent to effect registration of the purported Form Q submitted by the 2nd Petitioner. No fresh elections have been held since, therefore, there isn't any Form Q to be registered.
100. The 20th Interested Party submitted that 2nd Respondent should not be compelled to register the purported elected officials of the 2nd Interested Party since the fresh elections are yet to be held and the court in ELRC Petition No. 043/2021 in its judgment dated 20th August, 2021 directed the 2nd Respondent not to register any officials of the 2nd Interested Party. If the 2nd Interested Party is compelled to register the officials of the 2nd Interested Party, the action shall be tantamount to contempt of court as the 2nd Interested Party shall be defying the judgment of the Honourable Court in ELRC Petition No. 043/2021.

Analysis & Determination.

101. The issues for determination are:
- i. Whether the 2nd Interested Party's fresh election complied with the relevant procedures including directions of the court in Nairobi ELRC Pet No. E043 of 2021.



- ii. Whether the 2nd Respondent’s refusal to effect registration of officials is a violation of the rights of the Petitioners, the 2nd Interested Party and members of the 2nd Interested Party.
- iii. Whether the Petitioners are entitled to the reliefs sought.

Whether the 2nd Interested Party’s fresh election complied with the relevant procedure including directions of the court in Nairobi ELRC Pet No. E043 of 2021.

102. The Petitioner avers that its conduct of the fresh election was lawful and in accordance with the 1st Petitioner’s constitution and the court orders given in Nairobi ELRC Pet No. E043 of 2021.

103. Section 34 of the *Labour Relations Act* provides that:

“The election of officials of a trade union, employers’ organisation or federation shall be conducted in accordance with their registered constitutions.”

104. It is not disputed that this court ordered in Nairobi ELRC Petition No. E043 of 2021 that:-

- “a.
- b. It is declared that the 1st and 2nd Respondents in Petition 043/2021, violated the 3rd and 4th Petitioners’ fundamental rights and freedoms under *the Constitution* of Kenya and the *Labour Relations Act*, by excluding them from the voters’ register.
- c. No registration shall be effected by the 4th Respondent, with regard to results from the elections of 25th March 2021.
- d. The election results of 25th March 2021 are nullified.
- e. The 1st and 2nd Respondents shall update the Chapter’s voters’ register, as advised earlier by the 4th Respondent.
- f. Upon updating the voters’ register; upon inspection of that register by members; and with the concurrence of the 3rd and 4th Respondents, the Kenyatta University UASU Chapter, shall hold fresh elections within 60 days of this Judgment.
- g.”

105. The Petitioners submitted that the 1st Petitioner vide its National Election Board took over the day to day running of the 2nd Interested Party as there was no leadership in office to do so. As part of its job, it constituted an Election Board to conduct the elections of officials as directed in the aforementioned judgment and the same was slated for 15th September 2022. However, the Petitioner in Nairobi ELRC Petition No. E043 of 2021 moved to court and obtained an order staying the 2nd Interested Party from holding the AGM and consequent elections planned, however, upon hearing all the parties, the court dismissed the application through a ruling delivered on 24th February 2023.

106. Upon dismissal of the Application, the 2nd Interested Party proceeded to notify its members that it will proceed with the elections on 27th February 2023 which was held and the said officials were duly elected unopposed.



107. The Election Board duly followed the directions given to court as it has proved that it forwarded the voters register to all members vide an email dated 6th September 2022 for verification who are inclusive the member of the former Election Board and it further invited the 2nd Respondent to verify the same in accordance with the judgment delivered in Nairobi ELRC Petition No. E043 of 2021.
108. The 2nd Respondent averred that the Petitioners failed to give the requisite notice period to its members, however, the Petitioner maintain that they proceeded with the 2nd Interested Party's election from the date the court lifted the stay to hold the AGM and elections granted in Nairobi ELRC Petition No E043 of 2021 which was dismissed by the court through a ruling delivered on 24th February 2023.
109. The Petitioner argues that the notice period ran from 25th August 2022 to 6th September 2022 and again from 24th February 2023 to 27th February 2023 giving a total of 15 days and not 3 days as misrepresented by the 2nd Respondent. The Petitioners complied with constitutional threshold of not less than 14 days' notice period as provided under Article 19 (d) and (g) according to the Petitioners averments but in view of the differing timeliness the notice should have run concurrently for 14 days.
110. However, with due consideration that the ruling was delivered 6 months from the date of issuance of the first notice on 25th August 2022, it would have been prudent that the Petitioners once again complied with court orders given in the judgment delivered in Nairobi ELRC Petition No E043 of 2021.
111. As the 2nd Respondent submitted the verification of the voter's register should have been redone as some members may have ceased or resigned their membership due to different reasons and further given a 14 days' notice period to its members informing them of their intention to hold the AGM and consequent elections as provided under Article 19 (d) and (g) of their constitution.
112. The Petitioners therefore failed to prepare for the 2nd Interested Party's fresh elections held on 27th February 2023 in accordance with the Union's constitution and the orders granted in Nairobi ELRC Petition No E043 of 2021.

Whether the 2nd Respondent's refusal to effect registration of officials is a violation of the rights of the Petitioners, the 2nd Interested Party and members of the 2nd Interested Party.

113. Having established that the fresh elections held on 27th February 2023 did not satisfy the provisions of the Union's constitution and the orders granted in Nairobi ELRC Petition No E043 of 2021, the 2nd Respondent acted well within its powers to reject the Petitioners application to register the new officials.
114. The 2nd Respondent vide its letter dated 8th June 2023 refused to register the new officials for various reasons, however, this court agrees with it on only one of the reasons, that the elections were not conducted as per the court orders given in Nairobi ELRC Petition No E043 of 2021 as discussed above.
115. Article 14 (g) of the Union's constitution provides that a returning officer shall be an independent person/body identified by the Union's NEC. The Petitioners submitted that upon taking over the management of the 2nd Interested Party's affairs, NEC requested the 3rd Interested Party to preside over the elections as the returning officer. This was well within the Union's constitution.
116. The Petitioners and the 3rd Interested Party submitted that there was no secret ballot or ballot papers as the nominated persons were unopposed, therefore, it beats logic that they would have prepared ballot papers or used the secret ballots.



117. The new Election Board clearly called for members to submit their nomination papers before the initial election which were to be held on 15th September 2022. The Petitioners have availed the nomination papers received from the various candidates and confirmed that indeed the members were unopposed for these positions.
118. It is submitted by the Petitioners, that the 2nd Respondent has no power under the law to refuse to register Form Q filed for registration subsequent to the fresh elections held unless there is an order of the court stopping such registration. The honourable court has considered the court's orders guided by the judgment made in Nairobi ELRC Petition No E043 of 2021.
119. Clearly the UASU (Kenyatta University Chapter) the 1st respondent and Secretary of Kenyatta University chapter (UASU) were according to the judgment of 21st August 2021 to update the chapter's voter's register as advised by registrar of trade union who was that 4th respondent in the aforesaid case no 043/2021. This is not demonstrated was complied with.
120. Again upon updating the voter's register and inspection of register by members with the concurrence of chairman of the Kenyatta University Chapter Elections Board (3rd respondent) and the registrar of trade unions (4th respondent) then Kenyatta University (UASU chapter) shall hold fresh elections within 60 days from 21st August 2021. This again was not complied with.
121. The elections are to be conducted as per the court order herein and the union Constitution and the *Labour Relations Act*. In the case of Supreme Court of Kenya Raila Odinga & Another vs Independent electoral Boundaries & 2 Others (2017) EKLRC stated that the elections were fraught with irregularities. "Elections ought to be conducted in a transparent and open process" they asserted.
122. Furthermore, court orders are given to be obeyed in order to preserve the sanctity of the rule of law. In petition 351/2015 Trusted Society of Human Rights Alliance vs Cabinet Secretary For Devolution And Planning & Hon. Attorney General the court observed " it cannot be disputed that an order of the court has to be respected by the parties who are bound by it. Therefore every effort must be made to implement the order of the court and not disobey the same. It is not up to the party to choose whether to comply or not to comply with such order...."
123. The court has considered the lengthy history of this matter, the weighty pleadings and submissions as well as the annexures and holds that the 2nd respondent did not violate the petitioners rights and or those of the interested parties and holds that the petitioners should comply with the direction of the court as per the cited orders of 21st August 2021 as well as the timeliness by the 2nd respondent which should now start running from the date of this judgment. The petition dated 9th August 2021 and the prayers thereto are therefore dismissed.

Each party will meet their respective costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF FEBRUARY 2024

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ANNA NGIBUINI MWAURE

JUDGE

ORDER



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2) (d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

