



**Kenya County Government Workers Union v Registrar of Trade Unions;  
Rotich & another (Interested Parties) (Employment and Labour Relations  
Appeal E038 of 2021 & Employment and Labour Relations Cause E173 of 2022  
(Consolidated)) [2024] KEELRC 2010 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2010 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**EMPLOYMENT AND LABOUR RELATIONS APPEAL E038 OF 2021 &  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E173 OF 2022 (CONSOLIDATED)**

**BOM MANANI, J**

**JULY 25, 2024**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... CLAIMANT**

**AND**

**REGISTRAR OF TRADE UNIONS ..... RESPONDENT**

**AND**

**DAVID KIPRONO ROTICH ..... INTERESTED PARTY**

**RUKIA CHEPTOO ..... INTERESTED PARTY**

**JUDGMENT**

**Background**

1. The dispute between the parties revolves around the branch elections that were allegedly conducted by the Appellant/Claimant (hereafter referred to as the Claimant) on 29<sup>th</sup> January 2021 for its Nandi County branch and the Respondent’s decision not to register the new officials. According to the Claimant, the elections were validly conducted and new officials elected. As such, the Respondent is obligated to register them.
2. On the other hand, the Respondent disputes the fact that valid elections were conducted. As such, it has declined to recognize and register the names of the new branch officials. Instead, the Respondent has directed that the entire process be repeated.
3. The court directed that the Interested Parties be joined to the suit as the proceedings affect them. The two were allegedly unfairly removed from the list of contestants in the impugned elections. And



hence the decision by the Respondent to decline to register the proposed new branch officials of the Claimant.

4. It is perhaps necessary to point out at this point that when the Respondent refused to register the new branch officials who were presented by the Claimant, the latter moved to court to challenge the decision through appeal number E038 of 2021. Subsequently, the Claimant filed an ordinary claim to challenge the same decision.
5. Both the appeal and the claim raise the same issues for determination. Hence the decision by the court (differently constituted) to consolidate and hear the two matters as one.

### **Claimant's Case**

6. The Claimant contends that on 25<sup>th</sup> September 2020, the Respondent issued a directive requiring all workers' and employers' unions and the federations affiliated to them to carry out elections both at national and branch levels. The elections were to be conducted between 4<sup>th</sup> January 2021 and 31<sup>st</sup> March 2021.
7. The Claimant contends that following the aforesaid directive, it wrote to all its branches on 8<sup>th</sup> December 2020 notifying them to prepare for elections. The elections were subsequently conducted in all of its branches and the names of the new officials forwarded to the Respondent for registration.
8. The Claimant avers that the Respondent declined to register its new officials for the Nandi County branch. Instead, it wrote a letter dated 22<sup>nd</sup> March 2021 asking the Claimant to repeat the elections for the said branch.
9. The Claimant avers that it learned that the Respondent's decision was prompted by complaints lodged by the Interested Parties to the effect that their names had been irregularly removed from the list of contestants. Apparently, the 1<sup>st</sup> Interested Party had presented his nomination papers to run for the position of branch chairman whilst the 2<sup>nd</sup> Interested Party had lodged nomination papers for the position of branch women representative.
10. According to the Claimant, the 1<sup>st</sup> Interested Party was excluded from running for the position of branch chairperson because he had presented his nomination forms late. And the 2<sup>nd</sup> Interested Party was not allowed to run for the position of branch women representative because she was not an employee of the County Government of Nandi.
11. The Claimant contests the decision by the Respondent not to register the new officials because the Respondent allegedly did not seek its (the Claimant's) input before it made the decision. As such, the Claimant contends that the decision violated its right to be heard and the right to fair administrative action. It is the Claimant's case that had the Respondent sought its input before it made the impugned decision, it (the Claimant) would have accounted for its decision to exclude the two Interested Parties from running for seats at the branch.
12. The Claimant has also questioned the Respondent's directive to repeat the entire election when only two of the several seats were affected by the complaints by the Interested Parties. According to the Claimant, the elections were conducted in accordance with its Constitution and the law. Therefore, there was no reason to order for their repeat.



## Respondent's Case

13. On its part, the Respondent holds the position that the Claimant did not carry out elections at its Nandi County branch. The Respondent contends that the law requires the elections to be conducted through secret ballot. Yet, this is not what happened at the branch on 29<sup>th</sup> January 2021.
14. The Respondent contends that after the Claimant forwarded to it names of the purported new branch officials, it received complaints from the Interested Parties indicating that they had been unfairly excluded from the final list of contestants. Further, the Respondent avers that it received a formal complaint from branch members stating that no elections took place on the material date.
15. The Respondent contends that after receiving these reports, it asked the election officials at the branch to explain what had transpired on the election date. In their response, the election officials explained that the voters declined to participate in the process since the names of some of the contestants had allegedly been removed from the list.
16. The foregoing notwithstanding, the officials allegedly asked those who were keen to run for the seats to step up and only one candidate presented themselves for every of the vacant seats. As a result, they were declared elected unopposed.
17. According to the Respondent, further inquiries into the matter revealed that the two Interested Parties were not notified of the reasons why their names were removed from the list of contestants. As such, the electoral process was unfair.

## Interested Parties' Case

18. On their part, the Interested Parties maintain that they were unfairly excluded from the list of contestants. They basically reiterate the position expressed by the Respondent in the cause.

## Analysis

19. Although the Claimant argues that it conducted the impugned elections in accordance with its Constitution and the Labour Relations Act, it is noteworthy that it did not produce the Constitution in evidence for scrutiny in order to verify its contention. As such, it is difficult for the court to determine whether the impugned elections were carried out in accordance with the said Constitution.
20. That notwithstanding, the law requires that trade union elections should be conducted in a manner that is fair, accountable and transparent. Section 34 of the Labour Relations Act requires provisions on elections in the Constitution of a Trade Union to ensure that:-
  - a. There is no unfair discrimination between incumbents and other candidates in elections;
  - b. The elections are conducted through secret ballot.
21. From the evidence on record, it is apparent that the Certificate of Nomination that was prepared by the Claimant for the impugned elections contained names of several candidates for the various seats. Apart from the positions of branch treasurer, deputy branch secretary, assistant branch treasurer and branch women representative, the list shows that all the other five positions were contested.
22. However, on the Election Day, the Claimant contends that all the seats had only one contestant each. That suggests that the candidates for all the seats were unopposed.
23. The Claimant asserts that this was because the other candidates in the election stepped down. However, there was no evidence presented to show that some of the candidates withdrew their candidature.



24. The failure by the Respondent to provide this information rendered the electoral process unaccountable. The process was not transparent.
25. I agree with the Respondent that since there was no evidence to confirm that some of the candidates withdrew their candidature, it was necessary for their names to remain on the ballot papers for the electorate to make their choice. And hence the need for secret ballot. Thus, the failure by the Claimant to ensure the foregoing rendered the entire electoral process irregular.
26. Although the Claimant issued a Certificate of Nomination which showed that the position of branch women representative was unopposed, there is evidence that the 2<sup>nd</sup> Interested Party had expressed her desire to run for this position making it potentially contested. However, her application was mysteriously declined. She was not informed beforehand why her name was excluded from the final nomination list.
27. The Claimant only attempted to account for the removal of this candidate's name after the fact. It is at this time that it was alleged that the candidate's name was excluded because she was allegedly not an employee of the County Government of Nandi.
28. The Claimant also excluded the name of the 1<sup>st</sup> Interested Party from the final nomination list allegedly because he had submitted his nomination forms late. Yet, there is no evidence that this fact was communicated to the candidate before the elections.
29. The conduct of the Claimant in this respect violated the requirements of transparency and accountability in the electoral process. The failure to provide valid reasons to exclude the two Interested Parties from the electoral process smirked of discrimination against them in contravention of section 34 of the *Labour Relations Act*.
30. The Claimant has raised concern about the manner in which the Respondent handled the controversy. It contends that the Respondent ought to have notified it of the intention to decline to register the new officials in order for it to provide an explanation why the Interested Parties were excluded from the process.
31. I agree with the Claimant's contention in this respect. Despite the fact that it had unfairly excluded the Interested Parties from the electoral process, the Claimant was nevertheless entitled to due process. It was entitled to be notified by the Respondent why its proposed new officials were unlikely to be registered before the decision not to register them was effected. As such, both the Claimant and the Respondent violated the law on due process thereby rendering the entire process a nullity.

### **Determination**

32. After evaluating the evidence on record, the court finds that the impugned electoral process was rendered a nullity when the Claimant manipulated the final nomination list by irregularly removing the names of some of the candidates in the elections including the Interested Parties without first issuing them and the voters with the requisite notices. As such, it is only fair that the entire electoral exercise be repeated as recommended by the Respondent.
33. Although the Claimant has succeeded in challenging the failure by the Respondent to afford it an opportunity to be heard on the contested electoral process before it (the Respondent) issued the directive to repeat the exercise, it (the Claimant) must nevertheless repeat the exercise since the elections of 29<sup>th</sup> January 2021 were a sham. It is so ordered.
34. Each party to bear own costs.



**DATED, SIGNED AND DELIVERED ON THE 25<sup>TH</sup> DAY OF JULY, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Appellant

.....for the Respondent

.....for Interested Parties

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

**JUDGE**

