



Kimani & another v Kenya National Union of Teachers & 3 others (Cause E041 of 2024) [2025] KEELRC 2891 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2891 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E041 OF 2024
AN MWAURE, J
OCTOBER 24, 2025**

BETWEEN

CHARLES KIMANI 1ST CLAIMANT

SAMUEL MACHARIA 2ND CLAIMANT

AND

KENYA NATIONAL UNION OF TEACHERS 1ST RESPONDENT

**KENYA NATIONAL UNION OF TEACHERS, NAKURU
BRANCH 2ND RESPONDENT**

**KENYA NATIONAL UNION OF TEACHERS, NAKURU BRANCH
EXECUTIVE SECRETARY 3RD RESPONDENT**

THE COUNTY LABOUR OFFICER NAKURU 4TH RESPONDENT

RULING

Introduction

1. The 1st, 2nd, and 3rd Respondents filed a Preliminary Objection (P.O) dated 26th June 2025 on the following grounds that:
 1. The court lacks jurisdiction to hear and determine the suit.
 2. The Claimants have not exhausted the available internal dispute resolution mechanism before instituting the current proceedings.
 3. The suit herein is incompetent, defective and bad law.
 4. The Claimants lack locus standi to bring this suit.
2. Parties canvassed the P.O by way of written submissions.



1st 2nd and 3rd Respondents submissions

3. The 1st, 2nd and 3rd Respondents submitted that it is challenging the internal union election procedures, specifically notices to the Annual General Meeting and by-elections, which are governed by the KNUT Constitution and its internal dispute resolution mechanisms. The 1st, 2nd and 3rd Respondents relied on the Supreme Court case *Hassan Ali Joho & Another V Suleiman Said Shahbal & 2 Others* [2014] KESC 34 (KLR) the court cited the case of *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* (1969) EA 696, reaffirmed that a preliminary objection must be a pure point of law capable of disposing of a suit, such as jurisdiction. Jurisdiction, being foundational, was emphasized in *Mohamed V Abafae & 10 Others* [2023] KEHC 24386 (KLR), which quoted the seminal decision in *Owners of the Motor Vessel “Lillian S” V Caltex Oil (Kenya) Ltd** [1989] eKLR as follows:

“Jurisdiction is everything... a court of law down tools... the moment it holds the opinion that it is without jurisdiction.”

4. The 1st, 2nd and 3rd Respondents submitted that this Honourable Court (ELRC), which was established under Article 162(2)(a) of the [Constitution](#) and Section 12 of the ELRC Act, is limited to employment and labour-related disputes. The 1st, 2nd and 3rd Respondents also submitted that the Claimants have not exhausted the internal remedies provided under the KNUT Constitution, the suit contravenes Section 9(2) of the [Fair Administrative Action Act](#), which bars judicial review before all internal mechanisms are pursued.

5. The 1st, 2nd and 3rd Respondents argue that the Claimants’ suit is premature and legally untenable, as it offends the exhaustion doctrine, which mandates that parties must first utilize available internal dispute resolution mechanisms before seeking judicial intervention. This principle was firmly upheld in *Geoffrey Muthinja & Another --V- Samuel Muguna Henry & 1756 Others* [2015] KECA 304 (KLR), where the Court of Appeal emphasized that courts should be the last resort, not the first response to internal disputes. Furthermore, the Claimants lack locus standi, defined in Black’s Law Dictionary 9th Edition as the right to bring an action or be heard in a forum. In *Julian Adoyo Ongunga & Another V Francis Kiberenge Bondeva* [2016] KEHC 4186 (KLR), the court held that locus standi is central to a civil suit, and proceedings initiated without it are null and void. The Claimants have not demonstrated any legal interest in the AGM or elections; they are neither candidates nor officials, and were not denied participation. As such, they have failed to establish any infringement of rights warranting judicial protection.

6. The 1st, 2nd and 3rd Respondents submitted that the application dated 24th June 2025 is moot, having been overtaken by events following the retirement of the Branch Chairperson on 30th June 2025 and the successful conclusion of by-elections. The 1st, 2nd and 3rd Respondents relied on the case of *Giella V Cassman Brown & Co. Ltd* [1973] EA, arguing that the Claimants/Applicants had failed to establish a prima facie case, demonstrate irreparable harm, or show that the balance of convenience favours them. The notice for the Annual General Meeting and subsequent elections were in line with Article X(B) of the KNUT Constitution, and the vacancies were filled transparently. The court in *Pius Kipchirchir Kogo V Frank Kimeli Tenai* [2018] KEELC 2424 (KLR) emphasized that irreparable injury must be beyond monetary compensation, which the Claimants/Applicants have not shown. Additionally, the 1st, 2nd and 3rd Respondents incurred substantial costs (over Kshs. 10 million) in organizing the elections, and any disruption would destabilize the Union. As held in *Nguruman Limited V Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR), all three conditions for injunctive relief must be met conjunctively, failing which the application must fail.



7. Accordingly, the 1st, 2nd and 3rd Respondents urge the court to uphold the Preliminary Objection dated 26th June 2025 and strike out the suit with costs.

Claimants submissions

8. The Claimants submitted that the P.O raised by the 1st, 2nd, and 3rd Respondents is challenged on the grounds that it fails to meet the legal threshold established in *Bathawab Investment Limited V Hassan Ahmed Abdulhafedh aka Hassan Ahmed Zubedi & 3 Others* [2016] KEELC 719 (KLR) the court cited the case of *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* (Supra) which held that a valid preliminary objection must raise a pure point of law, be based on the assumption that all facts pleaded are correct, and not require factual ascertainment or judicial discretion. Justice Law and Justice Newbold P emphasized that such objections must arise clearly from the pleadings and, if successful, dispose of the suit. The objection in question is criticized for lacking specificity in the legal provisions it relies on, rendering it vague and defective, as highlighted in *Avtar Singh Bhamra V Oriental Commercial Bank Kisumu HCCC No. 53 of 2004* and *Guinesse Construction & Housing Co. Ltd V Said Hassan Hemed* [2020] KEHC 419 (KLR). Additionally, the 1st, 2nd and 3rd Respondents failed to demonstrate that the court lacks jurisdiction, contrary to the principle in *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] KLR, which underscores jurisdiction as foundational.
9. On the issue of exhaustion of internal remedies, the Claimant relied on *Republic V Council for Legal Education Exparte Desmond Tutu Owuoth* [2019] KEHC 11742 (KLR) and *Fleur Investments Limited V Commissioner of Domestic Taxes & Another* [2018] KECA 341 (KLR), which advocates a pragmatic approach, noting that exhaustion is not absolute where remedies are unavailable or ineffective.
10. Consequently, the Claimant submitted that the P.O is deemed unmeritorious and should be dismissed with costs, allowing the matter to proceed to a full hearing.

Analysis and determination

11. The court has considered the P.O together with the rival submissions by both parties; the issue for determination is whether the P.O is merited.
12. As reiterated in the earlier part of this ruling, the P.O must be founded solely on pure points of law, as established in the landmark case of *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd* (Supra).
13. The point of contention here is the issue of this court's jurisdiction being objected due to exhaustion doctrine:

The exhaustion doctrine does not take away jurisdiction from courts unless specified in the law.

Section 34(4) of the *Labour Relations Act* states that disputes arising from, or connected directly or indirectly to, elections held may be referred to the Industrial Court meaning this court (ELRC).



14. The provision for alternative dispute resolution is provided in Section 58 of the [Labour Relations Act](#) and it states as follows: -

“An employer, group of employers or employers’ organisation and a trade union may conclude a collective agreement providing for—

- a. the conciliation of any category of trade disputes identified in the collective agreement by an independent and impartial conciliator appointed by agreement between the parties; and
- (b) the arbitration of any category of trade disputes identified in the collective agreement by an independent and impartial arbitrator appointed by the agreement between the parties.”

The same is not mandatory as it reads “it may” and not shall. In *Eliud Wanjohi Gwandaru V Samuel Waita K & 11 Others* [2021] KEELRC 1617 (KLR), the court held that in its considered view that once an election has been conducted, any resulting dispute commonly referred to as an election petition may be properly brought before this Court. The present petition concerns the election of KUPPET officials for the Nakuru Branch and does not challenge any decisions made by the Registrar of Trade Unions. Therefore, filing the petition under Section 34 of the [Labour Relations Act](#) was appropriate and procedurally sound in the circumstances.

15. In this instant case, the dispute brought forth for determination is the issue of the internal union election procedures, particularly those concerning notices for the Annual General Meeting and by-elections, which are governed by the provisions of the KNUT Constitution and subject to its established internal dispute resolution mechanisms.

16. This ELRC court therefore has jurisdiction to deal with the elections of officials in KNUT as set out in Section 34(4) of the [Labour Relations Act](#), and it is upon the parties to prove their case before this Honourable Court.

17. Flowing from the foregoing, this Honourable Court finds that the P.O dated 26th June 2025 lacks merit and it is therefore dismissed.

18. Costs will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF OCTOBER, 2025.

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 Civil 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

