



**Bichang'a & 2 others v Kenya National Union of Teachers (KNUT) & 4 others  
(Petition E007 of 2026 & Trade Union Election Petition E008 & E009 of 2026  
(Consolidated)) [2026] KEELRC 135 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 135 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION E007 OF 2026 & TRADE UNION ELECTION  
PETITION E008 & E009 OF 2026 (CONSOLIDATED)**

**NZIOKI WA MAKAU, J**

**JANUARY 28, 2026**

**BETWEEN**

**MR. ONYWOKI HARRISON BICHANG'A ..... 1<sup>ST</sup> PETITIONER**

**MR. NYANG'WARA DONALD ..... 2<sup>ND</sup> PETITIONER**

**MR. MICHAEL NYABUTO NYARANGO ..... 3<sup>RD</sup> PETITIONER**

**AND**

**KENYA NATIONAL UNION OF TEACHERS (KNUT) & 4 OTHERS & 4  
OTHERS ..... RESPONDENT**

**RULING**

1. The Respondents have raised a preliminary objection against all the three Petitioner's Petitions to wit, that both the Petition and the Notice of Motion are defective as the same offend mandatory procedure set under the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025. The Respondents assert the Petitioners have omitted necessary parties being the Returning Office of the person whose election is complained of the Registrar, and the Registrar of Trade Unions who has registered change pursuant to filing of Form Q. The Respondents also assert the Petitions do not state the name of the election venue and the date of the declaration of the results and therefore sought the striking of the Petitions out in limine.
2. The Respondents through their Counsel Mr. Nyamu argued the preliminary objections. He submitted that the preliminary objections raised were on pure points of law in respect to all the three Petitions. He submitted that the common ground is that there is an offence to the Procedure and Practice Directions 2025 per directions 2 and 6. The Respondents assert that interpretation clause being Direction No. 2 defines who a Petitioner to be and the person who is Respondent are given. He



submitted that the official who is a returning officer as well as the person against whom the elections were declared is not joined in Petition E009 of 2026 and the Returning Officer has also not been joined. Counsel argues that the election was conducted by officials from the Ministry of Labour and that the non-joinder means there are no proper parties before court. He submitted that in Direction No. 6 provides the Petition must state the date and venue, the date of declaration of results, how the results were declared. It was submitted that in Petition E007 of 2026, E008 of 2026 and E009 of 2026, the Petitioners do not state the place, the venue or the date of the election. It was submitted that in Petition No. E009 of 2026, there is no indication of even how the results were declared. He submits that having omitted such particulars, the petitions are non-starters and dead on arrival. It is on that reason they should be struck out in limine and if there is any wish for relief, the Petitioners can come back. The Respondents submit that the Registrar of Trade Unions is not even joined and that there are no orders sought to quash the Registrar's decision. The Respondents submit that the Court cannot draw pleadings for parties and should strike out the petition, orders in limine as well as the motion and not give any interim relief.

3. Mr. Obiero for the Petitioners submits that the Court should look at principles that ground a preliminary objection. It was submitted that in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, it was held that a preliminary objection must be on pure points of law. It must also be predicated on a point of law on that the facts are true as pleaded or admitted. The Petitioners submit that the same must arise at a point where the objection is able to uproot the entire suit. It was submitted that it is not in dispute that the Chief Justice give practice directions and that it is not in dispute what makes up a preliminary objection. It was submitted that the Petitioners have complied with the law. It was his submission that the Petitioners admit some parties have not been joined. On the question of the date of the election, it was submitted that this is a question of fact, this is not a pure point of law. On the issue of the joinder of parties such as the Returning Officer, it was submitted that this a requirement of practice directions and that is not a ground that can support the dismissal of the case for non-joinder or misjoinder of parties. It was submitted that this is untenable. He referred to Rule 15 and 17 of the Employment and Labour Relations Court (Procedure) Rules 2024 that allows the adding of parties at any stage. The Petitioners submitted that Article 159 confirms that we should adhere to principles of justice over procedure. The Petitioners submitted that on the authority of the case of *Republic v National Environment Management Authority; Water Service Providers Association (WASPA) (Intended Interested Party/Applicant) Ex parte Nairobi City Water and Sewerage Company & another* [2021] KEHC 7859 (KLR), non-joinder or misjoinder of parties cannot form the basis of a preliminary objection. Counsel posed the question as to whether the Petitioners have lost the right of amendment? He submitted that is something that would have been raised at the time of the hearing of the application inter partes. The Respondents submit the Respondents have not made a proper objection as there is no room for preliminary objection to be archived on the physics of the English language. He thus prayed that the preliminary objection to be dismissed. He submitted that we cannot allow technicalities to defeat the justice of parties who have been delivered through illegitimate means a chance to occupy offices.
4. In his brief reply Mr. Nyamu submitted that the objection was on points of law since the practice directions are law. He submitted that they are framed pursuant to section 10 of *Judicature Act* and sections 5 and 2 as well as section 2 of the *Employment and Labour Relations Court Act*. It was submitted that the Directions prescribe who should be a party and these Rules are like the Mutunga Rules as this deals with the framing of the Petition. It was submitted that the case of *Anarita Karimi Njeru v Republic (Miscellaneous Criminal Application 4 of 1979)* [1979] KEHC 30 (KLR) (Crim) (29 January 1979) (Judgment) comes out on the defectiveness of the petition. It was submitted that the cases were dead on arrival as Rule 2 describes who is the Respondent. The Respondents submitted



that the Preliminary Objection falls on both fours on the objection under the Mukisa Biscuits case. The Respondents submitted that if the preliminary objection succeeds it will uproot the entire Petition as the petitions do not conform to the law. Counsel submitted that only pure points of law have been raised and if the Court looks at the Petition per Rule 2 and 6 will show there is no petition and that until the amendment is sought, there is no possibility for court to grant it. Turning to the case of Republic v NEMA & others (supra) on misjoinder, the parties in the suit did not have directions. It was submitted that the Rules here provide who is to be joined and that the Returning Officer not being joined that is fatal to the petition. He closed by saying it will be a misconception for the Petitioners to assert the Rules to be secondary as any petition must conform to Rules on Trade Union Election disputes. It was submitted that the Court should consider the challenge to elections which require adherence of rules on petition.

## Disposition

5. The Court is faced with a multilayered challenge to the Petitions between the Petitioners and the Respondents. It is common ground that the challenge is to election of trade union officials. It is also common ground that the Registrar of Trade Unions and the Ministry Officials who undertook the elections are not parties to the suit. Under the Trade Union Elections (Election Petition) Rules 2014 and the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025, there is provision for the manner and mode of moving a Court after a disputed trade union election. Under Direction 4(1) of the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025, it is stated that the objective of the Directions issued by the Chief Justice on 1<sup>st</sup> December 2025, is to facilitate the just, expeditious, efficient and proportionate resolution of trade union election disputes. Direction 4(2) provides that a party to a petition or an advocate for the party shall assist the Court to further the objective of these practice directions and for that purpose, participate in the processes of the court and to comply with the directions and orders of the court. This means that any of the advocates or parties to a petition have a duty to the Court to aid the court in furthering these objectives. Direction 6 provides in *parre materia* as follows:
  6.
    - (l) An election petition shall state-
      - (a) the name, physical and postal address, email address, telephone number and any other necessary particulars of the petitioner, respondent or the union official whose election is challenged;
      - (b) the venue and date when the election in dispute was conducted;
      - (c) the results of the election, if any, and however declared;
      - (d) the date of the declaration of the results of the election;
      - (e) the grounds of law or fact and particulars upon which the petition is presented; and
      - (f) the relief the Court is requested to grant.
6. The Court is permitted where more than one petition is presented relating to the same election, such petitions may be consolidated and dealt with together, so far as the consolidation makes the inquiry into the concerned election more convenient, efficient and complete. That explains why the 3 Petitions have been consolidated for purposes of hearing the objection made, opposition to it and for the joint Ruling. A parallel can be drawn between these Employment and Labour Relations Court (Trade



Union Election Disputes) Procedure and Practice Directions and the Election Petition Rules that apply in national election petitions including the Presidential Election petitions. These Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025 are the guardrails for ensuring order and the achievement of a just, expeditious, efficient and proportionate resolution of trade union election disputes.

7. In the case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (supra), the Court held:

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further in the same judgment, Sir Charles Nebbold, JA stated that:-

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection is deprecated.

[Emphasis supplied]

8. The Petitioners at the point of ex parte hearing of the motions under a certificate of urgency, were directed by the Court to comply immediately with the ELRC Practice Directions on Trade Union Election Disputes 2025. The Court was referring to the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025 which are germane to proceedings such as the petitions before the Court. The Petitioners did not comply with this direction and now assert through Counsel that they will move the Court to have an amendment done. The Petitioners did not comply with Directions 2 and 6 of the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025. Compliance or non-compliance with the Rules is a pure point of law. It does not require the establishment of facts. An objection can be taken to the pleadings already filed and the notice of preliminary objection is sufficient basis to challenge the provenance of a suit that is dead on arrival. One does not need to file elaborate pleadings to have a matter that can be determined in limine in order for the Court to make a determination thereon. That would be a waste of resources and scarce judicial time. The Court thus finds that there is basis for the objections raised and being well founded, the preliminary objection is merited and the result is that the Petitions are all struck out with costs to the Respondents.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF JANUARY 2026**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

