



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISII

CAUSE NO. E001 OF 2021

NOCHRACH ALUKO BALOPHET.....**CLAIMANT**

VERSUS

ELIUD OMUSALA OMBORI-EXECUTIVE SECRETARY
KNUT RACHUONYO BRANCH.....**1ST**
RESPONDENT

KENYA NATIONAL OF UNION TEACHERS
KNUT.....**2ND**

RESPONDENT

KNUT RACHUONYO BRANCH.....**3RD**

RESPONDENT HOMABAY COUNTY LABOUR OFFICE.....

4TH RESPONDENT

RULING

1. The 1st Respondent has raised a preliminary objection to the suit and specifically the sought by the Applicant. The 1st Respondent asserts the Claimant's action of seeking remedies before the Court offends the exhaustion doctrine. Mr. Ongoso for the 1st Respondent submits that the Claimant/Applicant has offended the KNUT constitutional provisions on exhaustion as well as the gamut of case law and the Fair Administration Actions Act regarding the much vaunted doctrine of exhaustion. It is asserted that the Claimant has failed to appeal the suspension to the National Executive Committee (NEC) of the Kenya National Union of Teachers. It is the position of Mr. Ongoso's client that having failed to surmount the barrier placed by the doctrine, the Court is devoid of jurisdiction since as per the holding of **Motor Vessel Lilian 'S' v Caltex Oil (Kenya) Limited [1989] KLR 1**, the Court should not take one more step as jurisdiction is everything, as held by Nyarangi JA.

2. Mr. Ongoso further submits the Claimant/Applicant has not met the test of **Giella v Cassman Brown & Company Limited [1973] EA 358** on the grant of injunctive orders as

no *prima facie* case has been established, there is no proof that there will be irreparable harm, and there is no proof that the balance of convenience favours him. The 1st Respondent thus urges the Court to disallow the motion and strike out the suit with costs.

3. Miss Adoyo for the Claimant/Applicant in her reply submits that the 1st Respondent has come to court with unclean hands. She posits that he who comes to equity or the seat of justice must do so with clean hands. She asserts that the 1st Respondent is the sole reason that the Claimant is in the present predicament as the 1st Respondent has declined to issue a notice for a general meeting of the Branch where the Claimant would face the membership and have his suspension either ratified or revoked. Ms. Adoyo submits that the 1st Respondent denied the Claimant the opportunity to appeal to NEC as without a decision of the branch AGM there would be no basis to move the NEC since the NEC would only entertain the appeal based on a decision of the general meeting of the Branch as per the KNUT constitution Article X.

4. The Applicant urges the Court to find that the objection is made in a clear case where there has demonstrated manifest failure of the processes to lead to a justified outcome. She submits there are exceptional circumstances demonstrated to obviate the deemed necessity to exhaust the other mechanisms for resolution. The Applicant asserts there has been a clear violation of his rights as he was patiently waiting and hoping against hope the 1st Respondent would call the general meeting for the Branch where his case would be considered. It is urged that the election for his position be barred.

5. In his reprise, Mr. Ongoso asserts that the Claimant seems to reverse his position as he had apprehended the motion and suit to seek the cancellation of the election and not merely those for the position he seeks, which position he had not been cleared for. He submitted no demonstration was made of campaigns or the like to warrant a finding the rights of the Claimant as a candidate are infringed.

6. The Court has been invited to come into the affairs of the Trade Union. As judicial precedent without number has

indicated, courts should be wary of interference with the internal affairs of Trade Unions except where there is a demonstration of manifest failure of systems or wanton disregard of the Union constitution or the law. In this case, the Claimant asserts he was suspended and he was never subjected to a hearing before the general assembly of members at the Branch level thus denying him a hearing and also abridging his rights to a fair administrative action. He seeks to stop the election for the position he occupies as he feels the Union has shafted him and his ambitions to continue in office after elections by members.

7. The exhaustion doctrine holds that where alternative mechanism for resolution exists, that method should be pursued and not make the Court the first port of call. Under the KNUT constitution, the 1st Respondent is the responsible person for calling the members general assembly which from all accounts seems not to have been done from the date of the Claimant's suspension. This in the eyes of the Court presents a clear demonstrable failure of the systems in place to allow for the exhaustion doctrine to be exercised. This is an exceptional circumstance for the Court to interfere since

the Claimant was denied, whether deliberately by design or inadvertently, to seek appeal before the internal organs of the Union.

8. The Court has weighed the pros and cons of stopping the election of the branch position in question altogether versus the greater good, that is, to permit the lawful exercise of democratic rights by the union members at the elections slated for January 24th 2026. In my considered opinion, rather than stop the elections, the better course is to immediately revoke the suspension of the Claimant and have him present his papers for clearance to vie at the elections. That way, should the members reject him at the ballot, then a democratic process will have removed him from office than to allow an illegitimate removal by an unlawful suspension not allowing him to run.

9. The order that commends itself for me to make is to have the Claimant presented as a candidate in the election on 24th January 2026. The election for Branch Executive Committee Member Rachuonyo Branch of KNUT can only proceed with the Claimant being on the ballot. The 4th Respondent to

ensure the KNUT complies with this order forthwith as should the KNUT NEC. Claimant to pay requisite dues for candidates at the election.

10. The final result is the objection is dismissed with costs to the Claimant/Applicant.

Orders accordingly.

Dated and delivered at Kisumu this 22nd day of January

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**