

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAKURU

ELRC CAUSE NO. 004 OF 2026
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

EPHANANTUS KANYIRI MWANIKI.....

....CLAIMANT

-VERSUS-

**KENYA BUILDING CONSTRUCTION
TIMBER, FURNITURE & ALLIED INDUSTRIES
EMPLOYEES UNION1ST
RESPONDENT**

**KENYA BUILDING CONSTRUCTION
TIMBER, FURNITURE & ALLIED INDUSTRIES
EMPLOYEES UNION (MOLO BRANCH).....2ND
RESPONDENT**

**THE REGISTRAR OF TRADE UNIONS.....3RD
RESPONDENT**

RULING

1. The Applicant filed notice of motion application dated 20th January 2026 seeking the following prayers:-

1. A permanent injunction to restrain and or bar the Respondents and or their servants and or

employees and or representatives from holding and or conducting and or proceeding with election of the officials of Molo Branch of 2nd Respondent on 24th January 2026 at Turi View Resort.

2. A mandatory injunction to compel the Respondents and or their agents and or servants and or employees and or representatives to accept and or allow, and or permit and or include the Claimant as a candidate for the position of Molo Branch Secretary of 2nd Respondent in the Branch.
3. Costs of this cause.
4. Interest of the cause at Court rates.
5. Any other relief the court may deem fit and just to grant.

2. The court considered the Application by the Claimant. The oral Preliminary Objection (P.O) application by the Respondent, the Respondent's replying affidavit and the respective oral submissions by the rival parties both as pertaining to the P.O. and to the application.

3. The court considering there is no time as election is scheduled for tomorrow the 24th January 2026 the court agreed with the parties to overlook the P.O. and deal with the substantive application.
4. Section 34(1) of the Labour Relations Act which states:-

“The election of officials of trade union, employers organisation or federation shall be conducted in accordance with their registered constitution in return in Section 5-V) states “Only fully registered paid up members are entitled to vote.”

6. Rule 15 (a & b) of the same Constitution states:-

“Any member who has paid up all his dues and has been a member for a minimum period of six months shall be eligible for election as a branch office.”

Rule 15 (b) provides

“All prospective candidates shall be required to complete application forms

prepared for that purpose by the National General Secretary and approved by the Executive Council. such forms shall among other particulars show full name of the candidate, his membership number, date he became a member and in which branch his current employer's name and addresses."

7. The law provides the elections must be conducted in compliance with the union Constitution. The Claimant has not established he has been paying his membership dues as per the Respondents constitution.
8. The court has not had the benefit of seeing the proof of Claimant's consistent membership fees, receipts and membership certificate. The copy of certificate in the court file being serial No. 250414 does not have details like membership number etc.
The Claimant also says he was an employee of Timsales Ltd from 1976-1989. He is not currently

stating his employment status. He is required as per the union constitution to give details of his employment.

9. The court does not find the ground of omitting a person who has not complied with the Union's constitution in elections is sufficient to stop elections which must have cost resources both to the union and members to organise. There is no concrete proof to grant temporary injunction as per principles well set out in the famous case of **GIELLA -VS- CASSMAN BROWN (1973) E.A 358.**

10. In any event should the main suit be heard and determined in favour of the Claimant the Election can be repeated. But for now, the court will not restrain the elections scheduled for 24th January 2026 and neither will the court order the Claimant to be included in the ballot for the reasons given herein. Elections of the Respondent's Molo Branch to proceed on 24th January 2026 as scheduled.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 23rd Day of
January 2026.**

**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

ORIGINAL