



**REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT OF KENYA AT KISUMU
PETITION NO. E013 OF 2026**

JOSHUA OTIENO OKINDA.....**PETITIONER**

VERSUS

WILSON LUVAVO.....**1ST**

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

KENNEDY ONMONDI OKUYO.....**3RD RESPONDENT**

AND

REGISTRAR OF TRADE UNIONS.....**INTERESTED
PARTY**

**CONSOLIDATED WITH
PETITION NO. E014 OF 2026**

PATRICK ONYANGO WERE.....

PETITIONER

VERSUS

WILSON LUVAVO.....**1ST**

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

ROSE OTIENO.....**3RD**

RESPONDENT

AND

REGISTRAR OF TRADE UNIONS.....**INTERESTED
PARTY**

RULING

1. The application before the Court is the one dated 30th January 2026. In it, the Petitioners seek various injunctive orders, the chief of which is to stop the registration of the Branch officials elected as the Chairperson and Executive Secretary of the KNUT Rachuonyo Branch.
2. The Court heard oral submissions in respect of the motion. Mr. Juma appearing for the Petitioners submitted that the Petitioners rely on the cases of **Giella v Cassman Brown & Co Ltd [1973] EA 358** and **American Cyanamid Co. Ltd v Ethicon Ltd [1975] AC 410** a decision of the House of Lords, as well as sections 4 and 34 of the Labour Relations Act and also sections 12, 16 and 20 of the Employment and Labour Relations Act. He submitted that the Petitioners seek two orders primarily - to stop the registration of the elected officials as the Chair and Secretary of the KNUT Rachuonyo Branch. He submitted that the rules of the elections were changed by presiding officer on the date of the election. Counsel submitted that perhaps the impugned Respondents were made aware of this prior.

3. Counsel for the Petitioners submitted that the mode of identification of a voter is in question as the voters were initially to avail their identification cards and a soft copy of their latest pay slip. He submitted that this was communicated by the County Labour Homa Bay who was the initial returning officer. It was submitted that this presiding officer was changed on 23rd January 2026 when the candidates arrived for nomination and that the new returning officer was the County Labour Officer, Kericho County. He submitted that the returning officer told members of the need to avail hard copy and thus turned away a number of voters. Counsel submitted that the Respondent's reply is that the requirement was always the hard copy not a soft copy and that the Union has also replied and said the requirement was a hard copy and not a soft copy. He submitted that to prove that this is not true, there are printouts of WhatsApp group chats where the members are notified that they should remember the requirement is a hard copy and not a soft copy. He submitted that the teachers are arguing of the requirement and posited that if it was always known the requirement was hard copy, there would be no need for

teachers to be informed. He submitted that the teachers would not have been arguing on why the hard copy was required.

4. It was submitted that the candidates told them not to argue and just accept it is a hard copy that is required. Counsel submitted that it was the next morning when the members were told to bring a hard copy. He posited the question as to how did the specific candidates know and make these arrangements? He submitted that the Secretary General asserts the requirement was always a hard copy but does not avail any evidence as in his letter addressed to branches, there is no mention of election rules. It was submitted that there is one more reason to demonstrate *prima facie* case: strangers were allowed to vote. He submitted that the elections were initially to be presided over by the Homa Bay Labour Officer who said the eligible voters were 1,600 while the Secretary General says the number for Rachuonyo is 2,185 members and the 1st Respondent provided the voters register which has 2,185 printed names. Other than the 2,185, there are another 200 hand written names. He asked

who these are. He asked who between the SG and the presiding officer, should tell us the actual number of voters? He submitted that having gone through the 200 names with his clients, a number teach in Kisumu County, Migori County, Kisii County and so it seems teachers from places around the county not only those from Homa Bay County voted.

5. He submitted that the Petitioners have demonstrated per **Giella v Cassman Brown** there are grounds for grant of the orders. He submitted that if the 2nd and 3rd Respondents are allowed to have the 3rd Respondent to assume office, it is not only the Petitioner who will suffer but the entire union. The Counsel submitted that there is no harm for the Respondents to wait for the petition to be determined because if they won fairly, they will be returned. He argued that to allow them to occupy office when there is lingering doubt over their election and for them to use the resources of union when not validly elected will be prejudicial to the Union. He submitted that the Petitioners seek scrutiny of election materials and argued that whereas there is a letter to suggest the Returning Officer handed over the materials to the County

Commissioner Homa Bay, there was doubt that this was done without tampering. He submitted that if the documents were sealed, how come the 1st Respondent has filed a copy of the register? He asked whether the 1st Respondent retrieved it from the box, make copies and returned it? He asked who was present when this was done? He submitted that there were ballot papers that were stamped and that some had writings and the Petitioners wish to scrutinize them and see how many they are and how many were cast for the different candidates. He stated that they also wish to see if the ballots tally with the marked register. And finally, submits there will be no prejudice suffered as the Petitioners only wish for the truth to be known.

6. Mr. Kajo appeared for the 1st Respondent and submitted that the Respondent relied on the replying affidavit sworn on 11th January 2026 by Mr. Wilson Luvago, the returning officer. He submitted the position of the 1st Respondent is that the election was above board and that on the issue of change of the returning officer, it was by the Labour Commissioner due to unavailability of the Homa Bay Labour Officer. He

submitted that the election process spanned 2 days - 23rd to 24th January when the same terminated. It was submitted that on 23rd January 2026, the date of nomination, the contestants were taken through the formation exercise and they signed a commitment deed which has been availed to court. The State Counsel submitted that agents and the Petitioners as candidates signed the commitment deed. It was submitted that there is no evidence of protest or any evidence of any disagreement with the process prior to the case in court. He submitted that there were ground rules agreed upon and the Petitioner did not indicate objection to the ground rules which are founded in the constitution of KNUT. The 1st Respondent submitted through Counsel that the issue of hard copy of pay slip is the basis of constitution and the guidelines by the Secretary General of KNUT.

7. It was submitted that there were various elective positions and it would not be proper to allege that the returning officer isolated the Petitioners to their disadvantage. It was submitted the Petitioners have not demonstrated that they sought to have information and that they were denied. He

submitted that we only see submissions at the bar and that the Petitioner's Advocate seems to give evidence from the bar. The 1st Respondent submitted that the Petitioners have not availed any register to prove the allegations whereas the 1st Respondent had produced a register to confirm the numbers. State Counsel submitted that the allegations of strangers voting have no evidence to back that assertion. He argued that even if there was the use of hard copy payslips in place of soft copy pay slips, how long would it take to produce a copy by just printing? The State Counsel submitted the arguments do not make sense and that after the elections were conducted, there is no evidence there was any person who raised any security concerns at the end. He submitted that the only reason the Petitioner are before court is that they were not declared winner. The 1st Respondent urged the dismissal of the motion as they have not met the principles in law for grant of such an order.

8. Mr. Nyamu for the 2nd Respondent submitted that the Application is opposed and that there is a replying affidavit which the 2nd Respondent seeks to rely on. The 2nd

Respondent submitted that it joins issue with the submissions and arguments by Counsel for the 1st Respondent. It was submitted that none of the allegations per section 85 of the Elections Act, whose principles they urge this Court to follow and borrow, nothing affects the results as given. He submitted that the change of presiding officer does not affect the process at all unless such officer was not specified per the statute. It was submitted that provided it was a labour officer qualified to conduct elections, nothing can affect the results. He posited the question whether it been shown the labour officer tampered with the results? And he answered, not at all. On the question of the soft copy versus a hard copy of pay slip being used, even as the 2nd Respondent joins issue that this was standard procedure and practice emanating from the Union constitution. It was submitted that at this age there are computer services all over and the election starts early and goes on till 3.00 p.m. what stopped the Petitioners from proceeding by motor bike or otherwise to get their pay slip printed. It was submitted that nothing turns on that submission of exclusion.

9. It was submitted that the Union election requires serious verification and for the verification to be undertaken, one has to carry the original identification card, pay slips whereat there is a check of the identification and the signature of pay slip after that it is taken to voter register clerk to check the name to confirm the voter has been verified at the first stage and then a second signature is endorsed and the after ascertainment of the prior verification. It was submitted that such a process cannot be verified with soft copy. The 2nd Respondent submitted that the Petitioner brought this petition in abuse of process as the election was properly conducted and only 2 petitioners out of many speak of soft copy. It was submitted that no circular has been shown and that they Petitioners are just trying to do anything to overturn the validly conducted elections. The 2nd Respondent submitted that the allegations that votes were manipulated, the Petitioners assert they were told the only voters were 1,600. He posited the question who would believe that without having proof? The 2nd Respondent submitted that the register shows the number of voters who are less than the

votes cast. The 2nd Respondent submitted that this Petition is just an attempt to overturn the election. The 2nd Respondent conceded that the register produced by the 1st Respondent has hand written names and it is alleged this is a mistake. It was submitted that the register displays the names, status, the TSC number of the persons on it and it has nowhere where the branch is indicated. It was submitted that whereas it is handwritten, there was a verification prior to voting so as to ascertain if the voters are paid up Union members by virtue of subscription. He submitted that it was indicated the names were included after verification of pay slips and that the same is stamped.

10. The 2nd Respondent submitted that the other issue was regarding the question of security and recount. Counsel for the 2nd Respondent submitted that scrutiny is not available automatically. He urged the Court to borrow section 82 of the Elections Act and also the case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & IEBC & another (Petition 2B of 2014) [2014] KESC 38 (KLR) (30 May 2014) (Judgment)** at the Supreme Court which addresses question

as to when and under what circumstance scrutiny is allowed. He submitted that Rule 33 of the Parliamentary and County Government Rules will come in hands to guide this Court. It was submitted that there is case law that states sufficient reason has to be shown first of all and this was as held in case of **Hassan Noor Hassan v Independent Electoral and Boundaries Commission [IEBC], Mandera County Returning Officer (David Maro Ade), Ali Ibrahim Roba & Mohamed Ahmed Arai (Election Petition 1 of 2017) [2018] KEHC 8440 (KLR) (Civ) (28 February 2018) (Judgment)** and the case of **Philip Osore Ogutu vzz Michael Onyura Aringo & 2 others (Petition 1 of 2013) [2013] KEHC 4011 (KLR) (2 May 2013)** where it was held that sufficient reason must be given as basis has to be laid sufficient enough to warrant scrutiny of votes or recount. The 2nd Respondent's Counsel submitted that none has been shown, no cogent evidence other than speculation had been laid. He submitted that it has been held conjecture cannot take the place of legal proof. He relied on the case of **William Maina Kamanda v Margaret Wanjiru Kariuki & 2 others [2010] KECA 499 (KLR)** where the Court of

Appeal held that scrutiny is only ordered where irregularity is shown to have been committed by election officials. He submitted that the margin between the winning candidates and the runners up should be such that scrutiny alone can resolve. The margin must be such as to show the mistake could be sufficient where margin is 2, 3 or 5 or 10 votes and that in this case the margin is very wide. He submitted that there were around 2,000 votes cast and the margin is over 200 and he submitted that is too wide. He submitted that he had looked at the Petition and at no place have the Petitioners sought any orders for scrutiny in their petitions. The Counsel submitted that the Court cannot just allow scrutiny and cited the case of **Charles Oigara Mogere v Christopher Mogere Obure & 2 others [2013] KEHC 2309 (KLR)** on the question. He also relied on the case of **Wavinya Ndeti & another v Independent Electoral and Boundaries Commission (IEBC) & 4 others [2013] KEHC 2346 (KLR)**.

11. In conclusion he submitted that the annexures relied upon some of them being WhatsApp messages just show

there was conversation which the court is being asked to consider as evidence, he submitted that he did see anything other than the texts, there is no certificate under the Evidence Act and the court should disregard the same. He submitted that in terms of **Giella & Cassman Brown** a *prima facie* case has to be shown and that the whole petition, the texture, the narrative is all based on speculations, no *prima facie* is shown, no prejudice is to be suffered if the Registrar goes ahead to register the elected Respondents and should court find they are not properly elected, has the power to quash the same. He submitted that the Court has power to issue orders such as *certiorari* and the court can then return them to election. He submitted that in national elections, once elected, MPs are sworn and should the petition succeed, the court orders a re-election. He submitted the offices should be filled not kept vacant. He submitted that the balance of convenience has to be weighed against the individual's interest and that no prejudice will be suffered as the salary can be surcharged. He submitted the elected teachers have constitutional rights just like the Petitioners and that there is nothing directed at

them and instead point at the union and the labour officer. He urged the court to dismiss the motion and give directions on disposal of petition and that the Court should also consider the Election Petition Rules which compel the Petitioners to make deposit for costs and court should determine the quantum. He submitted that the rules per rule 8(1) provides for costs to be deposited and the Court should determine what is payable. He thus urged dismissal of the motion with costs.

12. Miss Adoyo for the 3rd Respondent submitted that it was laughable that there were averments by the Petitioner that KNUT Rachuonyo has teachers who when told to print something they will just go away and not vote. She submitted that must be unique only to Rachuonyo. She submitted that an election should be likened to an examination and that a well-prepared student should be ready to take the examination regardless of the supervisor and invigilator. She submitted that maybe there was a preference because there was an arrangement. She submitted because of reasonable apprehension created by

the chaotic outcome of KUPPET elections, the DCC convened a security meeting as highlighted was between candidates and the security team, no agent, proposer or seconder was allowed to attend and the only teacher who attended and was not a candidate was kicked out - Mr. Ojwang Lawi was sent away. She submitted that it was a security meeting due to the apprehension above and that it was not a KNUT meeting. She submitted that as per the KNUT constitution of 2022, Article 20(6)(4) states on the nomination day which is one day preceding the election, that is when election started. She submitted that is when candidates presented themselves the person who presided was Mr. Wilson Luvago who is the Labour Officer Kericho. She submitted that the election started on the nomination day and that is when ground rules were set for the elections, that is where members were reminded, this is the practice, they were reminded hard copy of the national identification card plus hard copy of the most recent slip. She submitted that is the practice, nothing changed.

13. It was submitted that this is just a shocked Kenyan who is shocked he lost the elections and he is wasting precious judicial time. She submitted that there is a Ruling of this Court in Kisii ELRC being the case of **Nochrach Aluko Balopphet v Eliud Omusala Ombori Executive Secretary KNUT Rachuonyo Branch & 3 others (Cause E001 of 2021) [2026] KEELRC 139 (KLR) (22 January 2026) (Ruling)**. She submitted that it is not true the register had 1,600 votes as the Petitioners say as no such register has been annexed. She submitted that even if the Petitioners are telling the truth, the voters on the register if it was 1,600 and there was an addition the votes if given to Petitioner, he would still have lost to the 3rd Respondent. She submitted that there is no effect on the results of the election and that no *prima facie* case has been presented to warrant the orders being sought per **Giella v Cassman Brown**. She submitted that the balance of convenience does not tilt in favour of the Petitioner as no proof on the advantage the 3rd Respondent had to guarantee his win against the applicant. It was submitted that photos have been annexed of the Petitioner voting very well and when he avers he was sent

away that is an open blatant lie. She submitted that the 3rd Respondent is alleged to have received notification of the requirements prior to the election. She submits that there is no such proof and the printers that were allegedly brought, there is no photo of the printers. She posed the question as to how would the 3rd Respondent know who is to vote for him in order to single them out for printing their soft copies of payslip? She submitted that the Court is being treated to rumour mongers. She submitted that a question arose as between the old office and the new office that is elected, who should be transacting for the Rachuonyo KNUT Branch? She asked who has their best interest? She submitted that the persons who have been dismissed by members should not be the ones signing documents. She thus urged dismissal of the application.

14. In a brief reprise, Mr. Juma for the Petitioners submitted that Ms. Adoyo had said that the Petitioner was not barred to vote. He submitted that the Petitioner went to his house which is nearby to bring his documents. He submitted that KNUT Rachuonyo Branch comprises of 3 constituencies and

that what blocked the teachers to go to cyber to get print out. He submitted that Kendu Bay town is where SDA begun in 1906 and that it is a ghost town on a Saturday and that is why the 3rd Respondent being aware of these facts came with a printer. He submitted that ground rules were established on the day of nomination. He submitted that this demonstrates there was fluidity on the process and that there was basis for the grant of the orders sought by the Petitioners.

Disposition

15. The Petitioners herein seek mainly the halt in the assumption of office of the elected union officials for KNUT Rachuonyo Branch and for a scrutiny of the ballots cast in the elections for officials of the KNUT Rachuonyo Branch. Without delving into the Petition proper, the quest is to obtain injunctive relief, in the eyes of the Court, to preserve the substratum of the Petitions. There is an allegation that the ground rules changed at the last minute as well as allegations that there was fraud in the voting undertaken. There is allegation there was suspicious removal of the

returning officer who is alleged to have favoured certain candidates resulting in the result that was presented.

16. Whereas Mr. Nyamu SC representing the 2nd Respondent submitted that the elections of the Union are analogous to national or gubernatorial elections, the elections of KNUT whose constitution like all other trade union constitutions has a small c, relates to a party and structures that cannot be elevated to the platform of national elections.

17. To his credit, the case law Mr. Nyamu SC cited in aid of the 2nd Respondent's CASE indicates clearly that scrutiny is not casually ordered. There has to be a basis laid out and that there is paucity of grounds to order a scrutiny. On that score, the Petitioners have not surmounted the hurdle to allow the scrutiny of the votes cast. In any event, as far as the Petitioners case goes, there was concession in submissions that the ballots may already be compromised as the returning officer was able to access the register and copy it for purposes of this case.

18. The question that thus remains for the Court to determine is the sore question of whether the positions the 2 Petitioners challenge should be filled. In the considered view of the Court, on the strength of a decision that the 2nd Respondent cited being the case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & IEBC & another** (*supra*) which held that if it is shown that an election had irregularities that were of such magnitude as to affect the result, then such election stands to be invalidated. Further, the Court held that where an election is conducted in such a manner as demonstrably violates the principles of the Constitution and the law, such an election stands to be invalidated.

19. Drawing from the wise words of the Supreme Court, by analogous application of the principles enunciated above, where the elections are proved to have been conducted in contravention of a union constitution, those elections are capable of and amenable to annulment.

20. In this case, the grant of injunctive relief is at play and the cases cited by the Petitioners and Respondents are the case of **American Cyanamid Co. Ltd v Ethicon Ltd**

[1975] AC 410, [1975] UKHL 1 and the case of **Giella v Cassman Brown & Co Ltd [1973] EA 358**. The oft cited case of **Giella v Cassman Brown** (*supra*) indicates the parameters for consideration in the grant or denial of injunctive relief. It sets a 3 tier test. The test is that an applicant must: a) establish a *prima facie* case with a probability of success; b) show they will suffer irreparable injury not compensable by damages; and c) prove the balance of convenience favours them. This is the base as in the case of **American Cyanamid Co. Ltd v Ethicon Ltd** (*supra*) the House of Lords set out elaborate guidelines to establish whether an applicant has an adequate case for the granting of an interlocutory injunction. The guidelines consider:

- a. Whether there was a sufficiently serious/substantial matter to be tried.
- b. Whether damages were an adequate remedy for the claimant if an injunction was not granted.
- c. If damages would not be an adequate remedy, whether the claimant would be able to give an undertaking in damages to the defendant.

d. If it was considered that there was any difficulty regarding the availability of damages on either side, the court should consider the balance of convenience between the parties.

e. If these factors were evenly balanced, the court should consider maintaining the *status quo*.

21. The Court discerns there is a serious matter to be decided. This discharges the *prima facie* element of the case. Are damages an adequate remedy? The Court has been told that there were serious election malpractices. Whereas the facts are to be ascertained, there are allegations of manifest illegalities in the manner the election was conducted. To permit the 2 officials to occupy the seats they are yet to occupy would mean there is an issue with the aspect as to whether compensation by damages would be an adequate remedy. Put another way, the second limb of **Giella v Cassman Brown** is not met. The balance of convenience or as the **American Cyanamid Co. Ltd v Ethicon Ltd** (*supra*) case holds the court should consider the balance of convenience between the parties and if these factors were

evenly balanced, the court should consider maintaining the *status quo*.

22. In this case, both parties stand on the same level and therefore being evenly balanced the order that commends itself for me to make in respect of these 2 Petitions is to maintain *status quo*. In my considered view, there is no harm in the 2 officials not taking up their office pending the determination of this Appeal in March since the directions of the Court is that the Petitioners must file and serve their final submissions within 7 days and the Respondents to file and serve their submissions within 7 days of service. The Court will deliver the Judgment on this Petition on 23rd March 2026 irrespective of whether parties will have filed submissions as it will rely on the documents already filed.

It is so ordered.

Dated and delivered at Kisumu this 19th day of February

2026

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