

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU**  
**ELRC CONSTITUTIONAL PETITION NO E001 OF 2026**

**EDWIN MUTHOMI MBAABU .....1<sup>ST</sup> PETITIONER/APPLICANT**  
**VINCENT MUKUNGI.....2<sup>ND</sup> PETITIONER/APPLICANT**

**VERSUS**

**KENYA NATIONAL UNION OF TEACHERS.....1<sup>ST</sup> RESPONDENT**  
**THE REGISTRAR OF TRADE UNIONS.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Petitioners/Applicants initially moved the Court by way of a Notice of Motion dated 19<sup>th</sup> January 2026, followed by the present Motion dated 17<sup>th</sup> February 2026. In both applications, the Applicants seek conservatory orders restraining the Respondents from recognizing, validating, announcing, gazetting, or swearing in any officials allegedly elected during the KNUT Nyambene Branch elections held on 17<sup>th</sup> January 2026. They further seek orders restraining the Respondents from conducting the 1<sup>st</sup> Respondent’s national elections unless and until the Nyambene Branch elections are properly conducted to ensure lawful branch representation and participation in the national process.

2. In support of the Motion, the Applicants contend that at approximately 3:00 pm on the material date, the KNUT Nyambene Branch elections were violently disrupted, unlawfully halted, and left incomplete, thereby rendering the entire exercise constitutionally infirm, legally invalid, and incapable of producing a legitimate mandate.
3. The Applicants further assert that the abrupt termination of the voting process resulted in the mass disenfranchisement of registered members who were still in the queue waiting to cast their votes.
4. The 1<sup>st</sup> Respondent opposes the Motion through a Replying Affidavit sworn on 25<sup>th</sup> February 2026 by its Secretary General, **Collins Oyuu**. Mr. Oyuu states that the elections were conducted procedurally, lawfully, and constitutionally in strict compliance with Article XX(B) of the KNUT Constitution.
5. He avers that the voting and tallying processes of the said elections were free, fair, transparent, and devoid of violence. According to him, voting commenced at 8:00 am, and by midday, the majority of members had already cast their votes, after which the process awaited the prescribed tallying time of 5:00 pm.

6. Mr. Oyuu further deposes that at around 4:00 pm, the Applicants arrived at the polling station accompanied by individuals who were not registered members of the KNUT Nyambene Branch. Upon discovering that their names did not appear in the register, they allegedly became abusive and disruptive. He states that the Applicants and their companions attempted to interfere with the election process and incite members present, prompting intervention by election officials, agents, and police officers.
7. Mr. Oyuu explains that to safeguard the integrity of the process, the election officials, candidates, agents, and the returning labour officer mutually agreed to move to a secure classroom to continue with the tallying.
8. He alleges that the Applicants and their companions seized unused ballot books, ballot papers, and ballot boxes, which they later relied upon to falsely claim electoral irregularities.
9. Mr. Oyuu avers that following the successful conclusion of the elections, the names of the duly elected candidates were recorded on Form G and submitted to the 2<sup>nd</sup> Respondent, who has since confirmed their acceptance as the legitimate officials of the KNUT Nyambene Branch.

10. The 2<sup>nd</sup> Respondent, **Anne Kanake**, opposed the Motion through her Replying Affidavit dated 23<sup>rd</sup> February 2026. She states that based on information received by her office, the elections were conducted in accordance with the Union Constitution and the Labour Relations Act. She adds that **David Ochieng**, the County Labour Officer, supervised the elections and duly submitted a report to her. Being satisfied that all statutory requirements had been met, she lawfully exercised her mandate and proceeded to register the elected officials of the 1<sup>st</sup> Respondent's Nyambene Branch.

11. In Ms. Kanake's view, the conservatory orders sought have since been overtaken by events.

### **Submissions**

12. The Motion was canvassed through oral submissions, during which counsels for the parties reiterated the contents of their respective Affidavits. Mr. Kinyua, appearing for the Applicants, submitted that the election results cannot stand or be regarded as legitimate, emphasizing that an illegality cannot be said to be overtaken by events.

13. Mr. Akak Jok, counsel for the 1<sup>st</sup> Respondent, argued that it was the Applicants' own conduct that prevented them from voting and that their actions cannot be used as a basis to invalidate an entire election.

14. On behalf of the 2<sup>nd</sup> Respondent, Ms. Kibiti submitted that the registration of the elected officials was lawful and that the conservatory orders sought are incapable of being granted, having been overtaken by events.

### **Analysis and determination**

15. Having considered the Motion, the responses filed, and the parties' opposing submissions, I find that the singular issue for determination is whether the Court should grant the conservatory orders sought by the Applicants.

16. The principles governing the grant of conservatory orders were clearly set out in *Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR*, where the Court held that: -

*“In summary, the principles are that the Applicant ought to demonstrate an arguable prima facie case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice. Further, the Court should decide whether a grant or a denial of the conservatory relief will enhance the*

*Constitutional values and objects of a specific right or freedom in the Bill of Rights, and whether if an interim Conservatory order is not granted, the petition or its substratum will be rendered nugatory. Lastly, that the Court should consider the public interest and relevant material facts in exercising its discretion whether to grant or deny a conservatory order.”*

17. And further in *Centre For Rights Education and Awareness (CREAW) & 7 others vs Attorney General [2011] eKLR*, it was held that: -

*“At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”*

18. In addition, the Supreme Court of Kenya in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others eKLR* further expanded the applicable principles as follows: -

*“Conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public*

*agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as ‘the prospects of irreparable harm’ occurring during the pendency of a case; or ‘high probability of success’ in the applicants case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes and priority levels attributable to the relevant causes”*

19. From the foregoing judicial authorities, the principles governing the grant of conservatory orders may be summarised as follows: -

- a) The Applicant must show that he or she has a prima facie case with a likelihood of success and that, without the conservatory orders, prejudice is likely to be suffered.*
- b) The Court must assess whether, if the interim conservatory orders are not granted, the substratum of the matter would be rendered nugatory.*

c) *The Court must also consider whether granting or declining the conservatory orders would advance or undermine the public interest.*

20. Bearing the foregoing principles in mind, I now turn to examine the Motion.

21. Regarding what amounts to a *prima facie* case, the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR* stated as follows:-

*“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”*

22. Accordingly, the central question is whether the Applicants have demonstrated that they have an arguable, non-frivolous case and identified a right that appears to have been infringed.

23. It is instructive to note that a *prima facie* case is not one that must ultimately succeed at the full hearing. Rather, the Applicant must show that the case raises serious and arguable constitutional issues for determination, or that it alleges a plausible violation of rights. (See ***Kevin K. Mwiti & Others v Kenya School of Law & Others [2015] eKLR***).

24. The crux of the Motion is that the KNUT Nyambene Branch elections held on 17<sup>th</sup> January 2026 were marred by electoral malpractices in that they were violently disrupted, unlawfully halted, and never completed, thereby rendering the entire process constitutionally infirm and incapable of conferring a legitimate mandate. In support of the Motion, the Applicants have annexed a bundle of photographs which they alleged are destroyed ballot boxes and ballot papers.

25. The 1<sup>st</sup> Respondent concedes that there was attempted interference with the election process on 17<sup>th</sup> January 2026, though it attributes this interference to the Applicants. The 1<sup>st</sup> Respondent has further confirmed that due to the attempted disruption, the tallying exercise commenced at about 4:00 pm in a secure classroom within the election venue. The 1<sup>st</sup> Respondent also acknowledges that the prescribed time for beginning the tallying exercise was 5:00 pm.

26. What can be drawn from the foregoing is that the tallying exercise started before the prescribed time, and the Applicants did not participate in the voting process.

27. In view of the foregoing, the Court is satisfied that the Applicants have established an arguable *prima facie* case.

28. However, establishing a *prima facie* case is not, on its own, sufficient to warrant the issuance of a conservatory order. The Court must therefore go further and determine whether the Applicants stand to suffer irreparable harm if the conservatory orders sought are not granted.

29. The concept of irreparable injury was elaborated by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, as follows:-

***“An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”***

30. Essentially, the Applicants herein must demonstrate that, if the Motion is not granted, they will suffer irreparable harm and in addition to that, the substratum of the Petition will be lost, thereby rendering it nugatory.

31. Further, the Applicants must show that the danger is imminent, evident, and real-requiring immediate remedial intervention by the Court. The risk must be more probable than merely possible.

32. The dispute in this case centers on the outcome of the KNUT Nyambene Branch elections.

33. Opposing the Motion, the Respondents have produced extracts of the Register of officials, committee members, and trustees of the KNUT Nyambene Branch, as well as a copy of a notice of change of names and titles of officials (Form Q).

34. It is therefore clear that the 2<sup>nd</sup> Respondent has finalized the registration of the elected officials of the KNUT Nyambene Branch pursuant to the elections held on 17<sup>th</sup> January 2026. Consequently, the conservatory orders sought under prayer 2 of the Motion appear to have been overtaken by events.

35. Nevertheless, a review of the Petition shows that the Applicants are seeking, among other reliefs, a declaration that the KNUT Nyambene Branch elections were unconstitutional, unlawful, and void. Indeed, the Court is capable of granting the orders sought. Therefore, the refusal to issue the interim conservatory orders at this point will not render the Petition nugatory nor cause irreparable harm to the Applicants. They still have recourse under the Petition.

36. Regarding the order seeking to restrain the Respondents from conducting the KNUT national elections until the Nyambene Branch elections are properly held, the Court must consider whether granting such an order would serve or prejudice the public interest.

37. In this regard, the Court finds that it would not be in the public interest to halt the entire national elections of the 1<sup>st</sup> Respondent due to the alleged irregularities in the Nyambene Branch elections.

38. Having considered the urgency of this matter, the Court recognizes the need for the expeditious disposition of the Petition and therefore directs as follows: -

- a) The Respondents shall file their responses to the Petition within 14 days from the date hereof.**

- b) **Should the Petitioners wish to file any Supplementary Affidavit, they shall do so within 4 days of being served with the Respondents' responses.**
- c) **The Petition shall be canvassed by way of written submissions.**
- d) **The Petitioners shall file their written submissions simultaneously with any Supplementary Affidavit, if filed.**
- e) **The Respondents shall file their written submissions within 14 days of being served with the Petitioners' submissions.**
- f) **A convenient mention date shall be set to confirm compliance and schedule a date for Judgment.**

39. Costs shall be in the Cause.

**DATED, SIGNED and DELIVERED at NYERI this 26<sup>th</sup> day of February, 2026.**

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**STELLA RUTTO**

**JUDGE**

**In the presence of:**

Mr. Kinyua for the Petitioner/Applicant

Mr. Ajak Jok for the 1<sup>st</sup> Respondent

Ms. Kibiti for the 2<sup>nd</sup> Respondent

Ndati Court Assistant

### **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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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.

**STELLA RUTTO**

**JUDGE**

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