

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CIVIL CASE NO. E049 OF 2025**

**JUMA OMAR MWANGALA**

**(Suing as the chairperson of Kenya Association of  
Private Employment Agencies (KAPEA).....PLAINTIFF**

**-VERSUS-**

**VIRGINA NJOKI MURIGI.....1<sup>ST</sup> DEFENDANT**

**ADAN ALI KALA.....2<sup>ND</sup> DEFENDANT**

**AND**

**REGISTRAR OF SOCITIES.....INTERESTED PARTY**

**RULING**

1. The plaintiff has filed in this Honourable Court a suit seeking, among other prayers, a permanent injunction against the defendants restraining them from interfering with the affairs of Kenya Association of Private Employment Agencies (hereinafter “the association”) or posing as respectively the secretary and treasurer of the association. He also seeks an order nullifying the results of the election of the association that was held on 24 April 2025 and an order directed to the Interested Party compelling him to amend the association's register so as to reflect its officials in accordance with the meeting of the association held on the 13 September 2024.
2. Alongside the suit, the plaintiff has filed an application, seeking the same prayers sought in the suit but on interim basis; pending the hearing and determination of the suit. In the application brought by way of a motion

dated 5 June 2025, the prayers, relevant to this determination, have been couched as follows:

*“ 3.That upon hearing of this Application inter partes, the Honourable Court be pleased to issue a temporary injunction restraining the 1st and 2nd Defendant/Respondent herein and their associates from purporting to act as officials or representatives of Kenya Association of Private Employment Agencies (KAPEA); pending hearing and determination of the suit.*

*4.That this Honourable Court be pleased to issue an order that status quo be maintained with the Plaintiff/Applicant as the legitimate Chairperson, Mr. Mwalimu Mwaguzo continue to serve as Interim Secretary and Mr. Gerald Maina as Interim Treasurer of KAPEA, pending the next lawfully convened and Constitutional Annual General Meeting of KAPEA 2025 pending the hearing and determination of this Application and suit;*

*5.That this Honourable Court be pleased to issue an order directing the Interested Party herein not to recognize the leadership that resulted from the illegal election of 24th April 2025 pending the hearing and determination of this Application and suit.”*

3. The application is expressed to be filed under order 40 Rule 1, 2, 3, and 4, Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, cap. 21 and Section 18 of the Societies Act, cap. 108. The application is supported by the affidavit of the plaintiff.
4. The plaintiff has sworn that he is the chairman of the association which is itself registered as a society under the provisions of the Societies Act. The 1<sup>st</sup> and 2<sup>nd</sup> defendants were elected as the Secretary and Treasurer respectively of the association during the association's annual general meeting held on 13 March 2023. However, the defendants are said to have been expelled from the association during the association's special general meeting that was held on 13 September 2024 due to various disciplinary issues that were tabled against them.
5. The alleged disciplinary issues ranged from blocking the association's members' submissions of passports to the embassy of the Kingdom of Saudi Arabia to creation of an executive committee parallel to the association's duly elected executive committee.
6. In the special general meeting of 13 September 2024, held at Mombasa, it was resolved that the defendants be removed from office. The minutes and resolutions for change of officials of KAPEA were served upon the respondents and the interested party.

7. Despite their removal from office, the respondents continue holding themselves out respectively as the secretary and treasurer of the association and, further, they continue interfering with the running and management of the affairs of the association. It is also contended that the defendants and a faction of the association's membership are alleged to have conducted the association's elections on 24 April 2025 contrary to the constitution of the association and the provisions of the Societies Act.
8. It is also alleged that the 1<sup>st</sup> defendant has filed a suit in Mombasa Chief Magistrates Court Civil Case No. E430 of 2025 seeking to stop the members from conducting a legitimate election. The case in the magistrates' court is said to be based on forged and fabricated documents. The plaintiff contends that unless the respondents are restrained, they will continue holding themselves out as officials of the association together with other elected officials to the detriment of the association.
9. The defendants did not file any response to the application. Nonetheless, the applicant bears the burden of satisfying the court that he deserves an injunction pending the hearing of the substantive suit, more particularly in terms prayed for in his application.
10. From the applicant's own evidence, he and the defendants were elected as principal officers of the association in March, 2023. Indeed, a copy of a letter from the office of the Attorney General dated 27 March 2023, exhibited to the plaintiff's affidavit, named office bearers of the

association as Juma Omar Mwangala (chairman), Virginia Njoki Murigi (secretary) and Adan Kala Ali (treasurer). Others were Patrick Kariuki Mburu, named as the vice chairman; Philip Mutiso Munyao, who is indicated as the vice secretary and George Waweru Wangendo, named as the assistant treasurer.

11. According to the plaintiff, the secretary and the treasurer, who are respectively named as the 1<sup>st</sup> and the 2<sup>nd</sup> defendants in these proceedings, were removed from office in September, 2024. If that is the case a notice, in a prescribed form ought to have been given to the interested party notifying her of the change of officers. This is a mandatory requirement under section 17 of the Societies Act which reads as follows:

***17. Change of officers or title of office***

***(1) Notice in the prescribed form of any change of officers, or of the title of any office, of a registered society shall be given to the Registrar within fourteen days of the change, and the notice shall be signed by three of the officers of the society.***

***(2) Any registered society which fails to give notice as required by subsection (1) of this section of any change of officers or of the title of any office of the society, shall be guilty of an offence.***

12. According to the plaintiff's own affidavit, what was sent to the Registrar was not the notice in a prescribed form but minutes of a special general

meeting in which the defendants were allegedly removed as officers of the association and what the plaintiff has described as “*an executive order*”.

13. This is what the plaintiff has sworn in his affidavit in support of the application. In its pertinent parts, the affidavit reads as follows:

***“7. That further, as per the provisions of the Constitution of KAPEA, members held a Special General Meeting of the Association on the 13th September 2024 at Mombasa where the 1st and 2nd Respondent's aforesaid disciplinary issues were tabled and it was unanimously resolved that the Respondents herein be removed from office; (Annexed and marked JOIYI-2 is a copy of the minutes and resolutions of the Association's meeting held on the 13th September 2024)***

***8. That after the above mentioned Special General Meeting, the Minutes and resolutions for change of officials of KAPEA were served upon the respondents and the Registrar of Societies, the Interested Party herein and were duly received.***

***9. That thereafter, an Executive Order Number 1 of 25 was also served upon the Respondents and the Registrar and was duly received, and there were no objections from Respondents to counter which proves they were legitimately removed from office***

*by the Members of KAPEA on 13<sup>th</sup> September 2024. (Annexed and marked JOM-14 is a copy of the Executive Order).”*

14. Thus, from the foregoing paragraphs, it is clear that the notification prescribed in section 17 of the Societies Act was not served or presented to the interested party. Perhaps, at the point of service of the minutes and the “executive order” the Registrar should have been alerted that there was a dispute as to who the officers of the association were and invoked section 18 of the Act inquiring from the Society whether the dispute had been resolved. This section reads as follows:

***18. Disputes as to officers***

***(1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may, by order in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.***

15. Subsection (2) of section 18 states that if the order under subsection (1) is not complied with to the satisfaction of the Registrar within the period of

one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society. And According to subsection (3) a society aggrieved by the cancellation of its registration under subsection (2) may appeal to this Honourable Court within thirty days of the cancellation.

16. For purposes of disposal of the instant application, I would say that there is no evidence of change of officers of the association. Besides the office bearers named in the registrar of societies letter of 27 March 2023, there is no other evidence with the registrar showing who, according to section 18 (1) of the Act, have been properly appointed as the lawful officers of the association. I take it that “*proper appointment of the lawful officers of the society*” entails appointment or election of the office bearers in accordance with the association’s constitution.

17. More importantly, it has emerged from the applicant’s supplementary affidavit that a dispute over the officials of the association is pending in the magistrates’ court. In paragraph 7 of the supplementary affidavit the applicant has sworn as follows:

***“7. That the Registrar of Societies has sworn an affidavit in a different matter that related to the same subject matter confirming the allegations made against the 1st and 2nd***

***Defendants. (Annexed and marked "JOM-2" is a copy of the Affidavit sworn by the registrar)."***

18. A copy of the affidavit of the Registrar of Societies exhibited to the applicant's supplementary affidavit shows the "different matter" to which reference has been made but which, by the applicant's own admission is over the same subject as in this suit, is a suit filed in Nairobi as Miscellaneous Application No. 1280 of 2024 where the plaintiff and the applicant and the vice chairman of the association have been named as the applicants while the registrar of societies has been named as the respondent.

19. Besides the Nairobi suit, the plaintiff has also sworn that the 1<sup>st</sup> defendant has filed a suit in Mombasa Chief Magistrates' Court Civil Case No. E430 of 2025 seeking to stop the members from conducting what, in the opinion of the applicant, is a legitimate election. The suit is contested on grounds that it is based on forged and fabricated documents.

20. The question that immediately arises is why it was necessary for the plaintiff to file this suit when the same dispute is being adjudicated elsewhere. Without belabouring the point, this suit would appear to be *sub judice* and, therefore, contrary to section 6 of the Civil Procedure Act. This section reads as follows:

### ***6. Stay of suit***

***No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.***

21. For the foregoing reasons, I am not satisfied that the plaintiff's application meets the threshold for grant of an interlocutory injunction as set out in **Giella V. Cassman Brown & Co. Ltd [1973] EA 358**. To be precise, I am not satisfied that the applicant has established a *prima facie* case with a probability of success and neither has he established that if the injunction is declined, he will suffer irreparable injury that cannot be compensated by way of damages. If there was any doubt as to whether the applicant has established a *prima facie* case, I am not persuaded that the balance of convenience tilts in favour of granting an injunction.

22. For the foregoing reasons, the application is dismissed. Since the respondents did not file any response to the application, I make no orders as to costs. It is so ordered.

**Signed, dated and circulated on the CTS on 20 February 2026**

Ngaah Jairus  
**JUDGE**

