



**Sakwa v Kenya National Private Security Workers Union & 3 others
(Petition E010 of 2026) [2026] KEELRC 632 (KLR) (3 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 632 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E010 OF 2026
NZIOKI WA MAKAU, J
MARCH 3, 2026**

BETWEEN

PATRICK SAKWA PETITIONER

AND

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION 1ST
RESPONDENT**

DUNCAN OKELLO 2ND RESPONDENT

AND

REGISTRAR OF TRADE UNIONS 1ST INTERESTED PARTY

KISUMU COUNTY LABOUR OFFICER 2ND INTERESTED PARTY

RULING

1. By a Petition dated 23rd January 2026, the Petitioner challenged the elections for the position of the 1st Respondent’s Kisumu Branch Secretary held on 15th January 2026, alleging that they contravened Article 41(2)(c) and Article 47 of *the Constitution*, as well as the 2nd Respondent’s Constitution and other statutes. He sought:
 - a. a declaration that the elections be declared null and void; an order cancelling the election of the 2nd Respondent as the 1st Respondent’s Kisumu Branch Secretary;
 - b. an order directing the 1st Interested Party to cancel and/or remove the 2nd Respondent’s name as the 1st Respondent’s Kisumu Branch Secretary;
 - c. an order directing that fresh elections be held in compliance with the 1st Respondent’s Constitution; and costs of the Petition.



2. Contemporaneously, he filed an application under certificate of urgency seeking to injunct the 1st Respondent from publishing or registering the 2nd Respondent as its Kisumu Branch Secretary.
3. In response, the 1st and 2nd Respondents filed a Notice of Preliminary Objection dated 27th January 2026. They contended that the Court lacks jurisdiction due to non-compliance with Gazette Notice No. 18142 of 2025, which established a specialized regime for trade union election disputes. First, they argued that, the dispute having arisen from elections, it ought to have been instituted as an election petition as stipulated in Paragraph 5 of the Gazette Notice. Second, they averred that the Petition was not filed within 21 days of the declaration of results as required by Paragraph 5(3)(a). Third, they contended that there was no compliance with the mandatory structural and substantive content requirements of an election petition contained in Paragraph 6. Further, they asserted that the requirement for deposit of security for costs under Paragraph 8 of the Gazette Notice had not been met. Consequently, they urged the Court to strike out both the application and the Petition.
4. The Preliminary Objection was canvassed by way of written submissions.

Respondents' Submissions

5. The Respondent's submit that the application and the Petition are incompetent as the gravamen of the claim is not constitutional but electoral in nature. They submit that such disputes are strictly governed by section 34(4) of the *Labour Relations Act*, 2007, together with the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions, 2025. While acknowledging that the Court has jurisdiction to determine trade union election disputes, they contend that such jurisdiction has not been properly invoked in this matter. They point out that the Petitioner instituted the proceedings through a constitutional petition and a notice of motion instead of filing an election petition as required under the statute and the Practice Directions.
6. The Respondents further submit that the Applicant has not complied with the structural, procedural, or jurisdictional requirements prescribed for election disputes, including the form of pleadings, compliance with timelines, and the deposit of security for costs, which omissions go to the root of the court's competence. They also contend that the Petitioner's failure to convert the proceedings into an election petition, or to demonstrate compliance with the statutory framework despite the Court's direction issued on 23rd January 2026, renders the proceedings not just merely defective but an abuse of the court process. The Respondents submit that trade union election disputes are sui generis and governed by a structured petition regime designed to ensure prompt filing, precise pleadings, deposit of security, and expeditious determination. They assert that the law does not permit parties to suspend election outcomes through interlocutory motions or miscellaneous proceedings filed outside that framework. On the nature of the Preliminary Objection, the Respondents submit that it raises pure questions of law arising from the pleadings, without the need for evidence, within the meaning of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696. They submit that the Preliminary Objection concerns whether the dispute was instituted through the proper legal procedure, whether non-compliance with mandatory statutory requirements renders the proceedings incompetent, whether constitutional provisions can cure such non-compliance, and whether internal dispute mechanisms were exhausted.
7. The Respondents further submit that the Applicant's reliance on Articles 41, 47 and 50 of *the Constitution* does not alter the substance of the dispute. They submit that the Court must look to the true character of the claim rather than its constitutional framing, and that where Parliament has enacted a specific statutory mechanism for resolving a category of disputes, that mechanism is mandatory and exclusive. They emphasize that, constitutional provisions cannot be invoked to



circumvent timelines, structured pleadings, or the requirement for security for costs under section 34 (4) of the *Labour Relations Act*. They highlight paragraph 5 of the Practice Direction which mandates that an election petition should expressly state that it is brought under section 34 (4) of the *Labour Relations Act*, should be titled “Election Petition No.... of a given year,” should comply with prescribed content requirements and should be filed within the statutory period. Since the pleadings have not been framed as an election petition which ordinarily include clear pleading of the date of declaration of results, the specific results declared, the structured statutory grounds of challenge and the structured relief framework, the Respondents submit that it is incompetent.

8. Additionally, the Respondents submit that the Petitioner’s failure to deposit security of costs under Paragraph 8 of the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions, 2025 is fatal to the suit. They assert that security of costs is mandatory in order to sieve out procedurally non compliant suits. To support their position, they point to the fact that the Petitioner has neither, deposited the prescribed security, sought direction on the security from the court nor offered any explanation for non-compliance. In conclusion, they submit that the characterization of the dispute as a Constitutional Petition, renders section 34(4) of the *Labour Relations Act* nugatory; defeats the structured timeline in the electoral regime; undermines the security for costs requirement; collapses a specialized electoral framework into ordinary motion practice; and encourages procedural circumvention in every election dispute. They therefore urge the Court to uphold the Preliminary Objection, strike out the Notice of Motion and the Petition, and award them costs.

Petitioner’s Submissions

9. The Petitioner submits that the Preliminary Objection does not meet the threshold set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, of raising a pure point of law capable of disposing the suit without recourse to evidence. He contends that the Court would need to examine evidence and interrogate factual issues in order to determine whether the matter ought to have been filed as an election petition rather than a constitutional petition. He further asserts that the question whether mere citation of *the Constitution* converts proceedings into a constitutional petition can only be interrogated at the hearing. He relies on *Eliud Wanjohi Gwandaru v Samuel Waita K & 11 others* [2021] KEELRC 1617 (KLR), which held:

“29. As to whether the petition meets the threshold for filing a petition, this is a matter to be determined within the petition and cannot be determined as a preliminary issue.”

10. Concerning, security for costs the Petitioner submits that the rules contemplate that such security is deposited upon direction by the Court. He asserts that, in the absence of such directions, failure to deposit security does not render the Petition defective. The Petitioner submits that, if the Court deemed security necessary, the appropriate course would be to grant time for compliance rather than strike out the proceedings. The Petitioner further submits that the dispute had been preceded by a formal protest to the Registrar of Trade Unions and therefore was not prematurely brought before the Court. He urges the Court to focus on substantive justice rather than technical procedural objections. Citing Article 159 of *the Constitution*, he emphasizes that the Petition raises extensive constitutional violations and that any procedural defects should be treated as curable rather than fatal. To buttress his position the Petitioner relies on *Benjamin & 3 others v Kenya Medical Practitioners Pharmacists and Dentists Union & another; Registrar of Trade Unions & 17 others (Interested Parties)*(Petition E080 of 2021) [2021] KEELRC 1135 (KLR), in which the court in laying the hierarchy of laws from *the Constitution* followed by Acts of Parliament then all other laws emphasized that a trade union



constitution or an agreement between members does not take precedence over Acts of Parliaments. Before going ahead to underscore that form should not take precedence over substantive justice. In conclusion, the Petitioner submits that the Preliminary Objection was intended merely to shield the Respondents from scrutiny over alleged violations of the Union's Constitution, which he avers should not be allowed.

Disposition

11. The determination of the Court relates to whether the objection taken is proper in terms of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (supra). The Court has considered the rival arguments and the law in reaching this decision.
12. The objection taken is one where the Court must look to the true character of the claim rather than its constitutional framing. The objection relates to whether the jurisdiction of this Court was properly invoked in the matter of an election carried out for the 1st Respondent. The Petitioner argues that in the decision made in the case of *Eliud Wanjohi Gwandaru v Samuel Waita K & 11 others* (supra) where the Court held that the question as to whether the petition meets the threshold for filing a petition is a matter to be determined within the Petition and cannot be determined as a preliminary issue. The Court returns that the question that falls for determination is not whether the Petitioner met the threshold for filing a petition but rather, whether the Petition filed complies with the law in filing a petition to challenge a trade union election which this Court holds is *sui generis*. The decision cited by the Petitioners is therefore distinguishable as it does not fit the prism of the dicta in the case cited on all fours.
13. The Court finds that where Parliament has enacted a specific statutory mechanism for resolving a category of disputes, and the Chief Justice has promulgated rules of procedure in to be followed in articulating a dispute under the law in question, that mechanism is mandatory and exclusive. It must be followed by any party wishing to challenge the results of a trade union election and not the mere challenge of process that impugns the illegality or otherwise of a trade union election. The bifurcation is necessary as one challenges the result akin to an election petition whereas the other petition contemplated is where there is no election envisaged due to either lack of union representation in the sector or the like.
14. This Court is of the firm view that constitutional provisions cannot be called to aid in the circumvention of statutory timelines as was attempted here. There has to be structured pleadings in terms of the law which is comprised in the guidelines issued by the Chief Justice. The Court is minded that there is the requirement for security for costs under section 34(4) of the *Labour Relations Act* which fact is reiterated in paragraph 5 of the Practice Direction which mandates that an election petition should expressly state that it is brought under section 34(4) of the *Labour Relations Act*. The Petition should be entitled "Election Petition No.... of a given year" Noting that the Petition herein has not been framed as an election petition and did not include clear pleading of the date of declaration of results, the specific results declared, the structured statutory grounds of challenge and the structured framework for relief sought, the the finding of the Court is that this Petition is incompetent, misplaced and incapable of achieving the revocation of the election results.
15. When the Court gave directions upon the hearing of the application in the first instance, the Court directed that the Petitioners comply with the provisions of the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions, 2025. The fact that the Petitioners have flagrantly disregarded the provisions of the law, the Court returns that the preliminary objection is well founded and the application and the entire Petition herein are struck out albeit with no order as to costs.



16. The orders granted at interlocutory stage are automatically vacated and the 1st Interested Party may proceed to process the results of the Election transmitted by the 2nd Interested Party in terms of the *Labour Relations Act*.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF MARCH 2026

NZIOKI wa MAKAU, MCI Arb.

JUDGE

