



Kangogo v County Government Workers Union (Kenya) & 3 others (Petition E001 of 2026) [2026] KEHC 2883 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2883 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
PETITION E001 OF 2026
NIO ADAGI, J
FEBRUARY 26, 2026**

BETWEEN

VESKA KANGOGO PETITIONER

AND

COUNTY GOVERNMENT WORKERS UNION (KENYA) 1ST RESPONDENT

THE ELECTIONS COMMITTEE OF THE COUNTY GOVERNMENT

WORKERS UNION (KENYA) 2ND RESPONDENT

ROBA DUBA 3RD RESPONDENT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

RULING

1. This ruling relates to the Notice of Preliminary Objection dated 18th February 2026 by the County Government Workers Union, Kenya and Roba Sharu Duba, the 2nd and 3rd Respondents herein respectively whereby they pray that the Petitioner/Applicant's Application and Petition both dated 12th February, 2026 be dismissed and/or struck out on the grounds: -

1. That this Honorable Court is bereft of the jurisdiction to hear and determine the instant application and petition as only the Employment and Labor Relations Court, the successor of the Industrial Court, has the requisite jurisdiction to hear and determine disputes arising from, or connected directly or indirectly to, elections and/or nominations of officials of a trade union, pursuant to Section 34 (4) of the Labor Relations Act, 2007 and Section 12(1) (g) of the *Employment and Labour Relations Court Act*, 2011.



2. That no existing law clothes the High Court with jurisdiction over disputes or matters regarding or relating to and arising from trade union elections and/or nominations. thereby rendering the instant suit hopelessly incompetent and fatally defective.
 3. That further, the instant suit is sub-judice as the same issues raised in the Petitioner's application and Petition, being issues of the Petitioner's qualification and date of the 1st Respondent's Quinquennial national elections are currently under consideration by Courts of competent jurisdiction in Nairobi ELRCPET/E026/2026. Kisumu ELRCPET/EO18/2026, and Eldoret ELRCC/E009/2026 in which the Petitioner Applicant herein is a party.
 4. That consequently, the instant suit, including the Petitioner's application and Petition, is frivolous, scandalous, vexatious, misconceived, hopeless, a non-starter and an abuse of the Coun process. and is thus a suitable candidate for dismissal and or striking out.
2. The Preliminary objection was lodged following the issuance of the impugned ex-parte interim orders that were issued herein on 16th February 2026.
 3. The objection was canvassed by written submissions which I have carefully considered alongside the pleadings.

Analysis and Determination

4. The main issue for determination by this court is whether the preliminary objection is sustainable.

Whether the preliminary objection is sustainable.

5. The case of Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696 is famous on the issue of what constitutes a preliminary objection. The court observed thus:-

“.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.

Sir Charles Newbold P. stated:-

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

6. Similarly the Supreme Court in the case of Hassan Ali Joho & another v Suleiman Said Shabal & 2 Others SCK Petition No.10 of 2013 [2014] eKLR held that:-

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.



7. Further in the case of Hassan Nyanje Charo v Khatib Mwashetani & 3 Others, [2014] eKLR the court held that:-

“Thus”, a preliminary objection may only be raised on a ‘pure question of law.’ To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record”.

8. A preliminary objection cannot be raised if any fact has to be ascertained from elsewhere or if the court is called upon to exercise judicial discretion. The Court will also take into account that the preliminary objection must stem from the pleadings and raise pure points of law, and should not deal with disputed facts nor should it derive its foundation from factual information. See the case of Oraro- v Mbaja(2005) 1KLR 141, where it was held that:-

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

9. Evidently, a preliminary objection must be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with the point of law. Points of law are on locus standi, jurisdiction of the court and abuse of the court process.

10. This court finds that the Preliminary Objection raising an issue of jurisdiction which is a point of law is merited. Points of law are on locus standi, jurisdiction of the court, and abuse of the court process

11. On the issue of jurisdiction, the Supreme Court in The Matter of the Interim Independent Electoral Commission, S.C. Constitutional Application No. 2 of 2011; [2011] eKLR, and in Samuel Kamau Macharia and Another vs. Kenya Commercial Bank Limited and 2 Others [2012] eKLR, held that the assumption of jurisdiction by Courts in Kenya, is a subject regulated by the Constitution, Statute law, and judicial precedent. The Supreme Court stated:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity”.

12. In Motor Vessel “Lillian S” vs. Caltex Oil Kenya Limited (1989) KLR 1, this Court succinctly set out the principles and context for determination of jurisdiction. Nyarangi, JA stated, inter alia:

“Jurisdiction is everything. Without it, a court has no power to make one more step. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

13. It is trite law that where Constitution or Statute confers jurisdiction upon a court, tribunal, person, body or any authority, that jurisdiction must be exercised in accordance with the Constitution or the Statute conferring it.

14. The issue as to this Court’s jurisdiction can therefore only be determined by first answering the question whether this Court can effectively determine the nature of the claim herein.



15. The Petitioner contend that the Petition raises Constitutional questions relating to procedural fairness, legality, and compliance with regulatory directives, which fall within the supervisory and constitutional jurisdiction of the High Court of Kenya under Article 165(3) of *the Constitution*.
 16. Further that, the instant Petition is distinguishable from disputes contemplated under Section 12(1)(g) because it does not concern internal union disciplinary matters, collective bargaining issues, or labour relations disputes arising from employment. Rather, it concerns the unlawful administrative exclusion of the Petitioner from participating in an electoral process and the Respondents' failure to comply with a mandatory directive issued by a statutory regulator.
 17. It is equally imperative for this Court to appreciate the jurisdictional bar on this Court under the provisions of Article 165 (5) (b) of *the Constitution* of Kenya, 2010 which state that:-

“The High Court shall NOT have jurisdiction in respect of matters—

 - (a)
 - (b) falling within the jurisdiction of the courts contemplated in Article 162.
 18. The crux or substratum and subject matter of the instant Petition and application concerns participation of the Petitioner/Applicant in the election of a trade union officials.
 19. The court has also considered the application dated 25/02/2026 by the Intended Interested Party, and is of the view that the issues raised in the said application are largely the same as those extensively presented by the Petitioner in his petition. The submissions he plans to make before this Court do not seem to differ from those already submitted by the Petitioner/Applicant.
 20. Further, the 1st and 3rd Respondents have also raised in the Preliminary objection and submitted that the instant suit is sub-judice as the same issues raised in the Petitioner's application and petition, being issues of the Petitioner's qualification and date of the 1st Respondent's quinquennial national elections are currently under consideration by Courts of competent jurisdiction in Nairobi ELRCPET/E026/2026, Kisumu ELRCPET/EO/8/2026, and Eldoret ELRCC/E009/2026 in which the Petitioner/Applicant herein is a party.
 21. It is an undisputed fact that the Applicant did not disclose the existence of aforementioned suits when seeking interim reliefs from this Court vide the application dated 12th February, 2026. A reading of the application dated 12th February, 2026, which culminated in the issuance of the impugned ex-parte interim orders herein, reveals that this Court was not informed of the prior, existing and parallel suits.
 22. The upshot is that, by dint of the provisions of Article 165 (5) (b) of *the Constitution* of Kenya, 2010 and Section 12 (1) (i) of the Employment & Labor Relations Court Act, it is the Employment & Labor Relations Court (ELRC) that is better placed and clothed with the requisite jurisdiction to hear and determine the Petitioner's application and Petition touching constitutional questions relating to procedural fairness, legality, and compliance with regulatory directives, and not this Court.
 23. Accordingly, it is this courts' finding that it lacks jurisdiction to entertain the Petitioner's application and Petition and it downs tools. The same are struck out with costs assessed at Kshs.30,000/=.
 24. Right of appeal, 30 days.
- It is so ordered.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 26TH FEBRUARY 2026.

NOEL I. ADAGI



JUDGE

