

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT MOMBASA
MISC. APPLICATION NO. E002 OF 2026

- 1. MASILA MUTUNGA**
- 2. KEVIN MOLONJE**
- 3. SHADRACK MULWA**
- 4. JESEPHAT SHIKUKU**
- 5. IDD MWANIA**
- 6. ELIAS GAO MGAZA**
- 7. TIMOTHY MAINA NJAU**
- 8. PANUEL LIKOKO OMUCHINJI**
- 9. SAMUEL ZIRO NGOWA APPLICANTS**

VERSUS

- 1. ALEX MWANI**
- 2. DAVID KARISA**
- 3. JOSEPH WANYAMA**
- 4. GEORGE OUMA**
- 5. JOSHUA KALAMA**
- 6. AMOS KIBIRA**
- 7. SECRETARY GENERAL, KENYA ENGINEERING WORKERS UNION**
- 8. COUNTY LABOUR OFFICER, MOMBASA COUNTY**
- 9. COUNTY LABOUR OFFICER, KILIFIRESPONDENTS**

RULING

The applicants filed an application dated 30 January 2026 seeking leave to file the petition out of time.

In response, the respondents filed Notice of Preliminary Objections dated 20 February 2026 on the basis:

1. The intended petition violates Rule 3 of the Trade Unions Elections (Election Petition) Rules, Legal Notice 64 of 2014 on limitation of time, which cannot be extended.
2. The petition application for extension of time is not provided for in the said Rules, hence violates the entire Trade Union Election (Election Petition) Rules Legal Notice 64 of 2014.
3. The petitioners' application and the petition violate section 34 of the Labour Relations Act.
4. The prayers/orders sought violate the 7th respondent's constitution.

The respondents are therefore seeking the court's dismissal of the application by the applicants, with costs.

On the objections, the respondents submitted that under Rule 3 of the Trade Disputes Union Elections (Election Petition) Rules and Legal Notice No. 64 of 2014, limitation of time is in mandatory terms. The rules require that a petition seeking to question the validity of an election under the Labour Relations Act should be filed 7 days after the date of the declaration of the results of the election, as held in **Civil Appeal E040 of 2023 in Francis Njoroge Ngure & Mwangi Kangara; ELRC Misc. Appl. E365 of 2025 Hellen Wagechi Makanga v Absa Bank Kenya Limited**, the court held that where the time limit to file suit is set out under the law, such time limit must be complied with. The court's jurisdiction to extend time is thus regulated.

Under section 34 of the Labour Relations Act (the LRA), where the applicants are dissatisfied with the elections, the law allows for an appeal, not a petition, as herein sought to be done. The elections sought to be challenged have since taken place, and returns filed as provided for under the union constitution. The leave sought to file a petition out of time is bad in law and should not be allowed.

The applicants submitted that they seek to file a petition under Rule 3 of the Election Petitions Rules for Trade Unions. They seek to raise questions of law, and the objections by the respondents are without merit.

Determination

The applicants seek leave to file a petition out of time on the basis that they are members of the Kenya Engineering Workers Union. They have an interest in vying for or contesting the elective seats in the union, Mazeras Branch. They have requested the 7th respondent for documents from his office to be able to file their petition, but he declined. They were therefore unable to participate in elections held on 9 January 2026.

The instant application is premised under the provisions of Rule 3 of the Trade Unions Elections (Election Petition) Rules.

Under Rule 3, a petitioner seeking to question the validity of an election under the LRA should do so within 7 days.

A petition to question the validity of an election under the Act shall be filed within seven days after the date of the declaration of the results of the election.

The rule is couched in mandatory terms.

In reading Rule 3, the court is aware that Legal Notice No. 64 of 2014 was revised in 2023, and further, the motions relating to union elections are currently governed by the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025.

The leave thus sought to file a petition out of time is premised on repealed provisions. Even where such were to apply, the same applied in mandatory terms.

The applicants admitted in their submissions that the elections sought to be challenged were held on 9 January 2026. This fact established, the operation of the LRA comes into force. The

timelines required upon such an election remove the applicants from the domain of filing a petition as herein sought. Filing a petition will not achieve the intended purpose even where leave was to be granted, which is not the case here.

Accordingly, the respondents' objections are with merit. The application dated 30 January 2026 is without merit and is hereby dismissed. Each party to bear its costs.

Delivered in open court at Mombasa on this 19th day of March 2026.

M. MBARŪ

JUDGE