



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT KISUMU**

**PETITION NO. E013 OF 2026**

IN THE MATTER OF ARTICLES 36 & 41 OF THE CONSTITUTION  
OF KENYA

**AND**

IN THE MATTER OF SECTIONS 4 & 34 OF THE LABOUR  
RELATIONS ACT

**AND**

IN THE MATTER OF THE TRADE UNIONS ELECTIONS (ELECTION  
PETITION) RULES, 2014

JOSHUA OTIENO OKINDA-----

**PETITIONER**

**VERSUS**

WILSON LUVAVO-----**1<sup>ST</sup>**

**RESPONDENT**

KENYA NATIONAL UNION OF TEACHERS-----2<sup>ND</sup>

**RESPONDENT**

KENNEDY OMONDI OKUYO-----3<sup>RD</sup>

**RESPONDENT**

**AND**

REGISTRAR OF TRADE UNIONS-----**INTERESTED**

**PARTY**

**AS CONSOLIDATED WITH  
PETITION NO. E014 OF 2026**

PATRICK ONYANGO WERE-----

**PETITIONER**

**VERSUS**

WILSON LUVAVO-----1<sup>ST</sup>

**RESPONDENT**

KENYA NATIONAL UNION OF TEACHERS-----2<sup>ND</sup>

**RESPONDENT**

ROSE OTIENO-----3<sup>RD</sup>

**RESPONDENT**

**AND**

REGISTRAR OF TRADE UNIONS-----**INTERESTED**

**PARTY**

## **JUDGMENT**

1. The Petitioner in Petition No. E013 of 2026 moved this Court vide a petition dated 30<sup>th</sup> January 2026 impugning the elections for the 2<sup>nd</sup> Respondent's position of Rachuonyo Branch Chairman held on 24<sup>th</sup> January 2026. He contends that the election was not conducted in a free, fair, transparent or credible manner and seeks the following reliefs:

- (i) A declaration that the elections of the Kenya National Union of Teachers Rachuonyo branch held on 24<sup>th</sup> January, 2026 for the position of Branch Chairperson were not free and fair hence invalid.
- (ii) A declaration that the 3<sup>rd</sup> Respondent was not duly elected as the electoral exercise was not free and fair.
- (iii) An order barring the Interested Party from registering the 3<sup>rd</sup> Respondent as the Chairman of Kenya National Union of Teachers Rachuonyo branch.
- (iv) An order directing the 2<sup>nd</sup> Respondent to organize fresh elections for the post of Chairperson, Rachuonyo branch.
- (v) Costs of the petition.

2. It is his case that as a teacher and member of the 2<sup>nd</sup> Respondent he contested for the position of Chairman against the 3<sup>rd</sup> Respondent. He avers that in preparation for the election a meeting was held on 20<sup>th</sup> January 2026 hosted by the Homa Bay County Labour Officer Mr. Kirui and attended by all aspirants and relevant officials. According to the Petitioner the purpose of the meeting was to agree on ground rules and maintenance of peace during the elections. At the meeting it is his contention that the agreed ground rules were *inter alia* that, a voters register limited to 1,600 eligible voters would be used, candidates and their official agents would be permitted restricted access to the voters' register, and voters would identify themselves using national identity cards and soft copies of their latest payslips since hard copies of pay slips could be easily falsified.

3. He asserts that however, things took a different turn at the nomination exercise on 23<sup>rd</sup> January 2026 when they were informed that the Presiding Officer had been changed from Mr. Kirui, the Homa Bay County Labour Officer, to the 1<sup>st</sup>

Respondent. He avers that the 1<sup>st</sup> Respondent did not communicate any alteration to the agreed ground rules, therefore it came as a surprise when on election day the 1<sup>st</sup> Respondent unilaterally and abruptly varied the identification requirements by insisting on hard copy payslips instead of the previously agreed soft copies. As a consequence, the Petitioner states that a substantial number of his supporters, who had relied on the earlier directive, were denied the right to vote and left the polling station. The Petitioner asserts that this significantly prejudiced his candidature, as many of his supporters from far flung areas did not return to vote. As all this was ongoing, he contends that curiously a team allied to the 3<sup>rd</sup> Respondent had a printer at the polling station pointing to bias and favouritism by the 1<sup>st</sup> Respondent who had forewarned them of the change in the rules. Moreover, he and his agents were denied access to the voters' register contrary to the agreed rules.

4. Highlighting other instances of election malpractice, the Petitioner contends that; there was ballot stuffing evinced by the finding of ballot papers stuck together meaning some

voters were issued more than one ballot paper and the voter turnout of 1,816 votes exceeded the registered voter count of 1,600 demonstrating that unregistered voters were allowed to vote. The Petitioner further avers that the election process lacked transparency and verifiability, as the 1<sup>st</sup> Respondent failed and/or refused to provide election materials or documentation to substantiate the announced results, despite numerous requests. He therefore maintained that the 1<sup>st</sup> Respondent conducted the election with a premeditated outcome in mind as evinced by the outright favouritism of the 3<sup>rd</sup> Respondent.

5. The 1<sup>st</sup> Respondent opposes the application through a replying affidavit sworn on 11<sup>th</sup> February 2026. He avers that in in his designation as Labour Officer I stationed in Kericho he was duly appointed by the Labour Commissioner to preside over the elections as the Homabay Labour Officer was presiding over the 2<sup>nd</sup> Respondent's branch elections at Ratanga Secondary School on the same day. He contends that his appointment was valid since the Labour

Commissioner has the mandate to select labour officers to preside over elections in any part of the country.

6. The 1<sup>st</sup> Respondent states that the electoral process was conducted over two days, commencing with nominations on 23<sup>rd</sup> January 2026 at Kendu Bay, during which candidates, their agents, and stakeholders were briefed on the applicable procedures and requirements. He asserts that the verification requirements included the production of original national identity cards and hard copies of current payslips, in accordance with the Union's constitution and a circular issued on 17<sup>th</sup> December 2025 attached as annexure 'WL 3 a' and 'b' respectively. He asserts that these requirements were clearly communicated to all candidates, who were expected to relay the same to their supporters. It is the 1<sup>st</sup> Respondent's position that he did not alter or depart from any agreed rules but strictly adhered to the established legal and procedural framework governing the elections. He further contends that the Petitioner, being a former Branch Chairman and a seasoned union member, was well aware of these requirements.

7. Additionally, the 1<sup>st</sup> Respondent outlines that the elections were conducted in an orderly and transparent manner, with candidates and their agents actively participating at all stages, including voter verification, voting, and tallying. He avers that agents were present during the counting process and signed confirmation forms attesting to the accuracy and integrity of the results as evinced by their signing of the deed attached as annexure 'WL4'. In response to the allegations of malpractice, the 1<sup>st</sup> Respondent denies any occurrence of ballot stuffing or irregularities, asserting that the process was open and supervised, and that no complaints were raised by agents during the exercise. In particular, he maintains that after payslip and identity card verification, voters signed against their names on the register after which the clerk underlined their names as evinced by register attached as annexure "WL2". He asserts that the ballot boxes were transparent hence stuffing could not occur and that all procedures were conducted in the presence of candidates' representatives and security personnel.

8. Regarding voter turnout, the 1<sup>st</sup> Respondent states that the total number of registered voters in the 2<sup>nd</sup> Respondent's register was 2,185, out of whom 1,844 participated in the election for Branch Chairman, and that all who voted met the eligibility criteria set out in the union's constitution and regulations. He therefore asserts that the contention that unregistered persons voted, is unfounded.

9. The 1<sup>st</sup> Respondent further denies knowing any of the candidates hence the allegations of favouritism does not arise. He adds that the election results were duly transmitted to the Registrar of Trade Unions and that all election materials, including ballots, are securely preserved and available for verification pursuant to court orders if need be. In conclusion he asserts that the petition is defective having been instituted contrary to section 3(3) of the Government Proceedings Act, and urges the court to dismiss it with costs.

10. The 2<sup>nd</sup> Respondent opposes the Petition through a replying affidavit sworn by Mr. Collins Henry Oyuu its Secretary General. According to him, it has always been a mandatory requirement for voters to produce hard copy

payslips together with original national identity cards for verification purposes, hence the allegation that the 3<sup>rd</sup> Respondent was favoured or selectively advised to inform his supporters to carry hard copies is untrue. He asserts that it was virtually impossible for the 3<sup>rd</sup> Respondent to know those who would vote for him so as to forewarn them of the requirement for hard copies. He deposes that the election involved 2,185 registered members, with the 3<sup>rd</sup> Respondent garnering 1,049 votes against the Petitioner's 763 votes which was a fairly clear and wide margin. It is his position that the elections were free, fair, and verifiable, and that the petition is a mere fishing expedition by the Petitioner, who is in denial after losing the elections. In conclusion the 2<sup>nd</sup> Respondent urges the Court to dismiss the Petition with costs.

11. The 3<sup>rd</sup> Respondent equally opposes the Petition via a replying affidavit sworn on 10<sup>th</sup> February 2026. He maintains that the requirements for voting have consistently included the production of an original national identity card and a hard copy of the most recent payslip, ever since he started

voting in the year 2009. He asserts that the use of hard copy payslips is an established safeguard, as they can be marked during verification to prevent multiple voting. Regarding the meeting held on 20<sup>th</sup> January 2026, the 3<sup>rd</sup> Respondent maintains that it was purely a security briefing convened by the Deputy County Commissioner in view of earlier KUPPET elections that had turned chaotic. Moreover, he asserts that the meeting did not deliberate on or alter any electoral rules, neither were binding ground rules agreed upon. With respect to the appointment of the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> Respondent reiterates that it was necessitated by the fact that the Homa Bay County Labour Officer was presiding over the Homa Bay Branch elections. The 3<sup>rd</sup> Respondent further avers that the applicable voting requirements, including the use of hard copy payslips, were clearly communicated during the nomination exercise on 23<sup>rd</sup> January 2026 by the presiding Labour Officer and other officials, and that all candidates disseminated this information widely to their supporters through WhatsApp groups and other social media handles as evinced by printouts annexed as 'KOO 4 a-d'.

12. He contends that the election process was conducted peacefully, transparently, and in strict compliance with the union's constitution and procedures. He denies that any voters were turned away unlawfully and asserts that all candidates, including the Petitioner, remained present throughout the exercise and voted without hindrance. He further maintains that agents for all candidates participated in the process, raised no objections, and duly signed confirmation documents affirming the integrity of the process and results. Regarding allegations of irregularities, the 3<sup>rd</sup> Respondent asserts that none occurred. He emphasizes that he won the election by a substantial margin, garnering 1,049 votes against the Petitioner's 763 votes, attributing it to legitimate electoral support. He therefore urges the Court to dismiss the petition with costs.

13. In compliance with the Court's directions, parties filed written submissions.

#### Petitioner's Submissions

14. In support of the Petition consolidated submissions with regard to this Petition as well as Petition E014 were filed. The

Petitioners contend that the elections were marred by skewed processes, voter suppression and fraud. They maintain that the elections did not meet the threshold of free and fair elections, articulated in Article 81 of the Constitution and the decision in the case of **Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae) (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR)**, where it was held that elections must be:

- i. by secret ballot;
- ii. free from violence, intimidation, improper influence or corruption;
- iii. conducted by an independent body;
- iv. transparent; and,
- v. administered in an impartial, neutral, efficient, accurate and accountable manner.

15. On the replacement of the presiding officer, the Petitioners submit that it was suspect and no explanation whatsoever was advanced. They assert that the explanations

by the Respondents were not backed by any correspondence explaining the reason for the change, and further that no reason were given as to why he was not replaced by someone from the same office. They maintain that this unexplained change created an opportunity for manipulation and pointed to collusion between the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

16. Regarding the conduct of the election, the Petitioners submit that the 1<sup>st</sup> Respondent unilaterally departed from agreed ground rules by introducing, on the voting day, a requirement that voters produce hard copies of payslips, contrary to the earlier understanding that soft copies would suffice. They assert that this change disenfranchised many voters, including some of the Petitioners' supporters, particularly those who could not access printing services, and thereby tilted the process in favour of the 3<sup>rd</sup> Respondent. They further contend that the 3<sup>rd</sup> Respondent's camp had prior knowledge of this requirement and facilitated their supporters by providing printing services at the polling station.

17. Concerning the issue of ballot stuffing, the Petitioners submit that it was massively carried out. They reiterate that the number of votes cast exceeded the number of registered voters initially communicated, and that some ballot papers appeared to have been inserted in batches. As regards the voter register, they submit that 200 voters had been added by hand without any justification, meaning they were most likely fictitious and had been mischievously added to ensure the numbers in the ballot boxes tallies with the declared results. Moreover, they contend that they could even have been added after institution of this suit just in case a recount is ordered.

18. In response to the argument that the petitions were an afterthought, the Petitioners submit that the relevant forms allegedly signed by their agents were executed on the nomination day under confusion and could not be taken as confirmation of a free and fair election, particularly since no such confirmations were made on the actual voting day. They highlight that forms meant to be signed after the elections on 24<sup>th</sup> January 2026 were signed on 23<sup>rd</sup> January

2026. Drawing attention to pages 10 and 11 of the 1<sup>st</sup> Respondent's replying affidavit to Petition E014 wherein the 3<sup>rd</sup> Respondent purports to have witnessed a nomination exercise on 24<sup>th</sup> January 2026 which was clearly not the case.

19. On the issue of the margin of victory, the Petitioners assert that the alleged wide margin could not sanitize an election process tainted by irregularities. They maintain that the focus should be on the integrity of the process rather than the numerical outcome, reiterating, with reliance on the case of **Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae) (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR) (Election Petitions) (20 September 2017)** decision, that non-compliance with electoral laws may vitiate an election irrespective of the margin. In conclusion, the Petitioners submit that having discharged the evidentiary burden of demonstrating irregularities that compromised the election, the burden shifted to the Respondents to rebut these claims and

demonstrate compliance with the law, which they have failed to do. Consequently, they urge the Court to invalidate the elections and allow the consolidated petition with costs.

#### 1<sup>st</sup> Respondent's & Interested Party's Submissions

20. The 1<sup>st</sup> Respondent and the Interested Party submit that the Petitioner has failed to discharge the legal burden of proof required in election disputes. Relying on the principle that “he who alleges must prove,” as stated in **Ben Njoroge & another v Independent Electoral and Boundaries Commission & 2 others [2013] eKLR**, they contend that the Petitioner has not adduced sufficient evidence to substantiate the allegations of irregularities, misconduct, or breach of electoral rules.

21. On the issue of the change of the presiding officer, they submit that the 1<sup>st</sup> Respondent was lawfully appointed by the Labour Commissioner and presided over the election process from nomination through to conclusion without any objection from the Petitioner. Moreover, they assert that the appointment was within the statutory mandate of the Labour Commissioner. Regarding departure from agreed election

rules, they submit that there was no such deviation. They maintain that the requirement for voters to produce original national identity cards and hard copies of their most recent payslips was consistent with the KNUT Constitution and the circular issued on 17<sup>th</sup> December 2025. They further submit that these requirements were communicated to all candidates during the nomination exercise, and that the Petitioner himself complied with them at that stage. Consequently, they maintain that the Petitioner cannot legitimately claim ignorance or allege a last-minute change in the rules.

22. Concerning allegations of favouritism and preferential treatment of the 3<sup>rd</sup> Respondent, they submit that these claims are baseless and unsupported by evidence. It is their submission that the 1<sup>st</sup> Respondent applied uniform rules to all candidates and had no prior acquaintance with any of them. It is further asserted that the Petitioner has not demonstrated any differential treatment or bias in the conduct of the election. The 1<sup>st</sup> Respondent and the Interested Party further submit that the 3<sup>rd</sup> Respondent,

having garnered the highest number of votes, was validly declared the winner, and that the election was conducted in a free, fair, transparent, and credible manner in accordance with the KNUT constitution. In conclusion they urge the Court to dismiss the petition for lack of merit.

### 2<sup>nd</sup> Respondent's Submissions

23. The 2<sup>nd</sup> Respondent submits that the Petitioner has failed to discharge the legal and evidentiary burden of proof as required under Section 107 of the Evidence Act and as affirmed in **Raila Odinga & others v Independent Electoral Boundaries Commission & others [2013] eKLR**. The 2<sup>nd</sup> Respondent contends that the Petitioner has not presented any credible documentary evidence to substantiate the serious allegations raised, including the purported irregular replacement of the presiding officer, deviation from election rules, favouritism, and ballot stuffing.

24. On the issue of replacement of the presiding officer, the 2<sup>nd</sup> Respondent reiterates that it was necessitated by the unavailability of the Homabay Labour Officer and was lawfully effected by the Labour Commissioner. It further

submits that the Petitioner did not raise any objection at the time and that agents signed confirmation deeds dated 23<sup>rd</sup> January 2026 affirming the integrity of the process without protest.

25. Regarding the alleged unilateral departure from election rules, the 2<sup>nd</sup> Respondent submits that the applicable requirements were those set out in the KNUT constitution (2022) and the circular dated 17<sup>th</sup> December 2025, which required voters to present original identification documents and hard copy payslips. It asserts that the Petitioner has not produced any evidence, such as minutes or an agenda, to support the claim that soft copy payslips were permitted at any stage. The 2<sup>nd</sup> Respondent further submits that allegations of favouritism and bias against the 1<sup>st</sup> Respondent are unfounded, as no evidence has been adduced to demonstrate differential treatment or prior acquaintance with any candidate. Similarly, it asserts that the allegation that 3<sup>rd</sup> Respondent's camp had access to a printer is speculative and unsupported by evidence.

26. On the issue of ballot stuffing and the cap of voters at 1,600, the 2<sup>nd</sup> Respondent submits that no verifiable

evidence of malpractice has been adduced. While relying on the case of **Wavinya Ndeti v Independent Electoral Boundaries Commission & 4 others [2013] eKLR**, the 2<sup>nd</sup> Respondent submits that elections are processes in which minor errors or imperfections may occur, but such irregularities do not invalidate an election unless they are shown to have substantially affected the outcome. It submits that even if any irregularities existed, which is denied, the Petitioner has failed to demonstrate that they compromised the integrity or result of the election. In conclusion, the 2<sup>nd</sup> Respondent submits that the Petitioner has not met the requisite standard of proof in election disputes and has failed to establish any basis for the Court's intervention. It therefore urges the Court to dismiss the petition with costs.

### 3<sup>rd</sup> Respondents' Submissions

27. The 3<sup>rd</sup> Respondents in both Petition E013 and Petition E014 submit that, pursuant to sections 107, 108 and 109 of the Evidence Act (Cap 80), the burden of proof rests squarely upon the Petitioners to prove all allegations forming the basis of the Petitions. They contend that the Petitioners,

being the parties asserting the existence of certain facts, must discharge that burden, failing which the Petitions must fail. They further submit that the applicable standard of proof in election petitions is higher than a balance of probabilities but lower than beyond reasonable doubt, as settled in the case of **Raila Odinga v The Independent Electoral and Boundaries Commission & 3 others [2013] eKLR**. Under this standard, the Petitioners must not only prove non-compliance with the law but also demonstrate that such non-compliance substantially affected the election results. Relying on the principles enunciated in **Raila Odinga v IEBC & 3 others [2013] eKLR**, the 3<sup>rd</sup> Respondents assert that it is the duty of the court to determine whether a firm and unanswerable case has been established; that allegations of non-conformity must be proved together with their effect on the validity of the election; and that elections ought not to be nullified on the basis of explained discrepancies or irregularities that do not affect the outcome

28. On the issue of the alleged sudden replacement of the Presiding Officer, the 3<sup>rd</sup> Respondents submit that the

Petitioners failed to produce any evidence demonstrating that a specific individual had been formally appointed to preside over the election or that the replacement was unlawful. They assert that the Petitioners neither produced documentary proof of such appointment nor called any relevant witnesses, including the alleged Presiding Officer. Further, the Petitioners did not object to the alleged change at the material time and fully participated in the electoral process, thereby acquiescing to it. The 3<sup>rd</sup> Respondents contend that no prejudice or advantage arising from the alleged change was demonstrated and that this ground remains unproved. On the alleged unilateral departure from election ground rules, the 3<sup>rd</sup> Respondents submit that the Petitioners failed to adduce cogent evidence to support claims that voters were disenfranchised or that rules were selectively applied. They aver that no affected voter was identified or called as a witness, nor was any affidavit presented from such voters. The allegations regarding preferential treatment, use of a printer, and selective communication are, in their view, speculative and unsupported by evidence. They further submit that the

requirement for hard copy payslips was a longstanding identification practice in KNUT elections and was merely reiterated, not introduced. They maintain that the Petitioners failed to meet the requisite standard of proof on this issue.

29. Regarding the allegation of ballot stuffing, the 3<sup>rd</sup> Respondents contend that no credible evidence was presented to substantiate the claim. They submit that no documentation, witness testimony, or contemporaneous complaint was produced to demonstrate the alleged irregularities. They question the source of the alleged voter register figures and note that no witness was called to verify such claims. They rely on the case of **Raila Odinga v IEBC & 3 others [2013] eKLR** to argue that allegations unsupported by evidence cannot sustain an election petition. The 3<sup>rd</sup> Respondents further rely on **Raila Odinga, Martha Karua & 5 others v William Ruto, Rigathi Gachagua & 9 others, Presidential Election Petition No. E005 of 2022 (Consolidated)**, where the Supreme Court emphasized that allegations such as ballot stuffing must be strictly proved and that speculative or hearsay evidence is insufficient. They cite the Court's holding that fraud must be

proved to a high standard and that unproven hypotheses cannot form the basis for nullifying an election. They also rely on the Court's rejection of hearsay and incredible affidavit evidence, urging this Court to similarly disregard the affidavits of Mr. Erick Agumba Ongat and Mr. Martin Omondi for failing to meet evidential thresholds.

30. Additionally, the 3<sup>rd</sup> Respondents submit that minor irregularities, if any, are inevitable in any electoral process and do not warrant nullification unless they are shown to substantially affect the outcome. They rely on the Supreme Court's reasoning in **Odinga & 16 others v Ruto & 10 others; Law Society of Kenya & 4 others (Amicus Curiae) [2022] KESC 56 (KLR)** that courts should not overturn elections in the absence of proven violations that affect the result. On the facts, the 3<sup>rd</sup> Respondents maintain that the election was conducted in a free, fair, and peaceful manner, with no objections raised during the process. They aver that the Petitioners, having participated without protest, are estopped from challenging the process after the results. They further submit that the requirement for hard copy payslips was well known and complied with by voters, and

that the allegation regarding Kendu Bay being exclusively Adventist is factually incorrect. They also assert that candidates from the Petitioners' camp were successfully elected to several positions, thereby negating claims of bias or manipulation. They explain that additional voters were allowed upon verification through a consensual process involving all stakeholders, and no objections were raised at the time. They further contend that even if the contested votes were discounted, the margin of victory would remain significant and unaffected. In conclusion the 3<sup>rd</sup> Respondents urge the court to dismiss the Consolidated Petitions with costs.

#### Disposition

31. The issues in the dispute before the court are to do with a trade union election. As such, the north star will be Constitution of Kenya, the constitution of Kenya National Union of Teachers, the Trade Union Election Rules 2014 and the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025.

32. The Supreme Court in the case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others** (*supra*) did acknowledge the practical reality that imperfections in the electoral process are expected and that elections are conducted by human beings under stressful circumstances, and therefore mistakes do sometimes occur. It follows therefore that the court should not lightly overturn an election especially where the results substantially reflect the will of the voters where neither a candidate nor voters have engaged in any wrongdoing. In the case of **Raila Odinga & another v Independent Electoral and Boundaries Commission & 2 others (Election Petition 1 of 2017)** [2017] KESC 32 (KLR) (1 September 2017) (**Determination**) the Supreme Court held that in election matters, there is a presumption that the election was properly conducted and that the results declared were correct. The burden of proving that such was not the case

rests with the petitioner. The petitioner has to prove that the election was not conducted in accordance with the principles laid down in the Constitution and election law. Where there are allegations of irregularities, malpractices, or misconduct that the petitioner has made about the election, it is up to him to prove their occurrence. Further, the Petitioner has to prove that irregularities, malpractices, or misconduct were of such magnitude that they affected the results. With that in mind, the Court will deal with the fact pattern in the matter before me.

33. The Petitioners herein were unsuccessful candidates and they seek to challenge the elections conducted at the Rachuonyo Branch of the Union, enjoined in the suits as the 2<sup>nd</sup> Respondent. The elections from all accounts were conducted on 24<sup>th</sup> January 2026. The Petitioners contend that the election was not conducted in a free, fair, transparent or credible manner thereby precipitating the Petitions before

the Court. The Respondents on the other hand have argued the petitions are misplaced and that the elections were conducted in compliance with the law and any errors or omissions were not material to warrant the interposition of the Court in the outcome.

34. The Registrar of Trade Unions who is enjoined in the Petitions as the Interested Party, is obligated to conduct the Trade Union Elections each 5 year cycle. This year marked the fifth year to have the elections conducted for all trade unions in Kenya leading up to the delegates conference where COTU members would elect their officials. In preparation for the elections, the Interested Party issued guidelines on 25<sup>th</sup> September 2025 vide a communication reference **ML&SP/TU/ELECTION/2026**. From the face of it, this communication was dispatched to all registered Trade Unions, Employers' Organizations, and Federations. The 2<sup>nd</sup> Respondent is such a registered Trade Union and the Court

has not discerned non-communication to the 2<sup>nd</sup> Respondent. It is taken this notice reached the 2<sup>nd</sup> Respondent who was required to adhere to the guidelines issued by the Registrar of Trade Unions. It is indeed in compliance that elections were conducted in January 2026 for the Rachuonyo Branch of the Union.

35. The Branch elections were to take place between 5<sup>th</sup> January 2026 and 31<sup>st</sup> March 2026. The Trade Unions were required to adhere to their constitutions in conducting their elections. In addition, there were the following pre-election requirements to be strictly complied with:

*5. Pre-election requirements*

*Authorized representatives of Trade Unions, Employers' Organizations, and Federations are reminded of the following obligations:*

*I. Membership registers at both the branch and national level MUST be duly updated before the elections*

II. *For Unions whose Constitutions provide for their elections to be overseen by the Commissioner for Labour, certified copies of the registers must be furnished to the Commissioner for Labour (for national offices) and the same to the respective County Labour Officers (for branch offices) at least sixty (60) days before the elections.*

III. *In addition to the provision above, the said Unions are required to furnish the Commissioner for Labour and respective County Labour Officers with certified copies of the Union Constitutions. Do take note that any amended constitutions whose implementation has been barred by a court order are not to be used for these elections unless the court issues an alternative order.*

IV. *Where internal election mechanisms (Such as election boards/committees) have been provided by the Constitutions, such bodies must be constituted in line with the respective Constitutions and the necessary documents submitted to the respective authorized supervisors.*

V. *Only fully registered paid-up members are entitled to vote. Non-members who merely pay agency fees are not entitled to vote.*

*VI. Schedules of branch and national elections must be submitted to the Registrar and the Commissioner for Labour, as well as County Labour Officers (where the case applies), at least Sixty (60) days before the elections to facilitate adequate planning.*

*VII. The venue of the elections must also be communicated to the Registrar and other supervising officers at least Thirty (30) days before the elections.*

36. The directions were clear. No one was to be allowed to vote if they merely paid agency fees. The point will be more apparent as we discuss the conduct of the elections at Rachuonyo. From the submissions of the Petitioners, the elections were conducted on a Saturday, a day marked as holy being the Sabbath by adherents of the faith practicing as Seventh Day Adventists. It would be discerned that the argument by the Petitioners is that there were no shops or bureaus open since Rachuonyo is more or less the epicenter of the SDA movement having been the inaugural location of

the missionaries who spread this brand of Christianity. The Petitioners argued that the election rules communicated by the Labour Officer Mr. Kirui. It was said that the meeting on 20<sup>th</sup> January 2026 was hosted by the Homa Bay County Labour Officer Mr. Kirui and attended by all aspirants and relevant officials. According to the Petitioners, the purpose of the meeting was to agree on ground rules and maintenance of peace during the elections. It was the Petitioners contention that at that meeting the agreed ground rules were *inter alia* that, a voters register limited to 1,600 eligible voters would be used, candidates and their official agents would be permitted restricted access to the voters' register, and voters would identify themselves using national identity cards and soft copies of their latest payslips since hard copies of pay slips could be easily falsified. It is interesting to note that the Petitioners contend the candidates and their

official agents would be allowed restricted access to the voters' register.

37. The Registrar of Trade Unions had communicated that for Unions whose Constitutions provide for their elections to be overseen by the Commissioner for Labour, certified copies of the registers must be furnished to the Commissioner for Labour (for national offices) and the same to the respective County Labour Officers (for branch offices) at least sixty (60) days before the elections. It would therefore be inaccurate to assert the Registrar of Trade Unions would only permit limited access to the voters register for the trade union members who were vying for elections and their official agents. This does not comport with logic.

38. The assertion that payslips in electronic form would be utilized for voting is problematic in comprehension. Why would the 2<sup>nd</sup> Respondent permit the voting where an

electronic payslip is to be used? The more tenable thing would be to have the actual payslip that is issued to employees as the confirmation of the current fully paid up members of the Trade Union for purposes of election. It is asserted by the 2<sup>nd</sup> Respondent and the 3<sup>rd</sup> Respondents that this has been the *modus operandi* in previous elections. No evidence was led that there was any change in the conduct of elections from the past practice. It is also not evident that there were 'changes' to the identification of voters as alleged by the Petitioners.

39. It is clear therefore that it would be unconscionable to reverse the directives that comport with reason for some amorphous directive whose evidence has not been availed to Court for the proposition that the election rules were changed on 20<sup>th</sup> January 2026 a mere 6 days to the election without reference to the law. In the Court's view, the Petitioners were selling the Court a pipe dream. We are not

boarding. It is quite clear there was no evidence of malpractice or irregularity demonstrated to the Court. The threshold for dislodging a proposition is that there should be evidence slightly beyond reasonable doubt in election matters.

40. The 2<sup>nd</sup> Respondent seems to have conducted an election worth endorsing as the Registrar of Trade Unions and the Returning Officer have not been shown to have misconducted themselves in the handling of the elections for the Rachuonyo Branch of the Union. Critically, no complaints were raised by the candidates or their agents during the exercise. If there was any element of ballot box stuffing, there would have been immediate protest and the agents would have declined to sign off on the process. I return that the Petitions are thus misplaced and accordingly must fail as no evidence of malpractice or misstep by the election officials has been shown.

41. Before I pen off, there is the small matter of adherence to the directive No. 8 of the Employment and Labour Relations

Court (Trade Union Election Disputes) Procedure and Practice Directions 2025. It seems there is none of the Petitioners who complied with the Rule. There was no reason to decline to follow the law even after being alerted to do so by the Court. It is clear the Petitioners who are seasoned teachers would fail to comprehend the directions. In the future, when parties approach Court, it would be in their interests to acquaint themselves with the law attendant to their quests for justice before the Courts. A player must know the rules of the game before embarking on an attempt to play the game.

42. The long and short of the foregoing discourse is that the 2<sup>nd</sup> Respondent Union and the Registrar of Trade Unions as well as the Returning Officer cannot be blamed for the failure of the Petitioners to garner enough votes to be declared successful in the Branch elections for Kenya National Union of Teachers Rachuonyo Branch. The Petitions fail and are hereby accordingly dismissed. The Petitioners are condemned to pay costs of the Petitions to the Respondents herein.

It is so ordered.

**Dated and delivered at Kisumu this 23<sup>rd</sup> day of March**

**2026**

**Nzioki wa Makau, MCI Arb.  
JUDGE**

Original