



**Chacha v Etyang & 3 others (Petition E019 of 2026)
[2026] KEELRC 944 (KLR) (20 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 944 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION E019 OF 2026

NZIOKI WA MAKAU, J

APRIL 20, 2026

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

AND

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

AND

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

AND

**IN THE MATTER OF THE KENYA NATIONAL UNION OF
TEACHERS' CONSTITUTION, RULES AND REGULATIONS**

BETWEEN

NYASONGE CHACHA PETITIONER

AND

MARCELYNE ETYANG 1ST RESPONDENT

KENYA NATIONAL UNION OF TEACHERS 2ND RESPONDENT

JOSEPHINE WANKURU NSATO 3RD RESPONDENT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY



RULING

1. Through an application dated 13th February 2026 the Petitioner seeks the following prayers:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That pending the hearing and determination of this petition, this Honourable Court be pleased to issue conservatory orders barring the Interested Party from registering the 3rd Respondent as the duly elected chairperson of the 2nd Respondent's Kuria West branch following the elections held on 7th February, 2026.
 - e. That pending the hearing and determination of this petition, this Honourable Court be pleased to issue conservatory orders barring the 2nd Respondent herein from recognizing the 3rd Respondent as the duly elected chairperson of the 2nd Respondent's Kuria West branch following the elections held on 7th February, 2026.
 - f. That this Honourable Court be pleased to issue an order directing the 1st Respondent to deliver to the court for the purposes of scrutiny all the electoral materials used during the impugned elections including but not limited to; the marked voters register used during the elections, the election register, all un-used ballot papers, all used ballot papers in a sealed ballot box, the rules of elections and all forms signed during the exercise.
 - g. That this Honourable Court be pleased to issue directions for the scrutiny of the electoral materials referred to in (6) above and for the filing of an appropriate report to the court.
 - h. That costs of this application be borne by the Respondents.
2. The application is premised on the grounds apparent on its face as well as the Petitioner's supporting affidavit. She deposes that the 2nd Respondent's Kuria West Branch elections for the position of chairperson held on 7th February 2026 were not free and fair. In particular, she alleges that the 3rd Respondent, who is purportedly not a member of the 2nd Respondent, was irregularly allowed to contest against her despite her objections. She further avers that the 1st Respondent permitted voting without proper verification, thereby allowing ineligible persons to vote and resulting in a turnout exceeding the 763 registered members. According to the Petitioner, her objection to the 3rd Respondent's candidature was met with pandemonium from 3rd Respondent's goons who had accompanied her to the polling station. Additionally, although the 1st Respondent undertook to consult the 2nd Respondent and revert on the complaint, no action was taken. The Petitioner also asserts that no supporting documentation was availed to validate the declared results and points to the discrepancy between the 820 votes cast and the 763 registered voters as further evidence of irregularities.
3. The application is opposed. The 1st Respondent, in a replying affidavit sworn on 10th March 2026, denies the allegations and maintains that as the Returning Officer the elections were conducted lawfully and transparently. She avers that only registered members of the 2nd Respondent were permitted to vote and that the 3rd Respondent was a bona fide member, as evinced by her payslip (annexed as "ME-2") reflecting payment of union dues, as well as her inclusion in the election register. The 1st Respondent further states that no objection was raised regarding the 3rd Respondent's eligibility



- at the nomination stage and denies that any ineligible persons participated in the voting process. She asserts that the votes were counted openly and without complaint, and characterizes the application as an afterthought intended to undermine a free and fair electoral process.
4. The 2nd Respondent similarly opposes the application through a replying affidavit sworn by its Secretary General, Collins Henry Oyuu. He maintains that the 3rd Respondent is a duly registered and fully paid-up member of the union and was therefore eligible to participate in the elections. He further contends that the Petition contravenes the applicable Trade Union Elections Rules and is liable to be struck out.
 5. The 3rd Respondent also filed a replying affidavit sworn on 26th February 2026. She depones that she is a duly registered and paid-up member of the 2nd Respondent union as evinced by her payslip attached as “JWN 1”. She asserts that the Applicant has failed to substantiate allegations regarding the number of votes cast in her favour or to demonstrate that any objection was raised against her nomination. She denies any involvement in acts of violence or disruption during the elections and contends that no formal complaint was lodged with the police to support such claims. She maintains that the elections were conducted peacefully and the process was free and fair. She further states that the Applicant’s challenge is driven by dissatisfaction with the outcome and not grounded in fact or law. Additionally, she contends that the failure to enjoin the Attorney General renders the application defective. In conclusion, the 3rd Respondent urges the Court to dismiss the application with costs.
 6. The application was canvassed by way of written submissions.

Petitioner’s Submissions

7. The Petitioner submits that she has met the pre-requisites of grant of injunctions as set out in *Giella v Cassman Brown Co. Ltd* [1973] EA 358. On the existence of a prima facie case, the Petitioner argues that the elections were conducted in contravention of both the law and the Union’s Constitution. Firstly, she contends that the 1st and 2nd Respondents unlawfully allowed the 3rd Respondent to contest despite not being a member of the union, contrary to Article X(d)(2) of the 2nd Respondent’s Constitution. She highlights the 3rd Respondent’s payslips which evince payment of agency fees by non-members benefitting from the CBA and not membership subscription. She also highlights the fact that the Respondents have not produced the Union’s membership register.
8. Secondly, the Petitioner submits that non-members participated in the voting process, as evinced by the discrepancy between the 820 votes cast and the 763 registered voters. She maintains that this assertion has not been rebutted by the Respondents and therefore stands uncontroverted. On this basis, she contends that she has established a prima facie case with a probability of success. On irreparable harm, the Petitioner submits that allowing a non-member to assume office through an unlawful process would occasion harm that cannot be adequately compensated by damages. She asserts that, conversely, the 3rd Respondent would suffer no prejudice if her assumption of office is temporarily suspended pending determination of the Petition.
9. Finally, the Petitioner urges the Court to maintain the status quo pending the hearing and determination of the Petition, relying on the decision in *Okinda & another v Luvavo & 5 others; Registrar of Trade Unions (Interested Party)* [2026] KEELRC 406 (KLR), in which this court stated:

“In this case, both parties stand on the same level and therefore being evenly balanced the order that commends itself for me to make in respect of these 2 Petitions is to maintain



status quo. In my considered view, there is no harm in the 2 officials not taking up their office pending the determination of this Appeal”.

10. Accordingly, the Petitioner prays that the application be allowed with costs.

3rd Respondent’s Submissions__

11. The 3rd Respondent submits that the application is fatally defective for non-compliance with the mandatory provisions of the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions, 2025. In particular, she asserts that the failure to enjoin critical parties, including the Returning Officer, the Registrar, the Migori County Labour Officer, and the Secretary General of the 2nd Respondent, renders the application incompetent. She further submits that the application is deficient for failing to specify essential particulars, including the venue of the elections, the date of declaration of results, and the manner in which the results were declared, as required under the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions, 2025.
12. Additionally, the 3rd Respondent contends that the application has been overtaken by events. On whether a prima facie case has been established, the 3rd Respondent relies on the authority of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 and submits that the Applicant has failed to demonstrate a genuine and arguable case with a probability of success. She avers that no evidence has been presented to show infringement of any right, and thus the threshold for grant of interlocutory relief has not been met. On the issue of irreparable harm, the 3rd Respondent submits that the Applicant has not demonstrated any harm that cannot be adequately compensated by an award of damages.
13. Finally, the 3rd Respondent submits that the Petitioner has not discharged her burden of proof under section 107 of the *Evidence Act*. She therefore urges the court to dismiss the application with costs.

Disposition

14. The question for the Court to determine is whether sufficient basis has been laid for the grant of interim relief in terms of *Giella v Cassman Brown* (supra). The Petitioner moved the Court under the Trade Union Election procedures and has failed to abide the requirement for security in terms of directive No. 8 of the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions 2025 on deposit of security.
15. Even if the security had been deposited, the Petitioner needed to show she is within the purview of the grant of injunctive relief. The Petitioner has woefully failed to surmount the legal hurdles in the prima facie aspect of the case. The Petitioner has not demonstrated that there will be irreparable harm suffered that cannot be compensated by an award of damages should the order not be granted. In the determination, the Court was not required to consider the final aspect of when in doubt, the balance of convenience is to be applied.
16. In the view of the Court, it is the Members and the Union that will suffer irreparable harm should the members not have a representative in the interim. The Court declines to grant the prayers sought by the Petitioner. The parties will each bear their own costs for the motion. Directions on disposal of the Petition after this Ruling is delivered.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF APRIL 2026



NZIOKI WA MAKAU, MCIArb.

JUDGE

