



Mahaba & 3 others v Kenya Union of Post Primary Education Teachers (KUPPET) & 8 others (Petition E0028 of 2026) [2026] KEELRC 935 (KLR) (16 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 935 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E0028 OF 2026**

NZIOKI WA MAKAU, J

APRIL 16, 2026

**IN THE MATTER OF ARTICLES 2(1), 2(4), 3, 10, 20, 21, 27, 21, 47,
50, 56, 232, 236, 258 & 259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION
OF FUNDAMENTAL RIGHTS AND FREEDOMS**

AND

**IN THE MATTER OF KENYA UNION OF POST
PRIMARY EDUCATION TEACHERS (KUPPET)**

AND

IN THE MATTER OF BREACH OF RIGHTS OF MINORITY AND MARGINALIZED

AND

**IN THE MATTER OF THE DISCRIMINATORY, UNLAWFUL
AND UNFAIR TREATMENT OF THE PETITIONER**

BETWEEN

MARWA FRANCIS MAHABA 1ST PETITIONER

MANG'ITI COSMAS MURIMI 2ND PETITIONER

MWITA VINCENT THOMAS 3RD PETITIONER

SAGIRE BARRACH WAIKENA 4TH PETITIONER

AND

**KENYA UNION OF POST PRIMARY EDUCATION TEACHERS
(KUPPET) 1ST RESPONDENT**



**THE SECRETARY GENERAL KENYA UNION OF POSTPRIMARY
EDUCATION TEACHERS (KUPPET) 2ND RESPONDENT**
THE NATIONAL ELECTIONS BOARD, KUPPET 3RD RESPONDENT
**MIGORI COUNTY BRANCH OF KENYA UNION OF POSTPRIMARY
EDUCATION TEACHERS (KUPPET) 4TH RESPONDENT**
THE REGISTRAR OF TRADE UNIONS 5TH RESPONDENT
THE HONOURABLE ATTORNEY GENERAL. 6TH RESPONDENT

AND

**MINORITIES AND MARGINALISED AFFAIRS UNIT (MMAU) C/O
EXECUTIVE OFFICE OF THE PRESIDENT OF KENYA 1ST INTERESTED
PARTY**

**MINISTRY OF LABOUR & SOCIAL PROTECTION OFFICE OF
THE COMMISSIONER FOR LABOUR STATE DEPARTMENT FOR
LABOUR 2ND INTERESTED PARTY**

**COUNTY LABOUR OFFICER-MIGORI MINISTRY OF LABOUR REGIONAL
OFFICE 3RD INTERESTED PARTY**

RULING

1. Before the Court is the Notice of motion application by the Petitioners seeking injunctive relief on behalf of the Petitioners. In the main, the Petitioners seek the following orders:-
 - a. That pending the hearing and determination of this application, the Honourable Court be pleased to issue a conservatory order suspending the 1st Respondent's National elections scheduled to take place on 18th April 2026 or any other date.
 - b. That pending hearing and determination of the application this Honourable Court be and is hereby issue an order compelling the 1st and 4th Respondent to supply the Applicants with certified list of all officials elected in 2016, 2021 and 2026 elections.
 - c. That pending hearing and determination of the Petition, this Honourable Court be pleased to issue an order compelling the 1st and 4th Respondent to supply the Applicant with certified list of all officials elected in 2016, 2021 and 2026 elections.
 - d. That pending the hearing and determination of this Petition the Honourable Court be and is hereby pleased to issue a conservatory order suspending the 1st Respondent's National elections scheduled to take place on 18th April 2026 or any other date.
2. The Petitioners supported the motion and the Petition on an affidavit sworn by the 1st Petitioner Mr. Marwa Francis Mahaba. In brief, he asserts there is marginalization of the Kuria Region in the KUPPET elections hence the plea to issue the conservatory orders to bar the elections slated for 18th April 2026.
3. Vide an affidavit sworn by the Secretary General of the 1st Respondent Mr. Akello T. Misoru, the 1st Respondent asserts that there is no basis for the grant of the orders. He deposes that the elections at



- Migori Branch were free and fair and that the members elected to office represent the membership of the Region including the Petitioners. He asserts the members posted there are not from one ethnic community but are diverse.
4. At the hearing of the motion, Mr. Ding'i on behalf of the Petitioners submitted that the Petitioners are aggrieved by the conduct of the 1st to 4th Respondents whose actions have led to the marginalization of the Kuria Region of the Migori Branch of KUPPET. He argued that the Petitioners have a prima facie case as held in the case of Board of Management Uhuru Secondary School v County Director of Education & 2 others [2015] eKLR. He submitted that the Petitioners before the Court raise fundamental grounds speaking to the infringement of constitutional rights through the wanton discrimination meted out by the 1st to 4th Respondents in the elections at Migori Branch of KUPPET against the Kuria Region. He draws a distinction that the reference to the Kuria Region is not reference to the Kuria tribe. He asserts the KUPPET Migori branch conducted elections contrary to Articles 27, 56 and 47 of *the Constitution* of Kenya. He submitted that there is no balance in representation and the marginalized groups in Kuria region are not represented. He submits the 1st to 3rd Respondents have not responded to communication made to them regarding the issue. He submits that the breach of the provisions of *the Constitution* of Kenya relating to the marginalized groups is a matter that must be remedied and the conservatory orders sought by the Petitioners will safeguard the marginalized groups by affording them the protections of Article 56 as read with section 34 of the *Labour Relations Act*.
 5. The Petitioners argue that the Kuria region had representation of 3 elected and 3 nominated officials of KUPPET but post 2010 Constitution when the 2 regions were merged, there has been a blatant breach of the memorandum of understanding regarding representation. Counsel submitted that the failure by the 1st to 4th Respondents to provide election materials as sought renders the elections conducted not only suspect but irregular and illegal. He submits that the denial of conservatory orders would impair the rights of the marginalized groups as contained in the bill of rights. The Petitioners submit that a violation of their rights are about to be infringed and in the absence of conservatory orders the Petition will be rendered nugatory. He thus urges the grant of the orders sought.
 6. In reply, Ms. Mawinda relies on the affidavit filed in opposition and submits that the 1st Respondent does not discriminate against its members who include the Petitioners. She argues that the Migori County elections for KUPPET branch took place on 10th January 2026 and there was no bar to the Petitioners to vie for office. She submits there was participation by members of the region in elections both as candidates and as voters. She asserts the members from the Kuria region were neither denied nor barred from participating in the elections nor was anyone disallowed to participate or vie. She asserts the elections were free and fair. Counsel stated that no Petition was lodged challenging the validity of the elections. She posited that the people who participate in the elections are from all over the KUPPET Migori region including the Kuria region. She argued that the region has delegates who will represent the interest of all the members in the Region and that these delegates will participate at the elections. She submitted that the Petitioners have adequate representation. She submitted that public interest will be prejudiced if the interlocutory orders are granted. She stated that ballots have been prepared and expenses incurred in securing a venue for the elections. She submitted that if no election takes place there will be prejudice as the members will be prejudiced since there will be no representation of their interests. She submits no prejudice will be suffered if the Court declines to issue the conservatory orders and the elections proceed. She thus urged the denial of the orders.
 7. In a brief reply, Mr. Ding'i asserts that the assertions by the 1st and 2nd Respondent that the members participated in the elections is countered by the evidence availed to Court as there was discrimination against the marginalized groups in the Kuria region of KUPPET Migori County. He submits that the Petitioners have not had audience and their issues have not been addressed despite their seeking to be



furnished with information. He submits that in the Petitioners' view, the branch elections were flawed and it would be unjust to subject the members to representation that is flawed and one that infringes on Article 56. He urges the grant of conservatory orders so that violations are not visited on the Petitioners.

8. The Court, mindful of the strict timelines relating to the elections reserved Ruling for the matter to later in the morning and avoided giving an ex tempore ruling so as to draw the issues out in the determination as above. Primarily, the issue for determination is whether the Petitioners have laid out sufficient ground for the grant of conservatory orders.
9. In the case of Board of Management Uhuru Secondary School v City County Director of Education & 2 others [2015] eKLR cited by the Petitioners the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened is emphasised. The Petitioners clearly have a right to do what they have done. The question is, is there a prima facie case made out by the Petitioners? Or put another way, have the Petitioners surmounted the threshold for grant of interlocutory orders in a Petition.
10. In the case cited, my learned friend and Judge Onguto J. (now deceased), held that when determining the questions at the interlocutory stage, the Court should not delve into the matter in great detail. The Learned Judge held thus at para 46:

I am conscious of the fact that as I determine whether or not I should grant any conservatory orders on this matter, I must not venture into scrutiny of the facts and evidence. That will be for the trial court. However, the Petitioner ought to demonstrate how the rights and freedoms of the Principal and the students as well as the Petitioners rights have been impeded or put at risk.

11. I have accordingly considered whether the Petitioners have placed before me material to show their rights are impeded or put to risk. It is asserted there is no proper representation of the interests of the marginalized groups from the Kuria Region. I am not persuaded that the representatives from Migori KUPPET branch will not represent the rights of the Petitioners at the elections on 18th April 2026. In the circumstances, I am satisfied that there is no violation of the Petitioners rights demonstrated that would justify the grant of any conservatory orders in the Petitioners favour. I therefore decline to issue any interim relief in the Petition and accordingly dismiss the motion dated 13th April 2026 with costs to the Respondents. There will be further directions issued upon delivery of this Ruling.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 16TH DAY OF APRIL 2026

NZIOKI wa MAKAU, MCI Arb.

JUDGE

