



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

PETITION NO. E018 OF 2026

IN THE MATTER OF THE LABOUR RELATIONS ACT, NO. 14 OF
2007

AND

IN THE MATTER OF THE COUNTY GOVERNMENT WORKERS
UNION (KENYA) CONSTITUTION, 2024

AND

IN THE MATTER OF IRREGULAR, UNLAWFUL AND
UNCONSTITUTIONAL TRADE UNION ELECTIONS HELD ON 17TH
JANUARY 2026 AND THE INTENDED PARTICIPATION IN THE
NATIONAL DELEGATES CONFERENCE SCHEDULED 16TH
FEBRUARY 2026

BETWEEN

POLICUP OGENGA ODHIAMBO.....**1ST**

PETITIONER

JOSEPH OORO OWINO.....**2ND**

PETITIONER

VERSUS

THE CHAIRPERSON, HOMA BAY COUNTY
GOVERNMENT WORKERS UNION.....**1ST**
RESPONDENT

THE SECRETARY, HOMA BAY COUNTY
GOVERNMENT WORKERS UNION.....**2ND**
RESPONDENT

COUNTY GOVERNMENT WORKERS
UNION KENYA.....**3RD**
RESPONDENT

RULING

1. The Petitioners instituted this suit through a Petition dated 6th February 2026, challenging the nomination and election process of the 3rd Respondent's Homa Bay Chapter conducted on 17th January 2026. They contend that the said process was unconstitutional, unlawful, and in contravention of the Labour Relations Act as well as the Union's Constitution. Accompanying the Petition, they filed an application of even date seeking, inter alia, orders to restrain

the Respondents from swearing in officials elected pursuant to the impugned elections, and to further restrain the holding of the National Delegates Conference scheduled for 16th February 2026 at Top Cliff Lodge, Nakuru.

2. In opposition to both the Petition and the application, the Respondents raised a Preliminary Objection dated 13th February 2026. The objection is premised on two principal grounds. First, that the Petition and the application are *sub judice*, contrary to section 6 of the Civil Procedure Act, on account of the existence of **Homa Bay MCCC E004 of 2026**, which allegedly involves the same parties and substantially similar issues. Secondly, that the proceedings offend the doctrine of exhaustion as provided for under the 3rd Respondent's Constitution, which requires election disputes to be lodged before the Election Appeals Committee, as well as section 34 of the Labour Relations Act, which vests supervisory authority over trade union elections in the Registrar of Trade Unions. On that basis, the Respondents urge the Court to strike out both the Petition and the application.

3. The Preliminary Objection was canvassed by way of written submissions.

Respondents' Submissions

4. On the issue of *sub judice*, the Respondents submit that **Homa Bay MCCC E004 of 2026**, instituted by the Petitioners, involves the same parties and revolves around the same subject matter, namely the nominations, elections, and the intended National Delegates Conference. They contend that although the Petitioners allege that the said suit has been withdrawn, no formal withdrawal has been endorsed by the court. Consequently, they argue that the suit remains pending, thereby barring this Court from entertaining the present proceedings. In support of this position, they rely on the decision in **Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (2020) eKLR**, where the Supreme Court observed:

“(67) The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of sub judice is to stop the

filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction

5. The Respondents further contend that the Petitioners are engaged in forum shopping, having failed to obtain favourable orders before the Magistrate's Court. They maintain that the Preliminary Objection raises pure points of law and thus meets the threshold set out in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**

[1969] EA 696. On the doctrine of exhaustion, the Respondents submit that clauses 1 and 2 of the 3rd Respondent's Election Rules designate the Election Appeals Committee as the primary forum for resolution of electoral disputes. They further invoke section 34 of the Labour Relations Act, which mandates the Registrar of Trade Unions to supervise union elections. It is their position that the Petitioners' failure to pursue these mechanisms renders the present proceedings premature and deprives this Court of jurisdiction. In that regard, they rely on **William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR**, in which it was underscored that the exhaustion doctrine serves to postpone judicial consideration of matters to ensure that a party diligently protects his rights within the mechanisms outside court. Without prejudice to the foregoing, the Respondents submit that the Petitioners have not satisfied the threshold for the grant of interlocutory injunctions as set out in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**. On the aspect of a *prima facie* case the Respondents submit that none has been established as the

allegations of election malpractice have not been proven. They cite the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KLR 125**, for the proposition that evidence must be shown of infringement of rights for a *prima facie* case to be established. They assert that the Petitioners are disgruntled participants dissatisfied with the election outcome.

6. As regards irreparable harm, the Respondents submit that none has been established, contending that mere apprehension is insufficient. They rely on **Pius Kipkorir Kogo v Frank Kimeli Tenai [2018] eKLR**, in which it was stated:

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

7. On the balance of convenience, the Respondents submit that it tilts heavily in their favour as the Petitioners filed the application just ten days before the national delegates conference despite being aware of the conference since January. They further submit that substantial resources have already been committed towards the conference, and that halting it would occasion significant prejudice. Accordingly, they urge the Court to strike out both the Petition and the application.

Petitioners' Submissions

8. In response, the Petitioners frame the following issues for determination:

- (1) . Whether the Petition is *sub-judice*.
- (2) Whether the Doctrine of Exhaustion is absolute and was exhausted.
- (3) Whether section 34 of the Labour Relations Act 2007 bars the institution of this petition.
- (4) Whether the Court has jurisdiction to entertain the application and petition.

(5) Whether interim orders should issue.

9. On *sub judice* the Petitioners submit that **Homa Bay MCC E004 OF 2026** was withdrawn. They further argue that the said suit, being a civil claim, is distinct from the present constitutional Petition, and therefore does not trigger the doctrine of *sub judice*. With respect to the doctrine of exhaustion, the Petitioners contend that it is not absolute and does not apply where constitutional violations are alleged. They rely on the case of **Republic v Independent Electoral and Boundaries Commission (IEBC) ex parte National Super Alliance (NASA) Kenya [2017] eKLR** and the case of **Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR**, which held that exhaustion does not apply where the dispute raises constitutional issues. They further cite the case of **William Odhiambo Ramogi & 3 others v Attorney General & 4 others [2020] eKLR** for the proposition that courts may intervene where internal mechanisms are inadequate or ineffective. They highlight the fact that the Petitioners were not notified of the nominations as required.

10. Regarding section 34 of the Labour Relations Act, the Petitioners submit that it does not bar the institution of these proceedings. On the contrary, they argue that section 34(4) permits recourse to the Court. They attribute the filing of the Petition to the Respondents' inaction following their complaints. On jurisdiction, the Petitioners maintain that this Court is properly seized of the matter under section 34 of the Labour Relations Act. They further contend that the Preliminary Objection does not raise pure points of law, as it necessitates the ascertainment of contested facts, and should therefore be dismissed. On whether the interim orders sought should issue, the Petitioners submit that they will suffer irreparable harm if they are not issued. They assert that electoral legitimacy trumps administrative convenience. In conclusion the Petitioners urge the court to grant the interim orders as sought in the application and to dismiss the Preliminary Objection with costs.

Disposition

11. The first question the Court has to determine is whether the suit herein is *sub judice*. The Petition herein raised

constitutional questions and to boot, relates to labour matters. The Magistrates Court does not have the authority to deal with trade union matters as that is the preserve of this Court. The powers donated to the Magistracy did not include what the parties here seek to have a resolution on. As such, this matter is not *sub judice*.

12. The Court has to consider whether there is a basis for the grant of the orders sought. The standard is the **Giella v Cassman Brown & Co. Ltd** case. There is paucity of any material to show that the *prima facie* aspect has been met. The allegations of election malpractice have not been proven as yet to prompt the Court to act. For the Court to be persuaded there must be evidence of the alleged infringement of rights as held in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** (*supra*). The Petitioners have failed to demonstrate they are entitled to the orders sought and as such their application is dismissed with costs to the Respondents. Directions on the disposal of the Petition to follow this Ruling.

It is so ordered.

Dated and delivered at Kisumu this 20th day of April

2026

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

Original