



Aberi (Suing on his Behalf and on Behalf of other Aggrieved Graduate Engineers of the Institution of Engineers of Kenya) v Institution of Engineers of Kenya & 2 others (Petition E009 of 2026) [2026] KEHC 4189 (KLR) (13 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E009 OF 2026
DO CHEPKWONY, J
MARCH 13, 2026**

BETWEEN

SAM ABERI (SUING ON HIS BEHALF AND ON BEHALF OF OTHER AGGRIEVED GRADUATE ENGINEERS OF THE INSTITUTION OF ENGINEERS OF KENYA) PETITIONER

AND

**THE INSTITUTION OF ENGINEERS OF KENYA 1ST RESPONDENT
THE PRESIDENT OF THE KENYA INSTITUTION OF ENGINEERS 2ND RESPONDENT**

AND

HOWARD ASHIHUNDU MMAYI INTENDED RESPONDENT

RULING

1. On 5th March, 2026, this matter came up for inter parties hearing of the Petitioner’s Notice of Motion application dated 13th February, 2026, which was subsequently amended on 11th March, 2026. On this day, learned counsel for the Petitioner, Mr. Okemwa, urged the Court to allow the application on the basis that no response had been filed by the Respondents. He invited the Court to proceed on the footing that the application stood uncontroverted.
2. In response, learned counsel for the Respondents, Mr. Ojiambo, informed the Court that the Respondents intended to file their responses to both the application and the Petition. Counsel took the view that the parties ought to direct their attention principally to the substantive Petition so that the same may be heard and determined expeditiously, particularly in light of the fact that the 1st Respondent was already in the process of preparing for its forthcoming elections. He indicated that the Respondents were not opposed to the application dated 2nd March, 2026 in which the proposed



third Respondent is seeking to be enjoined in the proceedings, though, it is his view that the said party would be more appropriately joined as an interested party rather than as *amicus curiae*.

3. Learned counsel for the Intended 3rd Respondent, Miss Musungu, submitted that although her client is a member of the 1st Respondent, he is also a candidate for the position of Vice President in the forthcoming elections scheduled for 23rd March, 2026. Counsel further stated that the Intended 3rd Respondent is a member of the Constitutional Review Committee of the 1st Respondent, which committee is directly involved in the matters that form the subject of the present Petition. It is therefore her position that the proposed joinder is both necessary and appropriate, as the Intended 3rd Respondent will assist the Court by placing before it material and perspective relevant to the proper resolution of the issues raised in the Petition.
4. On his part, Mr. Okemwa, while expressing agreement with the proposal that the main Petition be prioritized for hearing, sought leave of at least fourteen (14) days within which to file submissions. At the same time, counsel pressed for the grant of the interim relief sought in the amended application, particularly, an order restraining the Respondents from proceeding with the elections scheduled for 23rd March, 2026 pending the hearing and determination of the Petition.

Analysis

5. Having carefully considered the rival submissions by counsels, this Court is persuaded that the most prudent and just course in the circumstances of this case is to prioritize the hearing and determination of the substantive Petition. In its view, where the issues raised in an interlocutory application are so intertwined with the central questions in the Petition, the Court ought, as far as is practicable, to adopt a case-management approach that advances the substantive resolution of the controversy.
6. That said, the Court must remain alive to the practical reality that the elections complained of are scheduled for 23rd March, 2026 and if they are allowed to proceed before the Petition is heard and determined, there is a real likelihood that the substratum of the Petition may be fundamentally altered, if not, altogether lost. The Court would then be confronted with a *fait accompli*, and the Petition, or a substantial portion of it, may be rendered nugatory. Thus, the conservatory orders are not intended to determine rights finally, but to preserve the subject matter of the Petition so that the Court's eventual determination is not reduced to a barren academic exercise.
7. In the present case, the Petitioner challenges, among other things, the governance framework, electoral processes, and alleged exclusions within the 1st Respondent thus impugning the elections scheduled for 23rd March, 2026. If elections are conducted before the Court has had an opportunity to interrogate the legality of that framework, the resultant prejudice may not be easily reversible. The court is therefore satisfied that, in order to preserve the substratum of the Petition and to safeguard the Court's ability to render an effective determination, interim orders as sought are warranted.
8. The court now turns to the application dated 2nd March, 2026, in which the Applicant is seeking the joinder of Howard Ashihundu Mmayi as the 3rd Respondent. This Court has considered the grounds set out on the face of the application as well as the supporting affidavit sworn by the said Howard Ashihundu Mmayi. From that material presented herein, in broad terms, the Applicant's case is, that he is a member of the 1st Respondent in good standing, a contestant for the position of 1st Vice President in the elections slated for 23rd March, 2026, and a member of the Constitutional Review Committee of the 1st Respondent. He avers that the issues raised in this Petition directly touch on the electoral process in which he is a candidate and on the constitutional review process in which he has participated, so that the orders sought in the Petition are likely to affect his interests directly. He further contends that his



- participation in the proceedings would assist the Court in effectively and completely adjudicating upon the issues in controversy and that no prejudice would be suffered by the existing parties if he is joined.
9. The court has equally considered the Replying Affidavit sworn by the Petitioner, Sam Aberi, on 10th March, 2026 in opposing that application. The Petitioner's position is that no specific claim, relief, or cause of action has been pleaded against the proposed party, and therefore, his joinder as a Respondent is legally untenable. The Petitioner further deposes that the Constitutional Review Committee has already discharged its mandate and, in any event, is merely an internal organ of the 1st Respondent without separate legal personality. The further argument advanced by the Petitioner is that the 1st and 2nd Respondents are the proper parties to answer the claims in the Petition, that the proposed joinder would unnecessarily clutter and delay the proceedings, and that the intended applicant has not demonstrated any distinct or unique issue that is not already capable of being addressed by the existing Respondents.
 10. Therefore, the question that therefore falls for determination is not whether Howard Ashihundu Mmayi has any connection at all to the subject matter of the dispute. Plainly, he does. The real question is whether, in law and in the circumstances of this case, that connection warrants his joinder as a Respondent, or whether his interest is more appropriately accommodated through joinder as an Interested Party.
 11. A party is ordinarily joined as a Respondent where relief is sought against him, or where allegations are made against him which require an answer from him in that capacity. A respondent is, in essence, a party against whom the Court is being asked to grant substantive relief, or one whose legal conduct, omission, or decision is directly under challenge. By contrast, an interested party is one who, though not the primary target of the relief sought, demonstrates a clear, identifiable, and proximate stake in the proceedings and whose participation may assist the Court in effectually and completely adjudicating upon the dispute.
 12. Measured against that distinction, this Court is not persuaded that the proposed party ought to be joined as a 3rd Respondent as no substantive relief has been specifically sought against him in the Petition. The complaint as presently framed is directed at the institution's actions, governance structures, and electoral processes of the 1st Respondent, as well as the conduct of its President. Thus, the primary burden of answering those allegations properly rests with the 1st and 2nd Respondents. To add the proposed party as a Respondent, in the absence of any pleaded cause of action against him, would risk blurring the true controversy and unnecessarily complicating the proceedings.
 13. Nevertheless, the court is equally unable to agree that the proposed party has no place at all in these proceedings. The material before the Court show that he is not a remote or casual observer. He is a member of the 1st Respondent, a declared candidate for one of the positions in the impugned elections, and a person said to have been involved in the constitutional review process whose output is one of the matters that are before this Court for determination. The outcome of this Petition, and in particular the interim and final orders relating to the scheduled elections and the underlying governance framework, may plainly affect him in a direct and practical way. His stake is therefore real, identifiable, and proximate. In those circumstances, the just and proportionate course is to join Howard Ashihundu Mmayi to these proceedings, not as a Respondent, but as an Interested Party.
 14. Having so found, and bearing in mind the urgency presented by the elections scheduled for 23rd March, 2026, this Court is satisfied that the matter ought now to proceed to substantive hearing on a priority basis. Accordingly, the following directions and orders issue:-



- a. The proposal by counsel that the substantive Petition be canvassed on a priority basis is hereby adopted.
- b. A conservatory order is hereby issued suspending the elections of the 1st Respondent scheduled for 23rd March, 2026, pending the hearing and determination of this Petition.
- c. The application dated 2nd March, 2026 is allowed only to the extent that Howard Ashihundu Mmayi is hereby joined to these proceedings as an Interested Party, and not as a 3rd Respondent.
- d. The Respondents, and the Interested Party shall file and serve their respective responses to the Petition, if any, within three days from the date hereof.
- e. Thereafter, the Petition shall be canvassed by way of written submissions and each party is granted Seven days from the date hereof to file its written submissions. Time shall be deemed of essence.
- f. Judgment on the Petition shall be delivered on the 17th April, 2016.

It is so Ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 13TH DAY OF MARCH, 2026.

D.O. CHEPKWONY

JUDGE

THE RULING ON DIRECTION IS UPLOADED VIA TEAMS.

In the presence of:-

Martin – Court Assistant

No appearance for both parties

