



**Mucheke & 2 others v Registrar of Trade Unions & 4 others (Appeal E094 of 2026) [2026] KEELRC 1112 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1112 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E094 OF 2026  
DKN MARETE, J  
APRIL 28, 2026**

**BETWEEN**

**ISAIAH MUNORU MUCHEKE ..... 1<sup>ST</sup> APPLICANT  
MORIATI PARMARI ..... 2<sup>ND</sup> APPLICANT  
BEATRICE CHERONO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REGISTRAR OF TRADE UNIONS ..... 1<sup>ST</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT  
BANKING, INSURANCE & FINANCE UNION (KENYA) ..... 3<sup>RD</sup> RESPONDENT  
BANKING, INSURANCE & FINANCE UNION (KENYA) (NATIONAL  
GENERAL SECRETARY) ..... 4<sup>TH</sup> RESPONDENT  
BANKING INSURANCE AND FINANCE UNION (KENYA) (RIFT VALLEY  
REGION BRANCH OFFICIAL: TIMOTHY KIGEN, LYDIA KANGONGO,,  
RICHARD KIMEU, IRENE SITATI, JOHN KIRUI, SARAH KARANJA,  
MARGARET WANJIKU MUNG'ORA, EDWARD KOTOINE NAMPASO AND  
GLADYS ROTICH) ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This is an application dated 27th March, 2026 and seeks orders reviewing, setting aside and vacating the ex-parte interim conservatory orders granted by this Court on 24th March 2026 restraining the 5th Respondents from assuming or holding office as branch officials or delegates of the Banking, Insurance and Finance Union (Kenya) pending the hearing and determination of this Appeal and also leave for the 3rd to 5th Respondents to file a supplementary Record of Appeal.



2. The application is supported by the affidavit of Tom O. Odero, sworn on 27th March 2026. The background to this matter is that the Appellants are incumbent national officials and members of the Banking, Insurance and Finance Union (Kenya) (BIFU(K)). They filed this Appeal under Section 30 of the *Labour Relations Act*, 2007 challenging the decision of the 1st Respondent to register Form Q for the Rift Valley Region Branch of BIFU(K) signed by the 4th Respondent, with effect from 21st February 2026, following branch elections whose validity they contest. On 24th March 2026, this Court granted ex-parte conservatory orders restraining the 5th Respondents from assuming or holding office as branch officials or branch delegates pending the hearing and determination of the Appeal. This was coupled with directions that parties file written submissions on the appeal within six days, three apart.
3. The 3rd to 5th Respondents now seek to have those orders reviewed and set aside. It is their contention that the orders are final in nature and could only properly be granted after hearing both parties; that the Appellants failed to make full and frank disclosure of material facts; that the effect of the orders has been to paralyse the entire operations and administration of the Rift Valley Branch; and besides, granting such orders ex-parte violated the constitutional rights of the 5th Respondents to a fair hearing under Articles 25(c) and 50 of *the Constitution* of Kenya.
4. The Appellants oppose the application, save for the prayer for leave to file a supplementary Record of Appeal to which they concede.
5. The 3rd to 5th Respondents in their written submissions dated 14th April 2026 submit that the threshold for review under Rule 74(1) of the ELRC Rules, 2024 is met on account of the nature and effect of the orders granted. They rely on Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR and Wilson Kaberia Nkunja v Magistrates and Judges Vetting Board & Others [2016] eKLR for the proposition that a party seeking conservatory orders must demonstrate a prima facie case, imminent prejudice, risk of the petition being rendered nugatory, and that public interest favours the grant of such relief — a threshold they submit the Appellants did not meet.
6. They further rely on the authority of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR for the proposition that conservatory orders should be granted on the inherent merit of the case bearing in mind the public interest, constitutional values and proportionate magnitudes. They submit that the right to fair hearing demands that a person cannot be condemned unheard and rely on Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others Petition No. 18 of 2014 [2014] eKLR for the elaboration of that principle. They further submit that the orders as granted have the effect of barring the entire Rift Valley Branch from conducting its operations and serving its members, rendering them final rather than interim in character. They pray that the orders be reviewed and set aside.
7. The Appellants in their written submissions dated 17th April 2026 submit that the 3rd to 5th Respondents have not demonstrated any of the grounds for review under Rule 74(1). They submit that the complaint of not having been heard before the interim orders were granted is inherent in every ex-parte application and does not, without more, constitute a ground for review under any of the four limbs of Rule 74(1). They seek to buttress their case by relying on the authority of National Bank of Kenya Ltd v Njau, (Civil Appeal 211 of 1996) [1997] KECA 71 (KLR) for the proposition that an error justifying review must be self-evident and should not require an elaborate argument to establish, and that re-arguing an already determined issue does not constitute a ground for review. They further submit that the ex-parte interim conservatory orders were properly granted to preserve the substratum of the Appeal as the 5th Respondents had already been registered and were on the verge of assuming



office and exercising delegate rights at the forthcoming national conference. They rely on *Mucheke & 12 others v Registrar of Trade Unions & 6 others* (Employment and Labour Relations Appeal E056 of 2026) [2026] KEELRC 774 (KLR) (18 March 2026) (Judgment), in which this Court in closely related proceedings nullified the branch elections of three other BIFU(K) branches conducted in the same 2026 election cycle for violations of the union constitution. They also rely on *Bahadurali Ebrahim Shamji vs Al Noor Jamal & 2 Others* [1998] KECA 255 (KLR) for the obligation of an ex-parte applicant to make the fullest possible disclosure of all material facts. They submit that the Appellants discharged this obligation and that the urgency was real and manifest, as any delay would have rendered the Appeal academic. They pray that the application be dismissed with costs.

8. I have carefully considered the application, the replying affidavit, the submissions of both parties, and the law. The jurisdiction of this Court to review its own orders is conferred by Section 16 of the *Employment and Labour Relations Court Act* and Rule 74(1) of the ELRC (Procedure) Rules, 2024 which circumscribes the grounds for review as follows:
  - a. discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced at the time the order was made;
  - b. some mistake or error apparent on the face of the record;
  - c. where the judgment or ruling requires clarification; or
  - d. any other sufficient reason.
9. The principles governing the exercise of this jurisdiction were well articulated in *Abdulkadir A Khalif v Principal Secretary Ministry of Lands & Physical Planning & 4 others; National Land Commission & another (Interested Parties)* [2020] KECA 621 (KLR), approving the observation that the expression 'any other sufficient reason' means a reason sufficiently analogous to those specified in the rule, and that any attempt to use review merely to re-argue a matter already decided amounts to an abuse of the review jurisdiction.
10. The principles that guide the court in determining whether to grant a review of interim orders may therefore be distilled as follows:
  1. Whether there is discovery of new and important matter or evidence that could not earlier have been produced with due diligence.
  2. Whether there is a mistake or error apparent on the face of the record.
  3. Whether the order requires clarification.
  4. Whether there is any other sufficient reason analogous to those specified.
11. On the first limb, the 3rd to 5th Respondents have not placed before the court any new matter or evidence that was not available at the time the ex-parte application was heard. Their entire case rests on the proposition that they were not afforded a hearing before the orders were granted. This is not new evidence; it is a fact inherent in the nature of every ex-parte application. This limb is not established.
12. On the second limb, no mistake or error apparent on the face of the record has been identified or demonstrated. As the Court of Appeal held in *National Bank of Kenya Ltd v Njau* (supra), an error justifying review must be self-evident and should not require an elaborate argument to establish. It will not be sufficient ground for review that another Judge could have taken a different view of the matter,



- nor can it be a ground for review that the court proceeded on an incorrect expansion of the law. The Respondents have not identified any such error here. This limb is not established.
13. On the third limb, no clarification of the order is required. The order of 24th March 2026 is clear in its terms: it restrains the 5th Respondents from assuming or holding office pending the hearing and determination of the Appeal. This limb is not established.
  14. On the fourth limb, the residual ground of 'any other sufficient reason' cannot be invoked merely on the basis of dissatisfaction with the outcome of an ex-parte hearing, nor on the basis that the orders have adversely affected the Respondents' operations. As the Court of Appeal made plain in *Abdulkadir A Khalif v Principal Secretary Ministry of Lands & Physical Planning & 4 others* (supra), the expression 'any other sufficient reason' requires a reason sufficiently analogous to those specified in the rule. The inconvenience of an adverse interim order does not meet that threshold. This limb is again not established.
  15. On the nature of the orders, it is not acceptable the characterisation of the conservatory orders as final. The orders are expressly made pending the hearing and determination of the Appeal and do not determine the merits of the election dispute. They are purely preservative in character. The distinction between final and interlocutory orders is well settled, and a restraining order pending determination of the main cause is quintessentially interlocutory.
  16. On the propriety of the ex-parte grant, I am satisfied that the orders were properly made. The Appellants demonstrated before this Court that the 5th Respondents had already been registered as branch officials on 24th February 2026 and were on the verge of assuming office and exercising delegate rights at the forthcoming national quinquennial conference. The risk to the integrity of the appellate process was real and immediate. This Court had, by its judgment dated 18th March 2026 in *ELRCA/E056/2026*, already nullified the branch elections of the Mount Kenya, Coast and Western Region branches of BIFU(K) conducted in the same 2026 cycle on closely analogous grounds of constitutional non-compliance, and had directed that fresh branch elections be held before the national conference proceeds. Allowing the contested Rift Valley branch officials to participate as delegates in the national conference before the present Appeal was heard and determined would have rendered the Appeal entirely nugatory. The urgency was therefore real and manifest.
  17. On the balance of convenience, this court is alive to the Respondents' concern that the operations of the Rift Valley Branch are affected by the conservatory orders. However, the Appellants have placed before this Court specific and credible evidence that the branch elections were conducted on 21st February 2026, a date different from the notified election date of 28th February 2026 and in apparent breach of multiple provisions of the BIFU(K) Constitution. In the context of this Court's contemporaneous judgment in *ELRCA/E056/2026* finding systematic constitutional non-compliance across multiple BIFU(K) branches in the very same election cycle, the balance of convenience favours maintaining the conservatory orders to preserve the integrity of the electoral process pending resolution of the Appeal. Any prejudice to the Respondents from the continuation of the orders is compensable in costs should the Appeal ultimately fail.
  18. A consideration of the respective cases of the parties tilts the application in favour of the Appellants. The 3rd to 5th Respondents have not met the threshold for review under Rule 74(1) of the ELRC Rules, 2024.
  19. I am therefore inclined to dismiss the application to review and set aside the interim conservatory orders, while allowing the prayer for leave to file a supplementary Record of Appeal, and order as follows;



- i. The application to review, set aside and vacate the ex-parte interim conservatory orders of 24th March 2026 is hereby dismissed.
- ii. The ex-parte interim conservatory orders of 24th March 2026 restraining the 5th Respondents from assuming or holding office as branch officials or delegates of BIFU(K) pending the hearing and determination of this Appeal are hereby confirmed and shall remain in force.
- iii. The 3rd to 5th Respondents be and are hereby awarded leave to file a supplementary Record of Appeal within fourteen (14) days from the date hereof.
- iv. The Appellants are awarded seven (7) days to, upon service, make, file and serve any rejoinder, if at all, to the supplementary Record of Appeal.
- v. The Appeal shall be prosecuted expeditiously by all parties.
- vi. Costs of this application shall be in the Appeal.
- vii. Mention on 21st May, 2026 for confirmation of compliance and directions of court.

**DELIVERED, DATED AND SIGNED THIS 28TH DAY OF APRIL 2026.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

1. Mr. Mbogori instructed by Nkonge Mbogori & Company Advocates for the Appellant.
2. Mr. Okello instructed by Okello Pamba & Company Advocates for the 3rd to 5th Respondents.
3. No appearance for the 1st and 2nd Respondents.

