



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

PETITION NO. E011 OF 2026

IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 24, 41, 47, 50, 73 AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: SECTIONS 4, 5, 54, 56 AND 65 OF THE LABOUR RELATIONS ACT, NO. 14 OF 2007

AND

IN THE MATTER OF: UNLAWFUL ELECTION OF TRADE UNION OFFICIALS AT CHEMELIL SUGAR COMPANY 2025 LIMITED

BETWEEN

WASHINGTON OCHIENG YOGO.....**1ST**

PETITIONER

ERICK ONYANGO JOLE.....**2ND**

PETITIONER

VERSUS

JAMES OMONDI AGUMBA.....1ST

RESPONDENT

KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS.....2ND

RESPONDENT

KENNETH SIFUNA.....3RD

RESPONDENT

JECONIA ADONGO.....4TH

RESPONDENT

GEORGE OWUOR WERE.....5TH

RESPONDENT

GENERAL SECRETARY, KENYA UNION OF SUGAR PLANTATION & ALLIED WORKERS....6TH

RESPONDENT

AND

THE REGISTRAR OF TRADE UNIONS.....1ST **INTERESTED**

PARTY

THE CABINET SECRETARY, MINISTRY OF LABOUR & SOCIAL PROTECTION.....2ND **INTERESTED**

PARTY

THE NATIONAL LABOUR BOARD.....3RD **INTERESTED**

PARTY

ATTORNEY GENERAL OF KENYA.....4TH **INTERESTED**

PARTY

RULING

1. Through an application dated 26th January 2026 the
Petitioners seek the following orders:

(1) *Spent*

(2) *Spent*

(3) *Spent*

(4) *Spent*

(5) THAT the 1st Respondent be compelled to produce before this Honourable Court the membership register for the Kenya Union of Sugar Plantation and Allied Workers, Chemelil Branch.

(6) THAT the election notice issued by the 3rd Respondent be declared invalid and of no legal effect for non-compliance with the Union Constitution.

(7) THAT costs of this application be awarded to the Petitioners/Applicants.

2. The application is premised on the grounds on its face as well as the 1st Petitioner's supporting affidavit. The

Petitioners contend that the Respondents conducted the 2nd Respondent's Chemelil branch elections on 24th January 2026 unlawfully, unprocedurally, and contrary to the Union's Constitution. They assert that the election notice did not comply with Rule 15(D) of the 2nd Respondent's Constitution, particularly as it provided only three weeks' notice instead of the stipulated thirteen weeks, and was issued by the 3rd Respondent instead of the 1st Respondent. It is further alleged that the 3rd Respondent unlawfully altered the voter eligibility threshold, from 13 weeks to 3 weeks thereby locking out a majority of the 2nd Respondent's members. The Petitioners further assert that the Interested Parties were not notified of the elections, and that the elections were conducted without valid nominations, the earlier scheduled elections of 17th January 2026 having failed without fresh nominations being undertaken. It is their averment that nominations for the 17th January 2026 elections did not suffice for the 24th January 2026 elections and in any event the gap between the 17th January 2026 and 24th January 2026 was too short to nominate candidates and conduct elections. The Petitioners maintain therefore that the elected

candidates particularly the 1st Respondent are not fit to hold office, specifically due to violence during the election and failure to hold a meeting mandating branch secretaries to call for elections as stipulated in the 2nd Respondent's constitution. In conclusion the Petitioners assert that unless the elections are nullified and the orders sought granted the 2nd Respondent's members stand to suffer prejudice, confusion, and disruption at the workplace.

3. In opposition, and on behalf of the 5th and 6th Respondent an affidavit sworn by Mr. Francis Wangara the 6th Respondent was filed. He depones that the elections were lawfully conducted pursuant to a notice issued on 15th December 2025 and the process complied with the 2nd Respondent's Constitution and the law. He contends that candidates for the position of Branch Secretary, including the 1st Respondent, duly submitted their applications, underwent vetting, and were approved by 7th January 2026. They contend that nominations for other positions are conducted on the floor during the election day in accordance with union practice. With respect to the elections not being held on 17th

January 2026, the deponent asserts that it was occasioned by violence instigated by the Petitioners and goons. For this reason, he asserts that it was necessary to postpone the elections to 24th January 2026, for which a fresh notice was issued and circulated and the elections proceeded with full participation of members. He asserts that the elections were conducted during a Special General Meeting for which only one week's notice is required, and that the notice issued met this threshold. He further contends that the requirement of thirteen weeks relates to eligibility of members to vote and not to the notice period for elections.

4. In response to allegations regarding voter eligibility, the Respondents maintain that there was no unlawful reduction of the eligibility threshold. Rather, they attribute any limitation in participation to operational changes following the takeover of the Chemelil Sugar Company, which resulted in only retained employees participating as union members. They further state that all relevant stakeholders, including the labour office, were duly notified and indeed supervised the elections. The Respondents further dispute the

Applicants' assertions regarding irregular nominations, maintaining that nominations are conducted on the floor on the election day under the supervision of the labour officer, and that all candidates who were proposed and seconded were validly allowed to contest. They further assert that the elected officials were duly chosen by members through a transparent process, and that one of the Petitioners was elected unopposed to the position of treasurer, while another actively participated in the process. On the eligibility of the 1st Respondent, it is deponed that the Union Constitution permits non-employees to contest for the position of Branch Secretary upon payment of the prescribed fee, which the 1st Respondent complied with. The Respondents deny allegations of misconduct or unfitness of the elected officials and attribute the application to malice and dissatisfaction with the election outcome. The Respondents further contend that the elections were conducted in strict compliance with the Union Constitution, with members duly notified of the venue and time, and that there were no objections raised at the time of the elections. They maintain that the application is an afterthought driven by ulterior motives, and that

granting the orders sought would unjustifiably overturn the will of union members as expressed through the ballot. Finally, the Respondents assert that no prejudice will be suffered by the Applicants if the elections stand, and that, on the contrary, nullifying the elections would disrupt union operations and undermine its objectives. They therefore urge the Court to dismiss the application with costs and uphold the validity of the elections.

5. On his part the 1st Respondent opposed the application through a replying affidavit sworn on 6th February 2026. He asserts that he was validly elected secretary of the 2nd Respondent's Chemelil Branch on 24th January 2026. He asserts that the only eligibility is payment of Kshs. 50,000/-, which he duly paid after nomination and vetting and was allowed to contest. As regards the elections failing to take place as scheduled on 17th January 2026, he reiterated that they were disrupted by the Petitioners necessitating its postponement to 24th January 2026, on which date the Petitioners voted. Moreover, he asserts that prior to the election notices were issued and circulated to the members.

Regarding, conduct of the elections he avers that none of the retained employees of the 5th Interested Party and member of the 2nd Respondent was locked from the exercise. He maintains that the application has been brought in bad faith and seeks to overturn the will of the 2nd Respondent's members.

6. In rejoinder the 1st Petitioner swore a further affidavit dated 13th February 2026. He reiterated that the 1st Respondent's election was not valid as a vast majority of the 2nd Respondent's members who paid their October, 2025 and November 2025 arrears fell below the 13-week threshold. With respect to the requirement for payment of Kshs. 50,000/- for eligibility for branch secretary, he asserts that it is not provided for in the 2nd Respondent's constitution. He maintains that after the elections of the 17th January 2026 fell through, fresh nominations were required for the subsequent elections of the 24th January 2026.

7. The application was canvassed by way of written submissions.

Petitioners'/Applicant's Submissions

8. The Petitioners identify the following issues for determination:

- a. Whether they have established a *prima facie* case with a probability of success.
- b. Whether they stand to suffer irreparable harm if the orders sought are not granted.
- c. Whether the balance of convenience tilts in their favour,
- d. Whether they have satisfied the threshold for grant conservatory orders in constitutional litigation.

9. Concerning a *prima facie* case aspect, the Petitioners submit that the contravention of the 2nd Respondent's Constitution as regards the notice period prior to elections and the fact that the notice was issued by a person lacking the mandate to do so are a serious violation of constitutional rights. They assert that elections conducted in contravention of a union's constitution are unlawful and void. In support of this position, reliance is placed on **Kenya Union of Commercial Food & Allied Workers v Meru North Farmers Sacco Ltd [2014] eKLR**, where the Court held that failure to comply with a union constitution renders the impugned process unlawful. It

is further submitted that the Respondents violated Article 41 of the Constitution by infringing on the right to fair labour practices and participation in trade union activities, including through locking out members, unlawfully restricting voting eligibility, and conducting opaque elections. The Petitioners also contend that the impugned elections constitute administrative action within the meaning of Article 47 of the Constitution, which demands legality, procedural fairness, and transparency. Reliance is placed on the case of **Judicial Service Commission v Mbalu Mutava & another [2015] eKLR**, where the Court held:

“Article 47 is intended to subject administrative processes to constitutional discipline.”

10. The Petitioners further submit that the elections scheduled for 17th January 2026 failed due to violence, no fresh nominations were conducted thereafter, and elections were subsequently held on 24th January 2026 without adherence to due process. This, they argue, undermined the democratic character required of trade union elections. They rely on the case of **Republic v Registrar of Trade Unions**

***ex parte* Kenya Hotels & Allied Workers Union [2015]**

eKLR, where the Court emphasized that union leadership must arise from lawful and democratic processes.

11. In sum, the Petitioners submit that they have demonstrated violations of constitutional rights, breach of statutory provisions, non-compliance with the union constitution, and procedural illegality, thereby satisfying the threshold set out in **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR**, which describes a *prima facie* case as one which on the material presented to court shows that there exists a right that has been infringed by the opposite party.

12. On irreparable harm, the Petitioners submit that unless the orders sought are granted, illegal officials will assume office, leading to workplace unrest, disruption of union operations, unlawful representation of employees, institutional confusion, and erosion of democratic governance within the 2nd Respondent Union. They assert that such harm cannot be adequately compensated by damages. Reliance is placed on **Nguruman Limited v Jan**

Bonde Nielsen & 2 others [2014] eKLR, where the Court categorised irreparable injury to mean an injury that cannot adequately be remedied by damages. The Petitioners maintain that trade union leadership directly impacts collective bargaining, workplace harmony, and labour relations, all of which are incapable of monetary compensation.

13. As for the balance of convenience, they submit that it tilts in favour of preserving the *status quo*, pending the hearing and determination of the Petition. They contend that the lower risk of injustice lies in halting the impugned elections rather than allowing potentially unlawful officials to assume office. They cite the case of **Suleiman v Amboseli Resort Ltd [2004] eKLR**, in which the court stated:

“The court should take the course that carries the lower risk of injustice.”

14. Finally, on whether they have satisfied the threshold for conservatory orders, the Petitioners reiterate that they have satisfied the requirements for the grant of conservatory orders as set out in the cases of **Gatirau Peter Munya v**

Dickson Mwenda Kithinji & 2 others [2014] eKLR and **Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] eKLR**, namely: the establishment of a *prima facie* case, demonstration of prejudice, and the existence of public interest in preserving the *status quo*. In conclusion they urge the Court to allow the application as prayed.

Respondents' Submissions

15. As regards prayer 5 of the application the Respondents submit that it is misconceived and untenable. They contend that the order as framed is inconsistent with prayer 2 already granted in the interim by court and those sought in the main Petition. They submit that the 1st Respondent has no mandate in supply of the 2nd Respondent's register having been barred by the Petitioners from assuming office. Further, the Respondents argue that the union constitution provides a clear procedure for accessing membership records, which the Petitioners have not complied with. It is their submission that no grounds have been pleaded to justify departure from the union's constitutional framework governing access to

such records. The Respondents also point out that no evidence has been tendered to show that any request for the membership register was made to the union or the relevant labour office. They assert that the request is speculative and raises suspicion as to its intended use. Moreover, they assert that a trade union is a membership-based organization, and its membership register can only be accessed upon proper justification and in accordance with its governing instruments.

16. On prayer 6, they submit that it is factually and legally untenable also. They contend that the 3rd Respondent did not issue any such notice. In any event, the Respondents assert that the relief sought is final in nature and goes to the core of the substantive dispute in the Petition. As such, it cannot be granted at an interlocutory stage. Reliance is placed on the case of **East African Portland Cement Company Limited v Attorney General & another [2013] eKLR**, where the Court held:

“Interim orders are granted... to maintain the status quo... Interim orders are not suitable if by their grant,

they finally determine the substantive dispute. The Courts must be wary of prejudgment of the substantive merits.”

17. On the principles for grant of interlocutory relief, the Respondents submit that none have been established. On a *prima facie* case they contend that elections were conducted following due notice and in accordance with the union constitution, and that the Petitioners actively participated in the process. They argue that no evidence has been provided to demonstrate that any members were excluded from the elections. Further, the Respondents submit that the 1st Respondent complied with all constitutional requirements, including payment of nomination fees and participation in the nomination process conducted on the election day. It is also submitted that the Petitioners have not justified their request for the membership register, nor demonstrated any legal basis for such an order. The Respondents maintain that they have already provided a list of members who participated in the elections. The Respondents therefore

contend that the application is merely a witch hunt against the 1st Respondent.

18. On prejudice suffered the Respondents submit that the grant of the orders sought would occasion significant prejudice to the union and its members. They assert that the elections were duly conducted with participation from 179 members, and that the majority of those members have not raised any complaints regarding the process. In contrast, only the Petitioners have challenged the elections. It is submitted that the orders sought have already disrupted union operations at the branch level by preventing duly elected officials from assuming office. This, they contend, has crippled the union's ability to carry out its mandate of protecting workers' rights. The Respondents maintain that the prejudice to the union and its members outweighs any alleged harm to the Petitioners, and that such disruption cannot be adequately remedied by damages. In conclusion the Respondents submit that the application is devoid of merit and should be dismissed with costs.

Disposition

19. The issues for determination at this interlocutory stage are concerned with the preservation of the *status quo* pending the hearing and determination of the Petition. The factors to consider are well set out in the case of **Giella v Cassman Brown & Co. Ltd [1973] EA 358** which principles have been reiterated in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others** (*supra*).

The principles are that

- a) The applicant must show a *prima facie* case with a probability of success;
- b) An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury; and
- c) When the court is in doubt, it will decide the application on the balance of convenience.

20. The *prima facie* aspect is simply that the case appears valid and self-evident upon the Court's initial examination without requiring a deeper or thorough investigation. This aspect was satisfied when credible allegations of impropriety were laid before the Court regarding the alleged breaches of the Union constitution and misfeasance regarding the

elections. The Court is satisfied the first limb of the parameters for grant of interlocutory relief are met.

21. The second limb is the irreparable injury aspect. Irreparable injury is basically harm that cannot be adequately compensated by an award of damages. It cannot be undone through legal remedies after a trial. This aspect must be met before the grant of injunctive relief. In this case, it is asserted the person who is stated to have been elected is not even a union member. This is cast against the constitution of the trade union and should the Court not intervene there would be representation by a person who is *prima facie* not qualified to hold the position. This is precisely what cannot be compensated by an award of damages. The Court is convinced that the second aspect of the criteria for grant of injunctive relief is met. The Court is required, when in doubt to consider the balance of convenience. This is not necessary as the Applicants have met the first two limbs and therefore are entitled to the grant of injunctive relief. The 1st, 3rd, 4th and 5th Respondents are not to hold any office pending the hearing and determination of this Petition.

Directions will issue on the manner and steps toward the disposal of the Petition immediately after this Ruling.

22. The Petitioners being successful, the order on costs is that the Respondents are to pay the costs of this Application to the Petitioners.

It is so ordered.

Dated and delivered at Kisumu this 27th day of April

2026

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