



**Masika & 2 others v Butiko & 4 others (Petition E103 of 2026)
[2026] KEELRC 1230 (KLR) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1230 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E103 OF 2026**

JK GAKERI, J

MAY 11, 2026

BETWEEN

STEPHEN M MASIKA 1ST PETITIONER

DAN MIHADI 2ND PETITIONER

JAMES NJIHIA 3RD PETITIONER

AND

WATSON BUTIKO 1ST RESPONDENT

NICHOLAS OTIENO OGOLA 2ND RESPONDENT

JONNES MUTUKU 3RD RESPONDENT

REGISTRAR OF TRADE UNIONS 4TH RESPONDENT

THE TRANSPORT WORKERS UNION 5TH RESPONDENT

RULING

1. The Petitioners commenced the instant suit on 31st March 2026 vide Petition and Notice of Motion of even date.
2. The Notice of Motion filed under Certificate of Urgency sought conservatory Orders pending inter partes hearing and determination of the Application and Petition as well as an order authorising the Petitioners to access manage and run the affairs of the Transport Workers Union, the 5th Respondent.
3. When the matter came on 1st April, 2026, the court issued directions on service, responses and mention on 16th April 2026 for further directions.
4. On 16th April 2026, counsel for the 1st, 2nd, 3rd and 5th Respondents informed the court that she had filed a Notice of Preliminary Objection dated 13th April 2026. Counsels agreed that the Preliminary



Objection be canvased by way of written submissions 7 days a piece and a ruling slated for 11th May, 2026.

5. The 1st, 2nd, 3rd and 5th Respondent's Notice of Preliminary Objection is challenging the courts jurisdiction by dint of the provisions of the Election Disputes Practice Rules 2025 on procedure, that the suit is sub judice ELRCA No. 045 of 2026 William Mmosi & another v Transport Workers Union & others, ELRC No. E263 of 2025 Stephen Masika & Dan Mihadi v Transport Workers Union and a similar application ELRC No. E036 of 2025 Dan Mhadi & Stephen Masika & another v Nicholas.
6. Atieno was struck out for irregularity. The 1st, 2nd, 3rd and 5th Respondents are also contesting the Petitioners' Locus Standi and contend that the suit is an abuse of court process by the Petitioners.
7. I have considered the submissions filed by the Petitioner dated 27th April, 2026 and the 1st, 2nd, 3rd and 5th Respondents' dated 20th April, 2026.
8. It is trite that whenever a Preliminary Objection is raised in a suit it must be disposed of at the earliest instance owing to its potential to dispose of the case at that stage.
9. The most often-cited rendition as to what constitutes a Preliminary Objection are the sentiments of Law JA and Sir Charles Newbold in Mukisa Biscuit Manufacturing Co Ltd v West End Distribution Ltd (1969) E.A. 696.

Law JA stated:

“... A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a Preliminary point may dispute of the suit. Examples are an Objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Sir Charles Newbold P added the following:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

10. Granted that the 1st, 2nd, 3rd and 5th Respondent's Notice of Preliminary Objection is grounded on the court's jurisdiction, the Petitioners locus standi and the doctrine of sub judice, the court is satisfied that the notice meets the threshold of a Preliminary Objection.
11. On want of jurisdiction, although the 1st, 2nd, 3rd and 5th Respondents failed to identify the specific provisions of the Employment and Labour Relations Court (Trade Election Disputes) Procedure and Practice Directions 2025, they were relying on, it is discernible that the instant Petition is framed in the context of the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and does not appear to have taken into consideration the operative framework in trade union election disputes.
12. It is common ground that the Petitioners are challenging the election held on 18th January 2026 but other particulars are missing.



13. Both the Trade Union (Elections Petition) Rules 2014 and the ELRC (Trade Union Election Disputes) Procedure and practice Directions prescribe the form and content of an election Petition which must be complied with.
14. The objective of the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions is to facilitate the just, expeditious, efficient and proportionate resolution of trade union election disputes.
15. Direction 4(2) provides that a party to a Petition or an advocate for the Party shall assist the court to further the objective of the practice directions and for that purpose participate in the process of the court and comply with the directions and court orders.
16. Direction 6 states:
 1. An election Petition shall state:
 - a. the name, physical and postal address, email, telephone number and any other necessary particulars of the Petitioner, Respondent or the union officials whose election is challenged;
 - b. the venue and date when the election in dispute was conducted;
 - c. the results of the election, if any, and however declared;
 - d. the date of the declaration of the results of the election;
 - e. the grounds of law or fact and particulars upon which the Petition is presented; and
 - f. the reliefs the court is requested to grant.
17. The foregoing is fortified by the decision in *Bichang'a & 2 others v Kenya National Union of Teachers & 4 others* (2026) KEELRC 135 (KLR); where the court stated as follows:

“These Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directions are the guardrails for ensuring order and the achievement of a just expeditious efficient and proportionate resolution of trade union election disputes.”
18. Equally, other than non-compliance with the prescribed form and content of the Petition, the Petition was not filed within the prescribed duration.
19. Rule 3 of the Trade Union Elections (Election Petition) Rules provides:

A Petition to question the validity of an election under the Act shall be filed within seven days after the date of the declaration of the results of the election.
20. This suit was filed after the prescribed duration and no application for extension of time was filed.
21. Similarly, section 5(3) of the Procedure and Practice Directions, 2025 provide:
 3. An election Petition shall be-
 - a. Filed within twenty-one days from the date of declaration of the results of a trade union election:



22. Although the Directions are subsequent to the Rules and thus latter in time the Rules prevail one Procedure and Practice Directions. This is because the *Labour Relations Act* confer upon the Cabinet Secretary power to make regulations in consultations with the National Labour Board.
23. Concerning sub judice, it is clear that ELRCA No E045 of 2026 William Moss & another v Registrar of Trade Unions & another scheduled for mention in 29th June, 2026 is challenging the election held on 18th January, 2026 on the ground of prematurity in violation of the 2nd Respondents Constitution, the national elections were held too early before the timelines fixed by the Registrar of Trade Unions and before branch elections.
24. Section 6 of the *Civil Procedure Act*, state:

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title, where suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.
25. The foregoing provision is couched in mandatory tone and demands that the subsequent suit be stayed until the previous suit is heard and determined.
26. The court was unable to trace ELRC No. E263 of 2025 and ELRC JR No E036 of 2025 has no effect on the instant suit.
27. On locus standi of the Petitioners the court is guided by the sentiments of the High Court in Kingori v Chege & 3 others (2002) 2KLR 243, cited with approval by the Supreme Court in Law Society of Kenya v Communications Authority of Kenya & 10 others (2023) KESC 27 (KLR) as follows;

A property party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognisable in a court of law being an interest which the court will enforce.”
28. The Supreme Court stated:

We agree with these observations of the superior courts regarding this issue of who can be a proper party before a court.”
29. Similarly, in Agakhan University Hospital v Kenya Private University Workers Union (2024) KECA 1950 (KLR), the Court of Appeal stated:

Locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in a court of law. Therefore, locus standi means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard. Locus standi is so important that in its absence, the party has not basis to claim anything before the court...”
30. See Okoiti & another v Attorney General & another (2021) KESC 28 KLR, Modern Soap Factory v Kenya Shoe and Leather Workers Union Civil Appeal No. 37 of 2019 among others.
31. Since the Petitioners are members of the 5th Respondent and had contested previously union elections, the court is satisfied that they have the requisite locus standi.



32. Finally, the court is not persuaded that the Petitioners/Applicants have abused the court process by filing the instant suit.
33. Guided by the decision in *Bichang'a & 2 others v Kenya National Union of Teachers (KNUT) and 4 others* (supra) where the Petitioners/Applicants petition was struck out for non-compliance with Directive 2 and 6, the court is satisfied that the instant Petition is unsustainable for non-compliance with the provisions of the Trade Union Election (Election Petition) Rules 2014 and the Employment and Labour Relations Court (Trade Union Election Disputes) Procedure and Practice Directives.
34. The upshot of the foregoing is that the 1st – 4th Respondents Notice of Preliminary Objection is merited and as a consequence, the Petition herein is struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 11TH DAY OF MAY, 2026.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

