



**Mihadi & 2 others v Otieno & another (Cause E036 of 2021)  
[2025] KEELRC 2021 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2021 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E036 OF 2021  
HS WASILWA, J  
JUNE 30, 2025**

**BETWEEN**

**DAN MIHADI & 2 OTHERS & 2 OTHERS & 2 OTHERS ..... PETITIONER**

**AND**

**NICHOLAS OTIENO & ANOTHER & ANOTHER & ANOTHER &  
ANOTHER ..... RESPONDENT**

**RULING**

1. The application before me is the one dated 17/6/25 which application is filed through a notice of motion filed by the respondents herein and brought pursuant to section 12 of the Employment and *Labour Relations Act*, rule 44 of the Employment and *Labour Relations Act* (procedure) rules 2024, section 34 and 35 of the *Labour Relations Act* 2007 and all other enabling provisions of law and seeking orders that the ex- parte order issued by this court on 16/6/2025 be and is hereby vacated or set aside.
2. The application is based on the following grounds:
  1. That the ex-parte order dated 16th June 2025 was obtained through material non-disclosure and suppression of material facts by the Ex-parte Applicants.
  2. That the Ex-parte Applicants failed to disclose to this Honourable Court that: A Central Council meeting was duly convened and held on 22nd May 2025 at Sandford Community School, Nairobi. The said meeting resolved that the 1st Ex-parte Applicant (General Secretary) was liable on all six charges preferred against him. The meeting voted (10 votes) for his removal from office. A subsequent Central Council meeting was held on 12th June 2025 where new Officials were elected to fill the substantive posts of National Chairman, General Secretary and National Treasurer.
  3. That the Ex-parte Applicants were duly invited to both meetings of 22nd May 2025 and 12th June 2025 but deliberately failed to attend.



4. That the Ex-parte Applicants coerced Central Council members who attended the meeting of 22nd May 2025 to draw letters and affidavits disowning the said meeting. Which members have since clarified were done under duress as their jobs were on the line.
  5. That the failure by the Ex-parte Applicants to serve the 1st Respondent with the application dated 5th June 2025 was deliberate and calculated to mislead this Honourable Court as the material herein would have been brought to court..
  6. That the extract of 30th May 2025 which the ex-parte order sought to stay has been overtaken by events, specifically the elections held on 12th June 2025 and the subsequent extract of 16th June 2025.
  7. That had the above material facts been disclosed to this Honourable Court, the ex-parte order dated 16th June 2025 would not have been granted.
  8. That the continued existence of the said order is causing confusion and chaos at the Union offices and is prejudicial to the smooth running of the Union's affairs.
  9. That it is in the interest of justice, harmony and peace that the said order be vacated forthwith.
  10. That the Ex-parte Applicants did not come to this Honourable Court with clean hands.
3. The application is also supported by the supporting affidavit of Nicholas Otieno Ogola the 1<sup>st</sup> respondent herein who reiterates the matters raised in the grounds in support of the application. They aver that the applicants should not be granted the orders sought.
  4. The respondents in response to this application filed a replying affidavit sworn on 19/6/2025 and submitted that there are no ex parte orders issued by this court on 16/6/25 as the orders of the said date were issued in the presence of lawyers of the 1<sup>st</sup> respondent – Onenga. They also submitted that the orders were not for review but an appeal and which cannot be sustained.
  5. The respondents also submit that the county council meeting never took place and seek the orders not to be allowed. They want the court to stay the orders of the Registrar of trade unions so that there is order in the Union.
  6. I have examined all the averments of the parties herein. It is indeed true that this court granted the respondents herein orders to institute judicial review proceedings which orders were to operate as stay of orders granted by the RTU.
  7. The respondents applicants have contested that the orders so granted are tantamount to reinstatement orders granted without granting them any chance to be heard.
  8. Indeed the orders of stay return the officials in office without considering the applicants who aver are in office. The applicants aver that there was no disclosure of material facts which they are now desirous of explain.
  9. At this point, this court need not go to the route of considering whether there was validity or not on the change of office bearers and as registered by the Registrar of Trade Unions in view of the application before me.
  10. It is however evident that the ex applicant are contending against the decision of the registrar of trade union to register fresh officials of the union who they aver should not be in office.



11. Section 30 of the *Labour Relations Act* states as follows:

Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial Court against that decision within thirty days of the decision.

12. The law is clear that where there is contention on any order granted by the registrar of trade union the aggrieved party should approach this court by way of an appeal. The ex-parte applicants however chose to approach this court by way of judicial review application which is an irregularity.

13. In view of this position, I find that the judicial review application as a whole is irregularly before me and I proceed to strike it out with all consequential orders therein. There will be no order of costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> OF JUNE, 2025.**

**HELLEN WASILWA**

**JUDGE**

