



**Miano & 4 others v Misori & 12 others; Registrar of Trade Unions
(Interested Party) (Employment and Labour Relations Constitutional
Petition E008 of 2024) [2025] KEELRC 1838 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1838 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS CONSTITUTIONAL PETITION E008 OF 2024**

ON MAKAU, J

JUNE 25, 2025

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS UNDER 10, 19(1), 25, 27, 28, 29(D),
36, 40, 41, 43, AND 46 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: CONSTRUCTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF: CONTRAVENTION OF SECTIONS 4(2),
31(5), 39, 42, 47, 48, 50(9) OF THE LABOUR RELATIONS ACT**

AND

**IN THE MATTER OF: THE KENYA UNION OF POST PRIMARY
EDUCATION TEACHERS (KUPPET) CONSTITUTION**

BETWEEN

ROBERT MIANO 1ST PETITIONER

WILLIAM LENGOIYAP 2ND PETITIONER

MOSES KIMWERE 3RD PETITIONER

PETER OLUOCH 4TH PETITIONER

YVONNE MUTINDI MUSYOKA 5TH PETITIONER

AND

MAURICE AKELO MISORI 1ST RESPONDENT

MOSES NTHURIMA 2ND RESPONDENT



WICKS NJENGA MWETHI	3 RD RESPONDENT
MAUREEN MAKIO NEKESA	4 TH RESPONDENT
WILSON OKENYE OMWEBU	5 TH RESPONDENT
DOREEN MUENI KILONZO	6 TH RESPONDENT
REUBEN AMBULI KWENDO	7 TH RESPONDENT
PETER LTANTIRAN LETIPILA	8 TH RESPONDENT
GILBERT WAFULA	9 TH RESPONDENT
ALICE KAIRUTHI	10 TH RESPONDENT
JACOB KAILUTHA	11 TH RESPONDENT
HELLEN GATHONI GITHUI	12 TH RESPONDENT
MUNGAI KIHANYA	13 TH RESPONDENT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

RULING

1. This ruling relates to the respondent’s Notice of Motion dated 15th November 2024 seeking the following orders: -
 - a. Settling aside of the court orders issued on 13th November 2024.
 - b. Costs of the application be in the cause.
2. The application is supported by an Affidavit sworn on 15th November 2014 by the applicants General Secretary Mr.Akelo M.T Misori, and it is opposed by the petitioners vide a Replying Affidavit sworn on 24th January 2025.
3. The Applicants case is that the impugned orders were irregular as the application was not served upon them. Besides the union is financially unable to comply with the said order since the Teachers Service Commission (TSC) has failed to remit union dues and Agency fee due to teachers’ strike.
4. On the other hand, the petitioner’s case is that the applicants were made aware of the dates when the matter was scheduled for hearing on 13th November 2024 and 13th January 2025; that they were served with the application and a Affidavit of service was filed; and that the application lacks merits.
5. The application was canvassed by written submissions. I have considered the motion, the affidavits and the written submissions filed. The issue for determination is whether the impugned order should be set aside.

Analysis

6. An irregular order is one which results from a defect in procedure. It is a decision made without serving the opposite party with court process. Better still, it is a decision which condemns a party without being afforded a chance to be heard.



7. In the instant case, the petitioners moved the court by a Notice of Motion dated 29th October 2024 under certificate of urgency. The petitioners sought order compelling the applicants herein to remit funds to the various accounts of Branches of the union headed by the petitioners.
8. On 4th November 2024, I made the following exparte orders:
 1. “The Application is certified urgent and fixed for inter partes hearing on 13th November 2024.
 2. I withhold interim order until the said hearing date to give the respondents a chance to state their case.
 3. ...”
9. On 13th November 2024, Mr.Otao Advocate appeared for the petitioner and Mr.Nderi held brief for Akello for the respondents. Mr.Nderi stated that they had received instructions the previous day and sought 21 days to file response to the motion. Mr.Otao prayed for interim orders in terms of prayer 2 and 3 of the motion. He told the court that the respondent had been served on 5th and 8th November 2024 and filed an affidavit of service.
10. Having considered the material before the court, I was satisfied that the respondents had been duly served with the court process and failed to respond to the motion. To balance the scale of justice, I granted the interim order sought and fixed the motion for inter partes hearing on 16th January 2025.
11. The respondent failed to respond to the motion and instead filed the instant motion seeking setting aside of the orders granted on 13th November 2024.
12. Having considered the court record, I reiterate that the applicants herein were not condemned unheard on 13th November 2024. They were served with the Notice of Motion and they attended court through their counsel Mr.Nderi who addressed the court. The orders were on the interim basis and when no response was filed after Mr.Nderi sought 21 days to file response, the interim orders were confirmed.
13. In view of the foregoing matters, I hold that the impugned interim orders were regular as the respondents were served but failed to file response to the petitioners’ motion. Consequently, I find no merits in Notice of Motion dated 15th November 2024 and proceed to dismiss it with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 25TH DAY OF JUNE, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

