



**Tony Cheruiyot v Kenya Medical Practitioners Pharmacists & Dentists' Union (KMPDU) & 3 others  
(Constitutional Petition E017 of 2022) [2022] KEELRC 1409 (KLR) (10 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1409 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CONSTITUTIONAL PETITION E017 OF 2022**

**NJ ABUODHA, J**

**JUNE 10, 2022**

**E017 OF 2022 IN THE MATTER OF ARTICLE 20, 22, 23 (3), 41, 47, 165,  
OF THE CONSTITUTION OF KENYA 2010 IN THE MATTER OF  
ARTICLE 4 (2) (3), 9 (6) 14 (4) (5) OF THE KMPDU CONSTITUTION,  
IN THE MATTER OF SECTION 33(A), 34 OF THE LABOUR RELATIONS  
ACT, 2007**

**IN THE MATTER OF SECTION 12, EMPLOYMENT AND LABOUR  
RELATIONS COURT ACT, 2011**

**BETWEEN**

**TONY CHERUIYOT ..... PETITIONER**

**AND**

**KENYA MEDICAL PRACTITIONERS PHARMACIST & DENTIST'S UNION  
(KMPDU) ..... 1<sup>ST</sup> RESPONDENT**

**SECRETARY GENERAL OF KMPDU ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL EXECUTIVE COUNCIL OF KMPDU ..... 3<sup>RD</sup> RESPONDENT**

**REGISTRAR OF TRADE UNIONS ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The petitioner herein through application dated June 8, 2022 sought orders in the main that the court issues interim injunction restraining the 1<sup>st</sup> to 3<sup>rd</sup> respondents from organizing or conducting KMPDU National elections set for 11th June, 2022 pending the inter partes hearing of the application and the petition.



2. The application was supported by an affidavit of the petitioner Tony Cheruiyot's who deponed among others that he was a member of KMPDU and entitled to vie for its leadership positions at all levels subject to meeting eligibility conditions contained in the KMPDU's constitution. He further stated that pursuant to the power vested on the Secretary General for KMPDU, he issued a notice in respect of KMPDU advisory Council meeting scheduled for the 11<sup>th</sup> June, 2022 to discuss the 2022 KMPDU elections.
3. According to Mr. Cheruiyot, the legal date for elections of the Union Officers has been provided as to be held in the month of April of every election year under clause 14 (4) of the KMPDU constitution therefore varying the election date was acting in contravention of the KMPDU constitution. he further contended that the respondents had not published the list of bona fide members eligible to vote one month before the elections.
4. The respondents filed a replying affidavit through one Dr. Davji Atellah who stated that he swore the replying affidavit on behalf of the 1<sup>st</sup> and 3d respondent in his capacity as the Secretary General.
5. Dr. Atellah further stated that the substratum of the application was the elections of KMPDU which was res judicata by virtue of Nairobi ELRC Petition E080 of 2021. According to him, KMPDU elections held on May 5, 2021 were challenged and the Court ordered the 2<sup>nd</sup> respondent to organize and conduct fresh elections in strict conformity with the constitution of the 1<sup>st</sup> respondent and the applicable union election laws within 45 days of the ruling.
6. The respondent enjoyed stay orders which lapsed with the court ruling on April 27, 2022. As such the 45 days lapsed on sunday, June 12, 2022. Dr. Atellah further complained that the petitioner did not seem to have regard to the fact that considerable sums of members' contributions were already being channeled to conduct the upcoming elections the bulk of which organization is complete.
7. According to him there was sufficient notice of the upcoming elections given to the membership of the union in accordance with the union's constitution. The suit has therefore been brought inordinately late in the day.
8. In the brief submissions before me, Mr. Kasaya for the petitioner submitted that the elections violated clause 14 and serval other clauses of the Union's constitution as well as article 41(c) of the Kenya [Constitution](#).
9. According to counsel the notice was issued out of time since the elections were supposed to be held in April and the elected officials be availed in May at the Annual General Meeting. Further article 9(6) of the KMPDU required that the list of eligible members to vote be published one month before the elections. This had not been done.

**Further the petitioner had not been given sufficient time.**

10. Ms. Akelo for the respondents submitted that the substratum of the Petition was re judicata since the matter had already been determined in Nairobi ELRC Pet. No. E080 of 2021 before Hon. Justice Wa Makau in which the learned Judge nullified the elections. The respondent sought and obtained interim stay pending appeal however, in a substantive ruling delivered on April 27, 2022, the stay application was dismissed.
11. According to Counsel therefore the 45 days began to run from when the substantive ruling was delivered; that is April 27, 2022. The notice for elections was issued on April 30, 2022 and this was sufficient notice. According to Ms. Akelo the notice referred to in the petition was the meeting of the Advisory Council and not the notice of the meeting for purposes of election.



12. This is an interlocutory application seeking an order for injunction. The principal considerations regarding grant of injunction are more or less settled. The applicant must demonstrate a prima facie case with probability of success, second, the applicant must demonstrate that damages will not adequately compensate him if successful in the ultimate and where the Court is not sure the matter will be decided on a balance of convenience.
13. Further an injunction being an equitable remedy, the applicant must not be guilty of inordinate delay and must make full and material disclosure of all the material facts.
14. The petitioner alleges that the 1<sup>st</sup> and 3<sup>rd</sup> respondent intend to hold elections contrary to the union's constitution that is to say elections ought to have been held in April and that register of eligible voters ought to be published thirty days before the elections. The petitioner further complains that notice for election was issued on June 6, 2022 for elections to be held on June 11, 2022. This was insufficient notice and contrary to the Union's constitution.
15. The Court has noted that the Unions elections that were held in May, 2021 were nullified by Hon. Justice Wa Maku on December 15, 2021. The respondents sought a stay of the order of the Court and the Court made substantive ruling on April 27, 2022. This therefore meant that the 45 days within which the elections were to be held began to run from the date of the substantive ruling. That is to say, April 27, 2022. From the record the 1<sup>st</sup> and 3<sup>rd</sup> respondent issued notice for elections dated April 30, 2022. It is important to note that the moment the court (Wa Makau) ordered fresh elections within 45 days of his ruling, the election were now to be conducted as per the court order and not as per the timeliness set out in the Unions Constitution.
16. It is therefore not correct as contended by Mr. Kasaya that the elections were being conducted contrary to the Unions Constitution.
17. The petitioner further contended that the notice for the election was short. The same having been issued on June 6, 2022 for an election on the 1<sup>st</sup> June 1, 2022. The court has had a look at the notice issued on June 6, 2022 and noted that it referred to a meeting of the National Executive Council to be held on June 10, 2022. The notice therefore does not concern the Unions election. The correct notice is the one dated April 30, 2022 setting the elections for June 11, 2022. If this be the case, then court takes the view that the petitioner is guilty of delay in bringing the present application.
18. The court agrees with the 3<sup>rd</sup> respondent when he laments that a lot of resources and time may have been committed in preparing for the elections.
19. From the brief analysis of the issues raised in the motion and the petition the court takes the view that the balance of convenience does not favour the applicant to warrant the grant of an interlocutory injunction.
20. The union has not had a chance to renew the mandate of the present office bearers or elect new ones because of previous court intervention. It would therefore not be equitable to injunct once again a scheduled election when it has not been sufficiently demonstrated that the respondent has acted contrary to its own constitution and that of the land. The petitioner still has the right to challenge the scheduled elections by prosecuting the petition to conclusion and if successful the elections can be nullified. However, no sufficient cause has been demonstrated by the petitioner at this stage to warrant the issuance of an order of injunction against the scheduled elections. The balance of convenience is not weighted in favour of the applicant.
21. The injunctive orders sought are therefore declined.



22. It is so ordered.

DATED AT ELDORET THIS 10<sup>TH</sup> DAY OF JUNE 2022

DELIVERED THIS 10<sup>TH</sup> DAY OF JUNE, 2022

Abuodha J.N

JUDGE

