



**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**PETITION NO. E005 OF 2021**

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 27, 36, 41 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 27, 36 AND 41 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF RULES 10, 11, 22, 23 AND 24 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF SECTIONS 4, 33 AND 34 OF THE LABOUR RELATIONS ACT**

**AND**

**IN THE MATTER OF REGULATIONS 2, 5 AND 8 OF THE KENYA UNION OF POST-PRIMARY EDUCATION TEACHERS REGULATIONS (REGULATIONS FOR BRANCH ELECTIONS) 2021**

**AND**

**IN THE MATTER OF REGULATIONS 2, 5 AND 8 OF THE KENYA UNION OF POST-PRIMARY EDUCATION TEACHERS REGULATIONS (REGULATIONS FOR BRANCH ELECTIONS) 2021**

**AND**

**IN THE MATTER OF ELECTION OF OFFICIALS OF THE KENYA UNION OF POST-PRIMARY EDUCATION TEACHERS CARRIED OUT ON 16<sup>TH</sup> JANUARY 2021**

**BETWEEN**

<b>KENNETH OUMA BORO</b>	<b>1<sup>st</sup> PETITIONER</b>
<b>BERNARD OBONYO</b>	<b>2<sup>nd</sup> PETITIONER</b>
<b>KEVIN MIJUNGU</b>	<b>3<sup>rd</sup> PETITIONER</b>
<b>PAUL OURU MIGWAMBO</b>	<b>4<sup>th</sup> PETITIONER</b>
<b>FRANCIS MARUA MAHABA</b>	<b>5<sup>th</sup> PETITIONER</b>
<b>MILLIE MULONGA</b>	<b>6<sup>th</sup> PETITIONER</b>
<b>SETH KANYANGO</b>	<b>7<sup>th</sup> PETITIONER</b>
<b>JOHN ADWAR</b>	<b>8<sup>th</sup> PETITIONER</b>

<b>RACHEL BOKE ERUSTUS</b>	<b>9<sup>th</sup> PETITIONER</b>
<b>JACINTA RIRO ROBI</b>	<b>10<sup>th</sup> PETITIONER</b>
<b>VERSUS</b>	
<b>KENYA UNION OF POST-PRIMARY</b>	
<b>EDUCATION TEACHERS</b>	<b>1<sup>st</sup> RESPONDENT</b>
<b>HENRI OTUNGA</b>	<b>2<sup>nd</sup> RESPONDENT</b>
<b>GEORGE OKATCH</b>	<b>3<sup>rd</sup> RESPONDENT</b>
<b>SAMUEL ORWA OKINYI</b>	<b>4<sup>th</sup> RESPONDENT</b>
<b>ROLLEX OWINO</b>	<b>5<sup>th</sup> RESPONDENT</b>
<b>FLORENCE ADHIAMBO OUMA</b>	<b>6<sup>th</sup> RESPONDENT</b>
<b>BON OGALO</b>	<b>7<sup>th</sup> RESPONDENT</b>
<b>KEVIN ODHIAMBO OTIENO</b>	<b>8<sup>th</sup> RESPONDENT</b>
<b>FREDRICK NYABUOGI</b>	<b>9<sup>th</sup> RESPONDENT</b>
<b>SHEILA OMUGA</b>	<b>10<sup>th</sup> RESPONDENT</b>
<b>CHARITY OMOLO</b>	<b>11<sup>th</sup> RESPONDENT</b>

#### **JUDGMENT**

1. The Petitioners moved the Court on 20 January 2021, alleging that the Kenya Union of Post-Primary Education Teachers (the Union), Migori branch elections held on 16 January 2021 were unlawful because the Union's Election Regulations had not been complied with. It was further alleged that non-members had been allowed to vote.
2. On the same day, the Petitioners filed a Motion under a certificate of urgency seeking certain interim reliefs.
3. When the Motion was placed before the Court, it directed that service be effected upon the Respondents.
4. On 25 January 2021, the Court allowed the Petitioners to file and serve an Amended Petition.
5. The Court further directed that the Motion and Amended Petition be taken together. The parties were also directed to file and exchange affidavits and submissions.
6. The Amended Petition was filed on 3 February 2021, and the Union filed Grounds of Opposition, Reply to Petition on 12 February 2021. The 2<sup>nd</sup> to 11<sup>th</sup> Respondents filed a Reply to the Amended Petition and a replying affidavit on 18 February 2021.
7. The Petitioners filed their submissions on 16 March 2021 (should have been filed/served before 3 March 2021), and they identified the Issues for adjudication as:
  - (i) Whether the Petitioners have established a case for setting aside the elections and/or nullification of the elections held on 16<sup>th</sup> January 2021.
  - (ii) Whether the Migori KUPPET branch elections were procedural, lawful and complied with the constitution and Regulations of KUPPET.
8. The Union filed its submissions on 16 March 2021, and it adopted the Issues as identified by the Petitioners.
9. The 2<sup>nd</sup> to 11<sup>th</sup> Respondents filed their submissions on 24 March 2021, and they identified the Issues for determination as:
  - (i) Whether inspection of voters register was allowed to members of the Union?



For 2<sup>nd</sup> to 11<sup>th</sup> Respondents F. Ndar Omollo & Associates Advocates

Court Assistant Chrispo Aura