



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**PETITION NUMBER E044 OF 2021**

**BETWEEN**

**HALIMA ADAN AHMED .....PETITIONER**

**VERSUS**

- 1. SETH PANYAKO, GENERAL SECRETARY,**
- KENYA NATIONAL UNION OF NURSES**
- 2. KENYA NATIONAL UNION OF NURSES**
- 3. THE REGISTRAR OF TRADE UNIONS.....RESPONDENTS**

**FURTHER ORDERS**

- 1. The Court made a ruling on 9<sup>th</sup> November 2021, which was released to the Parties the same date, dismissing the Petition herein.
- 2. It has been brought to the attention of the Court that the date of the ruling was erroneously indicated as 19<sup>th</sup> November 2021.
- 3. The Court wishes to review and correct its record, pursuant to Rule 34 of the E&LRC [Procedure] Rules, 2016, to show that the ruling was signed, dated and released to the Parties, on 9<sup>th</sup> November 2021.
- 4. A copy of today’s Orders to be availed to the Parties, with the corrected ruling, showing the date as 9<sup>th</sup> November 2021.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 16<sup>TH</sup> DAY OF NOVEMBER 2021.**

**JAMES RIKA**

**JUDGE**

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
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## VERSUS

1. SETH PANYAKO,

GENERAL SECRETARY KENYA NATIONAL UNION OF NURSES

2. KENYA NATIONAL UNION OF NURSES

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## RULING

1. The Petitioner is a Nurse, and a Member of the 2<sup>nd</sup> Respondent Union. She challenges elections conducted by the 2<sup>nd</sup> Respondent on 26<sup>th</sup> February 2021.
2. She petitions the Court, among other prayers, to declare elections null and void; declare failure by the 1<sup>st</sup> Respondent to approve Petitioner's application to vie for the position of General- Secretary illegal, null and void; a permanent injunction preventing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from registering results of the elections with the 3<sup>rd</sup> Respondent; the 3<sup>rd</sup> Respondent is restrained from receiving and registering such results; and fresh elections be held.
3. She states that the Court suspended the elections, through an order made on 25<sup>th</sup> February 2021, which was served upon the Respondents on 26<sup>th</sup> February 2021, before voting exercise got underway.
4. She made an Application dated 29<sup>th</sup> March 2021, asking the Court to order the 3<sup>rd</sup> Respondent not to register any results from the elections, until her Application was heard and determined.
5. The Court issued directions on 31<sup>st</sup> March 2021, declining to certify the Application as urgent.
6. On 19<sup>th</sup> May 2021, the Petition was mentioned before the Hon. Principal Judge Maureen Onyango. It is recorded that the Application dated 29<sup>th</sup> March 2021 was withdrawn. Parties were to take further directions on the hearing of the Petition.
7. The Respondents then filed an Application dated 7<sup>th</sup> June 2021, seeking to have the Petition struck off. The Application is based on grounds on the face of the Application and on an Affidavit sworn by the 1<sup>st</sup> Respondent on 7<sup>th</sup> June 2021. It is opposed through the Affidavit of the Petitioner, sworn on 24<sup>th</sup> June 2021.
8. The Respondents submit that: The Petition offends principles of constitutional drafting; it is frivolous and in abuse of the court process as it challenges an electoral exercise which is concluded; there was at the time of filing the Petition, a subsisting case **JR No. E.16 of 2020 Boniface Maina & Others v. Kenya National Union of Nurses** relating to the same subject matter; the Petition offends Section 34 [4] of the Labour Relations; the Petitioner does not have *locus standi* to bring the Petition as she is the Director of Nursing Machakos County, a Public Officer, and ineligible to contest a Trade Union Office; and that the Petitioner is in cahoots with other persons who presented other Claims before the Courts, to scuttle the 1<sup>st</sup> Respondent and his elected colleagues from having a peaceful tenure.
9. The Petitioner answers that she is a Nurse by profession, and a Member of the 2<sup>nd</sup> Respondent, by virtue of subscription. Striking out pleadings is draconian and the Court is asked to exercise extreme caution. Section 34 [4] of the Labour Relations Act does not state that all disputes arising from trade union elections are presented under the Labour Relations Act; Rule 7 of the Employment & Labour Relations Court Procedure Rules, 2016 allows Parties to approach the Court through Claims or Petitions; the elections are being challenged on other grounds, and not solely on the basis of orders issued in JR. No. 016 of 2020; and the said JR Application was struck out by the Court for improper drafting.
10. Parties agreed to have the Application considered on the strength of Written Submissions. Ruling was reserved for 16<sup>th</sup> December 2021 but is ready for delivery, on the date shown below.

### **The Court Finds:** -

11. The Petitioner does not deny that she is and was at all material times, the Director of Nursing, Machakos County, and therefore a Public Officer.
12. She resigned from the position of Machakos County Branch Secretary, of the 2<sup>nd</sup> Respondent, through a letter addressed to the General-Secretary, dated 2<sup>nd</sup> December 2019.
13. This was on the ground that she had been appointed to a management position in the County Government of Machakos.
14. In the letter, she correctly writes that: -

◆ There exist possibilities of conflict of interest with regard to confidential information that I may come to in line of serving at the capacities which I will be duty-bound to disclose to either party [ Union Executive or County Executive].

◆ At some point of serving in the two positions, fulfilling essential tasks required by the Union or the Employer, will become either a delicate balancing act or downright impossible owing to fiduciary duty of care.

◆ Requirements to both allocate duties and conduct or initiate disciplinary hearings that come with management function, will be deemed compromised or biased in cases where Union Members are concerned.

15. The Petitioner therefore tendered her resignation as the Branch Secretary, to enable her take up the management position.

16. 2 years later, why would she offer herself for the leadership of the 2<sup>nd</sup> Respondent, while still holding a management position in the public service?

17. The Court agrees with the Submissions of the Respondents, that the Petitioner was not eligible to run for 2<sup>nd</sup> Respondent's Office, being in top management position of an Employer to 2<sup>nd</sup> Respondent's Employees. The Industrial Relations Charter clearly demarcates the role of Employers and Trade Unions. In **Industrial Cause Number 1567 of 2011, Kenya Game Hunting & Safari Workers Union v. Lewa Wildlife Conservancy Limited**, the Court held that Clause B [10] and Appendix C of the Industrial Relations Charter, provide for levels of unionization of Employees, while prohibiting certain categories of Employees, who by virtue of their positions in the Employer's organization, have authority to hire, transfer, appraise, suspend, promote, discipline or handle grievances. The Petitioner understood the reasons for this, in her letter of resignation dated 2<sup>nd</sup> December 2019. It is not expected that anyone sits on both ends of the collective bargaining table. The Petitioner appreciated the different roles in her letter of resignation way back in 2019.

18. While the Constitution of Kenya and Section 4 of the Labour Relations Act, allow all Employees to subscribe to Trade Unions and, while Section 31 of the Labour Relations Act allows persons who are, or have been engaged or employed in the sector for which the Trade Union or Employers' Organization is registered, to be Officials, there are limitations as reasonably set out in the tripartite Industrial Relations Charter. A Management Officer running the affairs of the workplace Trade Union, would certainly be conflicted. The Petitioner ought to have resigned as the Director of Nursing, to enable her run for the position of General-Secretary of the 2<sup>nd</sup> Respondent.

19. The 1<sup>st</sup> Respondent was elected as General -Secretary on 26<sup>th</sup> February 2021. Returns were filed with the 3<sup>rd</sup> Respondent. Elections were concluded. The Court cannot issue vain orders, asking the 3<sup>rd</sup> Respondent not to act on the returns. If there was an order suspending elections, issued in other Court Proceedings, enforcement of those orders ought to have been pursued under the relevant Proceedings, by the relevant Parties.

20. Section 34 of the Labour Relations Act requires that notice of the election of Officials is given to the Registrar Trade Unions within 14 days of holding elections. The Registrar determines registration of the returns. Section 34 [4] requires that disputes arising from or connected directly or indirectly to elections held under the section, may be referred to the Industrial Court.

21. Where a Party wishes to challenge a decision of the Registrar to register election returns, the Court thinks this should be done, through an appeal against the decision of the Registrar, made under the Act, which may be filed to the Industrial Court within 30 days of the decision, under Section 30 of the Labour Relations Act.

22. There are clear statutory provisions for challenging election and registration of Trade Union Officials under the Labour Relations Act. Although the Petition route was open to the Petitioner, and although the Court finds no fault in her drafting, there is no persuasive reason why she avoided coming under the statutory regime which regulates the subject matter. The statutory route was always at her disposal, at the time she claims she was unfairly denied nomination and after the elections.

23. The Court is persuaded foremost, that the Petitioner did not have the capacity to offer herself for leadership of the 2<sup>nd</sup> Respondent Union. She was in a management position, and in her own opinion, would be conflicted in discharging the role of a Trade Union Official, as the top Executive of the particular Trade Union. And if she did not have the capacity to run for Office, she cannot have the capacity to challenge election to Office, of the successful candidates.

**IT IS ORDERED: -**

***a. The Application by the Respondents dated 7<sup>th</sup> June 2021 is allowed.***

***b. The Petition is struck out with no order on the costs.***

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 9<sup>TH</sup> DAY OF NOVEMBER 2021.**

**JAMES RIKA**

**JUDGE**