



**Benjamin & 40 others v Kenya Medical Practitioners & 2 others;
Commissioner for Labour & 73 others (Interested Parties) (Cause
E080 of 2021) [2021] KEELRC 50 (KLR) (15 December 2021) (Ruling)**

*Magare Gikenyi J Benjamin & 40 others v Kenya Medical Practitioners and Dentists
Union & another; Commissioner for Labour & 72 others (Interested parties) [2021] eKLR*

Neutral citation: [2021] KEELRC 50 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E080 OF 2021
NZIOKI WA MAKAU, J
DECEMBER 15, 2021**

BETWEEN

DR. MAGARE GIKENYI J. BENJAMIN & 40 OTHERS PETITIONER

AND

KENYA MEDICAL PRACTITIONERS 1ST RESPONDENT

DENTISTS UNION & ANOTHER 2ND RESPONDENT

AND

COMMISSIONER FOR LABOUR INTERESTED PARTY

PROF. SHELBY DARNEL INTERESTED PARTY

VELOCITY LIMITED & 71 OTHERS INTERESTED PARTY

RULING

1. The Court ordered a scrutiny of the servers on 29th November 2021 *vide* the Ruling issued on that day. In the decision the Court stated thus:

The elections substratum of this Petition were held on 7th May 2021. The holding of elections after 1st May 2021 however is cause for concern as there was the issue of compliance with the requirement to unveil the officials at the Annual Delegates Conference held in May. The elections called by the 1st Respondent’s Independent Electoral Committee were to be held on 29th April 2021 but curiously on the night of 28th April 2021, the IEC postponed the elections to 6th May 2021 due to purported unavoidable circumstances. Clearly, where



a party alleges non-conformity with the law in regard to a particular election, the Petitioner must not only prove that there has been non-compliance with the law, but that such failure of compliance did in fact affect the validity of the elections. It is on that basis that the Respondent herein bears the burden of proving the contrary.

The Petitioner herein was required to avail credible evidence of the 1st Interested Party's departures from the prescriptions of the law in regard to the elections held. There was an abrupt change of date and in the Court's view, the result of this abrupt change prima facie leads to doubt as to the veracity of the poll as the acts of the 1st Interested Party's IEC seem irregular in that regard. In the Court's considered view there is reason to allow the opening up of the servers to verify the authenticity of the results."

2. The Court then issued an order directing the electronic record of the elections held on 6th May 2021 to be availed within 48 hours of the Ruling with such access being "read only" access to be supervised by the Deputy Registrar of this Court. The result of the scrutiny is filed and is before me and from a careful reading of the results, it is clear the verification of the outcome is not possible. The report in the last paragraph states

In conclusion, the team could not verify that the exercise was not tampered with as Velocity Limited did not avail the whole triangulation method they used for the exercise.

3. We cannot vouch for the results. As such and as a consequence the Court will issue the following:-
 - (i) A declaration is hereby issued that the 1st Respondent's Election held on 6th May 2021 was not conducted in accordance with the constitution of the Union and the applicable law relating to such elections thus rendering the declared result invalid, null and void.
 - (ii) A declaration is hereby issued that the irregularities and illegalities in the Union Election held on 6th May 2021 were substantial and significant that they affected the integrity of the election, the declaration of results and attendant consequential entries notwithstanding.
 - (iii) A declaration is hereby issued that the Officials of the 1st Respondent were not validly elected.
 - (iv) An Order is hereby issued directing the 2nd Respondent to organize and conduct fresh elections in strict conformity with the constitution of the 1st Respondent and the applicable Union election bylaws within 45 days of this Ruling.
 - (v) Each party shall bear their own costs of the challenge to the elections held.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER 2021

NZIOKI WA MAKAU

JUDGE

