



**Abdi & 2 others v Speaker, County Assembly of Garissa & another (Constitutional Petition E013 of 2023) [2024] KEHC 4577 (KLR) (3 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4577 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CONSTITUTIONAL PETITION E013 OF 2023**

**JN ONYIEGO, J**

**MAY 3, 2024**

**BETWEEN**

**MOHAMED ABDI ..... 1<sup>ST</sup> PETITIONER**

**MOHAMUD HASSAN ..... 2<sup>ND</sup> PETITIONER**

**ABDIFATAH ABDULLAHI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**THE SPEAKER, COUNTY ASSEMBLY OF GARISSA ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY ASSEMBLY OF GARISSA ..... 2<sup>ND</sup> RESPONDENT**

**Persons that had applied for a job listing and had been shortlisted for an interview have a legitimate expectation to be interviewed.**

Reported by John Ribia

***Labour Law** – employment - legitimate expectation - legitimate expectation of applicants that had been shortlisted for an interview – where the position was re-advertised without interviews being conducted – where the reason was to accommodate minorities and marginalized persons - whether persons that had applied for a job listing and had been shortlisted for an interview had a legitimate expectation to be interviewed – whether the County Government of Garissa was at liberty to re-advertise for a position that it had already shortlisted candidates so as to accommodate members of the minority and marginalized communities - whether persons who had been shortlisted were to re-apply - Constitution of Kenya, articles 10 and 259.*

***Constitutional Law** – fundamental rights and freedoms – enforcement of fundamental rights and freedoms - right to fair administrative action - applicants that had been shortlisted for an interview - where the position was re-advertised without interviews being conducted - whether requiring persons that had applied for a job listing and had been shortlisted for an interview to apply again after the position was re-advertised without conducting an interview or granting reasons for re-advertising was a breach of the right to fair administrative action of the shortlisted candidates - Constitution of Kenya articles 10, 47, 56 and 259.*



## Brief facts

The petitioners applied for the position of external members of the Garissa County Assembly Service Board and had been shortlisted and invited for interviews on June 14–15, 2023. However, the interviews were postponed due to a court-issued conservatory order. On September 13, 2023, the respondents re-advertised the vacancies without giving reasons, prompting the petitioners to file a constitutional petition. They alleged violations of their legitimate expectations and rights to fair administrative action.

## Issues

- i. Whether persons who had applied for a job listing and had been shortlisted for an interview had a legitimate expectation to be interviewed.
- ii. Whether the County Government of Garissa was at liberty to re-advertise for a position that it had already shortlisted candidates so as to accommodate members of the minority and marginalized communities; and whether persons who had been previously shortlisted were required to re-apply.
- iii. Whether requiring persons that had applied for a job listing and had been shortlisted for an interview to apply again after the position was re-advertised without conducting an interview or granting reasons for re-advertising was a breach of the right to fair administrative action of the shortlisted candidates.

## Held

1. Before any constitutional relief could issue, a party seeking such relief must prove that he or she had *locus standi*. For a constitutional remedy to apply one had to prove with precision the nature of the violation and the provision violated. A party seeking a constitutional redress ought to express himself or herself with a reasonable degree of precision about the nature and extent of constitutional rights violated or threatened or likely to be infringed.
2. Not every infringement amounted to a constitutional violation that would attract a constitutional relief. There must be a real infringement, denial of rights or threat to violation that called for interpretation of the Constitution *vis-à-vis* the rights infringed or threatened. It was not every disagreement that must find its way to the constitutional court.
3. Article 259 of the Constitution provided that the Constitution must be interpreted in a manner that promoted *inter alia*; its purposes, values and principles; the rule of law; good governance and be given purposive interpretation as read as a whole. In the instant case the petitioners had relied on the breach of their legitimate expectation and fair administrative action.
4. The petitioners had a legitimate expectation that the respondents were duty bound to conduct the interviews for which the petitioners were shortlisted. The protection of legitimate expectations was at the root of the rule of the law, which required predictability and certainty in government's dealings with the public. That was what article 10 of the Constitution envisaged on the aspect of accountability, transparency and good governance.
5. A party that sought to rely on the doctrine of a legitimate expectation had to show that it had *locus standi* to make a claim on the basis of legitimate expectation. There was no dispute that the petitioners were among the 36 persons shortlisted for the external person's positions. They were even invited to appear on a specific date for interview which never came to fruition. The right to employment was a right for every Kenyan subject to relevant conditions attached. They met the requisite qualifications and had been invited for interviews. They therefore had legitimate expectations to be interviewed and if successful to be employed. The expectation was legitimate hence constitutional.
6. The petitioners were entitled to reasons for re-advertising the same positions. Article 47 of the Constitution underscored fair administrative action which included giving reasons for any decision or action taken by a public body to whom an explanation for the action taken was necessary. No such explanation was rendered. To that extent the applicants' rights and those of the other candidates were violated for lack of fair administrative action hence breach of legitimate expectation.
7. The actions of the respondents were not justifiable. The argument that the timelines had lapsed hence making continuing with the process a breach of the law was not convincing as the process legally



stopped and time stopped running legally and nobody would be held liable for flouting the law. The explanation that they had not taken into consideration the minority and marginalized people living within Garissa County, although noble, could not explain why they had overlooked the same in the first place and omitted to give an explanation.

8. The 3<sup>rd</sup> respondent as an employment agency, must take into account the minority and the marginalized. Having woken up to the reality that there was an omission in the recruitment process, they had a duty to correct the omission. However, the correction should not be at the detriment or expense of the already shortlisted persons. The respondents could go ahead and re-advertise if they found it desirable with a caveat that those who had already applied and been shortlisted needed not apply and that they shall automatically be interviewed.

*Petition partly allowed.*

### **Orders**

- i. *A declaration was made that the petitioners had a legitimate expectation to be interviewed after having been shortlisted for the position of external members of Garissa County Assembly Service Board.*
- ii. *Declaration made that the respondents shall be at liberty to re-advertise the said positions so as to accommodate members of the minority and marginalized living within Garissa county.*
- iii. *Declaration made that upon the respondents re-advertising the positions of external members of the Garissa County Assembly Service Board, the petitioners and their counterparts (36 of them) who had applied and been shortlisted for the same positions needed not apply and that they shall automatically qualify to appear for interview when scheduled.*
- iv. *Each party was to bear own costs.*

### **Citations**

#### **Cases**

#### **Kenya**

1. *Anarita Karimi Njeru v Republic* Criminal Appeal 4 of 1979; [1979] KECA 12 (KLR) ; [1979] KLR 154 - (Mentioned)
2. *Communication Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* Petition 14, 14A, 14B & 14C of 2014 (Consolidated) [2014] KESC 53 (KLR) - (Explained)
3. *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others* Civil Appeal No 224 of 2017; [2017] KECA 436 (KLR) - (Explained)
4. *Kenya Revenue Authority v Export Trading Company Limited* Petition No 2 of 2020 [2022] KESC 31 (KLR) - (Explained)
5. *Matemu, Mumo v Trusted Society of Human Rights Alliance & 5 others* Civil Appeal 290 of 2012; [2013] KECA 445 (KLR) - (Applied)
6. *Mudegu, Legeus Lomosi v Kenyatta University* Constitutional Petition 44 of 2019; [2020] KEHC 7744 (KLR) - (Explained)
7. *Mwiti, Kevin K & others v Kenya School of Law & 2 others* Constitutional Petition 377 of 2015; [2015] KEHC 2294 (KLR) - (Explained)
8. *Origa, Japheth Ododa v Vice Chancellor University of Nairobi & 2 others* Constitutional Petition 491 of 2016; [2018] KEHC 4861 (KLR) - (Explained)
9. *Republic v Principle Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO* Miscellaneous Civil Application 461 of 2016; [2019] KEHC 10312 (KLR) - (Applied)

#### **Statutes**

#### **Kenya**

1. Constitution of Kenya articles 2, 10, 20, 21, 22, 27, 28, 41, 47, 50, 73, 258, 259 - (Interpreted)



2. Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Constitution of Kenya Sub Leg) rule 10 - (Interpreted)
3. County Assembly Service Act (cap 265D) section 9(2); Schedule First - (Interpreted)
4. County Governments Act (cap 265) section 12(3)(d) - (Interpreted)

#### **Advocates**

*Nelly Njenga Advocates* for the petitioners.

### **JUDGMENT**

1. The petitioners herein through the firm of Nelly Njenga Advocates moved this court via a petition dated September 15, 2023 brought pursuant to articles 2, 10, 20, 21, 22, 27, 28, 41, 47, 50, 73, 258, and 259 of the Constitution seeking the following reliefs:
  - i. A declaration that the 1<sup>st</sup> respondent's action of failing to conclude the recruitment process and interview the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners is a violation of their legitimate expectation and is therefore unconstitutional.
  - ii. A declaration that the impugned re-advertisement of the vacancies for the external members of the Garissa County Assembly Service Board by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents was irregular, illegal and violated the constitution and is therefore null and void an initio.
  - iii. A declaration that failing to afford the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners an opportunity to be interviewed despite their qualification has violated their right to fair administrative action under article 47 of Constitution.
  - iv. An order of mandamus compelling the 1<sup>st</sup> respondent to strictly comply with the constitutional requirement for fair administrative action while conducting the recruitment of the external members of the Garissa County Assembly Service Board.
  - v. An order be issued compelling the 3<sup>rd</sup> respondent to undertake the interview process of the list of the shortlisted candidates.
  - vi. Cost of the petition.
2. The petition is hinged on the fact that on October 4, 2022, the 1<sup>st</sup> respondent advertised vacancies for the position of external members of Garissa County Public Service Board. The petitioners among others bearing the qualifications as prescribed in the notice, applied for the said positions of external member of the Garissa County Assembly Public Service Board. On or about June 9, 2023, the 1<sup>st</sup> respondent in his capacity as the secretary of the County Assembly Service Board published a list of thirty-six persons, which list included the petitioners.
3. That the petitioners among the other shortlisted candidates traveled to Garissa and presented themselves before the 3<sup>rd</sup> respondent but were informed that the interviews would not take place on the said dates. As a consequence, no further information was provided to the petitioners or any of the other shortlisted candidates.
4. On or about September 13, 2023, the petitioners were shocked to find published in *Daily Nation Newspaper*, a Notice for the readvertisement of vacancies for the two external members of the County Assembly Service Board. The petitioners argued that the failure of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents to conclude the recruitment process and their decision to readvertise the vacancies of the external



- members of Garissa County Assembly Board is a violation of their legitimate expectation and an infringement of their right to fair administrative action and therefore unconstitutional.
5. That by shortlisting the petitioners, the respondents created a reasonable and legitimate expectation in the minds of the petitioners and all other shortlisted candidates that the next step in the recruitment process would be interview and selection. This court was therefore urged to find that the rights of the petitioners were infringed and therefore allow the prayers as sought.
  6. The petition is further amplified by the affidavit of Mohamed Abdi on his behalf and that of the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners who reiterated the content contained in the main petition.
  7. The petitioners argued that the failure of the respondents to conclude the recruitment process and their decision to readvertise the vacancies of the external members of Garissa County Assembly Board is a violation of their legitimate expectation and an infringement of their right to fair administrative action and is therefore unconstitutional.
  8. In opposing the suit, the respondents filed a replying affidavit sworn on October 6, 2023 by Hon Abdi Idle Gure on his own behalf and that of the 1<sup>st</sup> and 3<sup>rd</sup> respondents. He deposed that he was the speaker of the County Assembly of Garissa and the chairperson of the 3<sup>rd</sup> respondent. It was his position that he was aware that on October 4, 2022, the 3<sup>rd</sup> respondent pursuant to section 12(3)(d) of the County Governments Act, 2012 as read together with section 9(2) and the First Schedule of the County Assembly Services Act, 2017 declared and advertised vacancies for the positions of two external members of the County Assembly Public Service Board.
  9. That the advertisement clearly set out the academic and statutory qualifications to be met by any of the persons interested in applying for the said positions which were to be submitted to the secretary of Garissa County Assembly Service Board. That following the advertisement, the Board shortlisted thirty-six individuals and invited them for interviews which interviews were scheduled for 14<sup>th</sup> – June 15, 2023.
  10. That upon the notice for the interviews being issued by the Board, Constitutional Petition No. E005 of 2023 *Mohamed Sigat & another v The Clerk County Assembly of Garissa & 2 others* was filed in the High Court thus attracting a conservatory order staying and suspending the interviews scheduled for 14.06.2023 and June 15, 2023 pending hearing and determination of the petitioner's application.
  11. That in a meeting scheduled on August 9, 2023, the Board resolved to readvertise the positions on the grounds inter alia that the time lines within which the Board is required to submit applications, consider applications, shortlist, conduct interviews and recommend the name of the applicant qualified for each of the position of the county assembly for approval was fourteen days.
  12. That no prejudice was occasioned on the petitioners as a result of the readvertisement and further, the petitioners failed to demonstrate in any manner whatsoever how the re-advertisement of the positions violated their constitutional rights. That the application herein has been brought in bad faith and the dominant motive is to cripple the recruitment process of the external members of the board for extraneous purposes devoid of genuine pursuit for justice. It was therefore urged that the suit herein ought to be dismissed with costs.
  13. The court directed that the petition be heard by way of written submissions and the parties complied with the same direction.
  14. The petitioners in their written submissions dated January 19, 2024 submitted in reference to the fact whether the respondents' failure to conclude the recruitment process and interview of the 1<sup>st</sup>, 2<sup>nd</sup> and



- 3<sup>rd</sup> petitioners is a violation of their legitimate expectation and an infringement of the principle of fair administrative action.
15. It was submitted that in reference to articles 2,10,47 and 73 of the *Constitution* together with the holding in the Court of Appeal case in *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 Others*, Civil Appeal No 224 of 2017 [2017] eKLR, the constitution should be interpreted in a manner that promotes its values and principles as enshrined under article 259.
  16. That the respondents' administrative decision to advertise vacancies, shortlist qualified candidates, invite candidates for interviews, fail to conduct the said interviews and thereafter re-advertise the same positions infringed into their rights. To that end reliance was placed on the case of *Legeus Lomosi Mudegu v Kenyatta University* [2020] eKLR where the court held that articles 47(2) requires written reasons for any administrative action that is likely to violate the fundamental freedom of a person or adversely affect that person.
  17. That not only did the administrative decision to postpone interviews and thereafter re-advertise the same positions involve expenditure of valuable resources, no consideration was given to the petitioners or to any of the other shortlisted candidates. That the respondents resolved to re-advertise the positions without properly informing the petitioners of their rationality and with full knowledge that that decision was going to adversely affect the petitioners.
  18. It was urged that the petitioners were not sufficiently or at all informed of the reasons for cancellation of the recruitment process and for the re-advertisement a fresh. It was contended that any reasonable person would expect that the interviews would be conducted on the said date after shortlisting and the requisite invitation. That the petitioners therefore in applying for the positions, qualifying and thereafter traveling to Garissa, had legitimate expectation that there would be a fair and expeditious recruitment process which to their dismay was not the case.
  19. To that end, reliance was placed on the case of *Kenya Revenue Authority vs Export Trading Company Limited* (Petition No 2 of 2020 [2022] KESC 31 (KLR) where the issue of legitimate expectation was considered to mean that one may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment.
  20. On the other hand, the respondents in their written submissions dated January 24, 2024, developed issues for determination as follows:
    - i. Whether the petition is incompetent for failing to meet the threshold of clarity and precision required in a constitutional petition.
    - ii. Whether the 3<sup>rd</sup> respondent's impugned decision of re-advertising the positions violated the petitioners' legitimate expectation?
    - iii. Whether the respondents violated the petitioners' right to fair administrative action?
  21. On the first issue, it was urged that the petitioners' petition provided little or no particulars as to the allegations and the manner of the alleged infringements of the cited articles of the constitution. It was thus alleged that the petition was incompetent as the same failed to plead with precision as required in a constitutional petition and rule 10 of the *Constitution of Kenya Practice and Procedure Rules, 2013*. Reliance was also drawn from the cases of *Anarita Karimi v Attorney General* [1979] KLR 54 where the Court of Appeal with approval in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR held that a petitioner who alleges that his rights have been violated is under obligation to state how the same have been violated.



22. On the second issue, it was submitted that the said interviews that were scheduled for the 14<sup>th</sup> and June 15, 2023 were halted for the reason that there were conservatory orders issued by this court on June 12, 2023 in Constitutional Petition No E005 of 2023 *Mohamed Sigat & another v Clerk County Assembly of Garissa & 2 others*. That upon lifting the orders on July 4, 2023, it came to the attention of the Board that the requirement of section 9(2) and the First Schedule of the [County Assembly Services Act, 2017](#) that the Board to within fourteen days after the last date of submission of applications consider the applications, shortlist, conduct interviews and recommend the name of one applicant qualified for the position to the County Assembly for approval had lapsed. That considering the statutory timeline within which to recruit the external members, the Board found that it was imperative to comply with the express provision of the law on timelines within which to conclude the recruitment process to avoid a situation where the recruitment is challenged in court once more.
23. It was further contended that it was important to re-advertise for the reason that there were issues by the petitioners in Garissa High Court Constitutional Petition Number E005 of 2023 *Mohamed Sigat & another v the Clerk County Assembly of Garissa & 2 others* with regard to complaints raised by the minority and marginalised groups living in Garissa County alleging discrimination after the shortlisting of the applicants.
24. That in as much as the petitioners claimed that their legitimate expectations were violated as a result of the readvertisement of the positions, they did not provide adequate particulars of the claims relating to the violations of their legitimate expectation. To buttress that position, the court was referred to the case of [Republic v Principle Secretary, Ministry of Transport, Housing and Urban Development ex parte Soweto Residents Forum CBO](#) [2019]eKLR and [Communication Commission of Kenya and 5 Others](#) [2014] eKLR, where it was held that for the doctrine of legitimate expectation to apply, there must be proof that: there was an express, clear and unambiguous promise given by a public authority; the expectation itself must be reasonable; the representation must be one which is competent and lawful for the decision maker to make and there cannot be a legitimate expectation against clear provisions of the law or the constitution. That in the case herein, no express, clear and unambiguous promise was made to them that the recruitment process would be concluded and interviews conducted.
25. On the third issue, it was submitted that the petitioners did not demonstrate the manner and the extent in which the decision of the Board to re-advertise the positions violated their rights to fair administrative action. That the fact that the recruitment process was not concluded, the petitioners' rights to fair administrative action did not crystallize for enforcement. That the petition was premature, speculative and made in bad faith and therefore, this court was urged to struck out it out for being incompetent.

## Determination

26. I have considered the petition herein, response thereof and rival submissions by both parties. The issues that crystalize for determination are; whether the petitioners' rights were violated and or threatened and; whether they are entitled to the reliefs sought. The petitioners contended that their expectation to being interviewed and possibly being recruited were violated. That by re-advertising the same positions without rendering any viable explanation their rights were violated by the respondents who were charged with the process.
27. On their part, the respondents contended that they did not violate nor infringe on the rights of the petitioners. That following the issuance of conservatory orders stopping the scheduled interviews in Constitution petition NoE005 of 2023, the statutory limitation within which to conduct interviews lapsed hence the need to re-advertise; secondly, they claimed that it was necessary to re-advertise to have



wider inclusivity covering the marginalised and minority an issue that was raised in that case but which is spent before the current petition. In their view, the petitioners did not exhibit any evidence or proof of violation of their rights.

28. The key question therefore is whether the petitioners have met the threshold of what constitutes a violation of the constitution or infringement or threat.
29. It is tried that before any constitutional relief can issue, a party seeking such relief must prove that he or she has locus standii. The law on *locus standi* in constitutional petitions is envisaged under article 22 and 258 of the [Constitution](#). Article 22 of the [Constitution](#) provides that:

“

“22. Enforcement of Bill of Rights

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by
- a) person acting on behalf of another person who cannot act in their own name;
  - b) a person acting as a member of, or in the interest of, a group or class of persons;
  - c) a person acting in the public interest; or
  - d) an association acting in the interest of one or more of its members.”

30. Further, article 258 of the [Constitution](#) provides as follows:

“

- “(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
- (a) a person acting on behalf of another person who cannot act in their own name;
  - (b) a person acting as a member of, or in the interest of, a group or class of persons;
  - (c) a person acting in the public interest; or
  - (d) an association acting in the interest of one or more of its members.”

31. Nevertheless, for a Constitutional remedy to apply one has to prove with precision the nature of the violation and the provision violated. In the most celebrated case of [Anarita Karimi Njeru v Republic \(supra\)](#) eKLR, a party seeking a constitutional redress ought to express himself or herself with a reasonable degree of precision the nature and extent of constitutional rights violated or threatened or likely to be infringed.
32. It should however be born in mind that not every infringement amounts to a constitutional violation to attract a constitutional relief. See [Japheth Ododa Origa v Vice Chancellor University of Nairobi & 2 Others](#) [2018] eKLR wherein it was stated that:



- “...there must be a real infringement, denial of rights or threat to violation that calls for interpretation of the constitution vis avis the rights infringed or threatened. It is not every disagreement that must find its way to the constitutional court,”
33. However, article 259 provides that the *Constitution* must be interpreted in a manner that promotes *inter alia*; its purposes, values and principles; the rule of law; good governance and be given purposive interpretation as read as a whole. In the instant case the petitioners have relied on the breach of their legitimate expectation and fair administrative action.
  34. Was their legitimate expectation that the respondents were duty bound to conduct the interviews for which the petitioners were short listed. The answer in my view is yes. Does it constitute a constitutional right?
  35. In the case of *Kevin K Mwiti & others v Kenya School of Law & 2 others* [2015] eKLR the principle of legitimate expectation was extensively discussed to wit that the protection of legitimate expectation is at the root of the constitutional principle of the rule of the law, which requires predictability and certainty in government’s dealings with the public. This what article 10 of the constitution envisages on the aspect of accountability, transparency and good governance.
  36. Further, in the Supreme Court decision in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR, the court stated that; a party that seeks to rely on the doctrine of legitimate expectation has to show that it has locus standi to make a claim on the basis of legitimate expectation.
  37. There is no dispute that the petitioners were among the 36 persons shortlisted for the external person’s positions. They were even invited to appear on a specific date for interview which never came to fruition. The right to employment is a right for every Kenyan subject to relevant conditions attached. Having met the requisite qualifications, invited for interview, they had legitimate expectation to be interviewed and if successful be employed. In my view, the expectation was legitimate hence constitutional.
  38. Were they entitled to reasons for re-advertising the same positions? The answer is yes. This is anchored under article 47 of the constitution which underscores fair administrative action which includes giving reasons for any decision or action taken by a public body to whom an explanation for the action taken is necessary. In this case no such explanation was rendered. To that extent the applicants’ rights and those of the other candidates were violated for lack of fair administrative action hence breach of legitimate expectation.
  39. Was there justification for the decision taken by the respondents? The respondents attempted to justify the same claiming that they could not break the law as the timelines for the entire process had lapsed following a conservatory order which stopped the process. However, I do not find that convincing as the process legally stopped and time stopped running legally and nobody would be held liable for flouting the law.
  40. The second explanation given was that, after the suit in respect of which a conservatory order was issued, it emerged that they had not taken into consideration the minority and marginalized people living within Garissa county. Although this sounds as a good and noble reason, one could not explain why they had overlooked the same in the first place and an explanation rendered.
  41. Nevertheless, I am in agreement with the 3<sup>rd</sup> respondent that as the employment agency, it must take into account the minority and the marginalized. Having woken up to the reality that there was an omission in the recruitment process, they had a duty to correct the omission. However, the correction



should not be at the detriment or expense of the already short- listed persons. In other words, the respondents can go ahead and re-advertise if they find it desirable with a caveat that those who had already applied and been shortlisted need not apply and that they shall automatically be interviewed.

42. As regards the question whether they will be successful or not, only God knows. Taking into account the totality of all the circumstances surrounding this suit, I am persuaded and therefore make a finding that the petition herein is merited and therefore deserving of the following declaratory orders.
- a. That a declaration be and is hereby made that the petitioners herein had a legitimate expectation to be interviewed after having been shortlisted for the position of external members of Garissa County Assembly Service Board.
  - b. That a declaration be and is hereby made that the respondents shall be at liberty to re-advertise the said positions so as to accommodate members of the minority and marginalized living within Garissa county.
  - c. That a declaration be and is hereby made that upon the respondents re-advertising the positions of external members of the Garissa County Assembly Service Board, the petitioners herein and their counterparts (36 of them) who had applied and been shortlisted for the same positions need not apply and that they shall automatically qualify to appear for interview when scheduled.
  - d. That each party shall bear own costs.

**Dated, signed and delivered virtually at Garissa this 3<sup>rd</sup> day of May 2024**

**J. N. ONYIEGO**

**JUDGE**

