



**Adan v Ministry of Interior and National Administration & 4 others (Employment and Labour Relations Petition E077 of 2025) [2025] KEELRC 2526 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2526 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E077 OF 2025  
HS WASILWA, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**ABDI AHMED ADAN ..... PETITIONER**

**AND**

**MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION .... 1<sup>ST</sup>  
RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE OFFICE OF THE COUNTY COMMISSIONER, WAJIR . 3<sup>RD</sup> RESPONDENT**

**THE OFFICE OF THE SUB-COUNTY COMMISSIONER,  
WAJIR ..... 4<sup>TH</sup> RESPONDENT**

**JIBRIL ADAN ABDIKARIM ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Petitioner/Applicant filed a Notice of Motion dated 28<sup>th</sup> April 2025 seeking orders that: -

1. Spent.
2. pending the hearing and determination of this application inter partes, and determination of the substantive suit, there be a conservatory order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents and their agents from effecting the appointment of any individual to fill the vacancy for the position of Assistant Chief II in Hadado Sub County in Ademasajida division.
3. pending hearing and determination of this application inter partes and determination of the substantive suit, there be a conservatory order of injunction restraining the occupation, assumption of office for the position of Assistant Chief II in Hadado Sub County in



Ademasajida division and the exercise of powers and discharge of duties related to that office by any person identified by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

4. costs hereof be provided for.

### **Petitioner/Applicant's Case**

2. The Applicant avers that on 19<sup>th</sup> May 2023, the position of Assistant Chief II Hadado was advertised by the 1<sup>st</sup> Respondent, and he was one of the candidates that applied for the position.
3. He was short listed and invited for an interview on 3<sup>rd</sup> January 2024. He went through the interviews on 11<sup>th</sup> January 2024, and was ranked first while the 5<sup>th</sup> Respondent was ranked second respectively. Thus, he was the successful interviewee chosen to occupy the position substantively.
4. The Applicant avers that on 29<sup>th</sup> March 2024, the same position was re-advertised without any reasons being given for the re-advertisement once again reapplied.
5. However, this time, he was ranked second after the 5<sup>th</sup> Respondent who now emerged as first and another interviewee – Abdirashid Ahmed Mahamed who emerged as second, both come from a majority community.
6. The Applicant avers that on 28<sup>th</sup> October 2024, the same position was again re-advertised yet again without any reasons being given for the re-advertisement. Once again, he reapplied and emerged second while the 5<sup>th</sup> Respondent who has not attained the age limit was ranked first.
7. It is the Applicant's case that the advertisements specifically indicated that the required age is 30 years and above. However, the 5<sup>th</sup> Respondent was able to attain the first position even when he had not attained the again limit.
8. The Applicant avers that the 5<sup>th</sup> Respondent is from the Ajuran clan, Gashe sub clan that already has 6 chiefs in the area while, the Applicant belongs to the minority Gedid sub clan of Ajuran clan with no single chief that comes from the minority community.
9. It is the Applicant's case that in the absence of any explanation on the re-advertisements, the appointment of the 5<sup>th</sup> Respondent was calculated and based on grounds of nepotism and discrimination as the limited age for the position is 30 years and above while the 5<sup>th</sup> Respondent is a person of the age of 26 years.
10. The Applicant avers that if the Respondents' decision is not stayed, it may render this application and petition nugatory and further subject the him to a gross violation of his rights.
11. The Applicant avers that the appointment is to be effected within two weeks from 28<sup>th</sup> April 2025, thus, the court grants conservatory orders, the subject matter of this petition will be rendered moot, nugatory and an academic exercise.

### **1<sup>st</sup> – 4<sup>th</sup> Respondents' Case**

12. In response to the Application, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent filed grounds of opposition dated 8<sup>th</sup> May 2025 on grounds:
  1. That the petition discloses no violation of constitutional rights and statutory provisions and is therefore fatally defective, misconceived, and an abuse of the court process.



2. That the recruitment process for the position of Assistant Chief II was conducted within the framework of Article 232 of *the Constitution*, which demands fair competition and merit as the basis of appointment in public service.
  3. That the initial shortlisting or selection of the petitioner did not amount to an appointment, and no formal offer of employment was issued; hence, no legitimate expectation capable of enforcement arose
  4. That the appointing authorities exercised lawful administrative discretion in the selection of the successful candidate, Mr. Jibril Adan Abdikarim, based on merit, qualifications, and suitability.
  5. That the petitioner's allegations of nepotism and favourism are unsubstantiated, speculative, and lack credible evidence. The burden of proof for such allegation's rests on the petitioner, which he has failed to discharge.
  6. That under Section 4(3) of the Fair Administrative Actions Act, the petitioner had an opportunity to seek review or Appeal administratively before invoking the court's jurisdiction but failed to exhaust those mechanisms.
  7. That granting the orders sought would amount to this Honorable Court usurping the statutory mandate of public recruitment authorities, contrary to the principle of separation of powers.
  8. That that the public interest and the efficient administration of public service outweigh the individual grievance of the Petitioner. which lacks merit in law and
  9. That the petition is otherwise frivolous, misconceived, and an abuse of the court process.
13. In opposition to the application, the Respondents further filed a replying affidavit dated 2<sup>nd</sup> July 2025 sworn by Abdulrahman Hemed, the Deputy County Commissioner for Hadado Sub-County.
  14. The Respondents aver that the then Assistant Chief, Hadado Sub-County, Osman Hassan Ali got promoted to the Chief's position in 2022 when the chief, Mohamed Adan, retired from office in 2020 and not 2023 as alleged. Therefore, the position of Assistant Chief II fell vacant.
  15. The Respondents aver that the position was resultantly advertised at different times, the first advertisement was on 15<sup>th</sup> October 2021. Interviews were conducted on 11<sup>th</sup> January 2024, and the subsequent ones on 13<sup>th</sup> June and 26<sup>th</sup> November 2024. They followed due process with an objective scoring system applied to all candidates based on merit.
  16. The Respondents aver that the re-advertisement on 29<sup>th</sup> March 2024 was directed by the Office of the Regional Commissioner, North Eastern Region vide a letter dated 22<sup>nd</sup> March 2024, ref no: C4 Vol. XXXL.
  17. The Respondents aver that pursuant to this directive, interviews were conducted on 13<sup>th</sup> June 2024 and the Deputy Commissioner forwarded his recommendations to the County Commissioner vide a letter dated 20<sup>th</sup> June 2024.
  18. However, the Regional Commissioner directed for the re-advertisement of 28<sup>th</sup> October 2024 vide a letter dated 17<sup>th</sup> September 2024 and ref no ADM2/6.Vol.



19. It is the Respondents' case that the re-advertisements were administrative decisions made to ensure the appointment of the most qualified and suitable candidate for effective service delivery or due to procedural considerations deemed necessary by the appointing authority.
20. The Respondents contend that such re-advertisements are legitimate exercise of administrative discretion and do not inherently signify a flaw in a previous process or a violation of rights.
21. The Respondents aver that the re-advertisements were neither done arbitrarily nor maliciously but as part of the Respondents' constitutional and statutory mandate to ensure competent and representative local administration.
22. It is the Respondents' case that the selection of the 5<sup>th</sup> Respondent was based on his performance in the interview, his qualifications, and his overall suitability for the role as assessed by the recruitment panel. The appointing authority satisfied itself that he met all the required criteria at the time of his selection.
23. The Respondents aver that while the 5<sup>th</sup> Respondent had not yet attained the age of 30 years, the age of qualification was interpreted in accordance with prevailing public service guidelines, allowing for some discretion where a candidate demonstrated exceptional capacity or community acceptance.
24. The Respondents aver that it is a fundamental principle of public service recruitment that participation in an interview process does not automatically confer a right to appointment. The decision to appoint rests with the appointing authority exercising lawful administrative discretion to identify the best fit for the advertised position.
25. It is the Respondents' case that the burden rests on the Petitioner to adduce credible and compelling evidence to substantiate the allegations of discrimination, nepotism or any other impropriety in the recruitment process. In the absence of such evidence, these claims remain speculative and unsubstantiated.
26. The Respondents aver that the Petitioner's claim that his claim Gedid sub claim is marginalised, was not a factor in the interview outcomes or re-advertisement, which were based purely on administrative efficiency and community representation, not exclusion.
27. The Respondents aver that the Petitioner has not demonstrated with sufficient particularity how his constitutional rights under Articles 27 and 47 were violated.
28. The Respondents aver that the Petitioner had an avenue to seek administrative review or appeal concerning the recruitment process before resorting to court. The principle of exhaustion of administrative remedies is pertinent in such matters and the Respondents contend that the Petitioner ought to have exhausted these channels before filing this petition.
29. It is the Respondents' case that grant of the Petitioner's prayers would amount to an unwarranted intrusion into the executive function of public recruitment, thereby undermining the separation of powers.

### **5<sup>th</sup> Respondent's Case**

30. In opposition to the application, the 5<sup>th</sup> Respondent filed a replying affidavit dated 20<sup>th</sup> April 2025.
31. The 5<sup>th</sup> Respondent avers that the position of Assistant Chief of Hadado South Sub-Location was first advertised on 19<sup>th</sup> May 2023, then re-advertised on 29<sup>th</sup> March 2024 and again on 28<sup>th</sup> October 2024
32. The 5<sup>th</sup> Respondent avers that he applied for the position of Assistant Chief on 3<sup>rd</sup> April 2024 and following the re-advertisements he re-applied.



33. The 5<sup>th</sup> Respondent avers that he was invited by the interview panel for three interviews and he attended all the interviews conducted in January 2024, June 2024 and November 2024 and the Applicant was aware of all the interviews and failed to challenge the procedure.
34. It is the 5<sup>th</sup> Respondent's case that the recruitment process was conducted in accordance with the laid-out regulations as the shortlisted candidates appeared before the sub-county interviewing panel.
35. The 5<sup>th</sup> Respondent avers that the alleged scoresheets were illegally obtained and do not reflect the true picture of the interviews. That it is imperative upon the Applicant to apply in writing and officially obtain all the relative information with regard to the said interviews instead of giving the court illegally and irregularly obtained information yet the law allows the Applicant to obtain the same officially.
36. The 5<sup>th</sup> Respondent avers that the Applicant has failed to show the Court any efforts made to obtain the scoresheets lawfully. Further, the alleged scoresheets are not dated and signed by the interview panel and were never published thus the Applicant being able to access the results is as a result of irregularities.
37. The 5<sup>th</sup> Respondent avers that following the interview process, he was subsequently appointed vide a letter dated 2<sup>nd</sup> April 2025.
38. It is the 5<sup>th</sup> Respondent's case that the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents' appointed him as the Assistant Chief of Hadado South Sub-Location on 2<sup>nd</sup> April, 2025 through their administrative action which was lawful, reasonable, procedurally fair, transparent and/ or accountable.
39. The 5<sup>th</sup> Respondent avers that the ex-parte orders of granted on 29<sup>th</sup> April 2025 by the court were as a result of serious material non-disclosure and that he was already appointed on 2<sup>nd</sup> April 2025 therefore already overtaken by events.
40. He reiterates that he is fully qualified for the position of Assistant Chief therefore the Applicant's allegations of nepotism and favoritism lacks credible evidence and are unsubstantiated.
41. The 5<sup>th</sup> Respondent avers that he is a Kenyan Citizen and a qualified resident of Hadado South Sub-Location, Wajir County thus he has a legitimate expectation to serve in the office that he qualified, interviewed and duly appointed legally and procedurally.

### **Applicant's Submissions**

42. The Applicant submitted that in the Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] KEHC 2174 (KLR), the Court summarized the principles for grant of conservatory orders as: -
  - “(i) The need for the applicant to demonstrate arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice.
  - (ii) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.
  - (iii) Thirdly, the Court should consider whether, if an Interim conservatory order is not extended, the petition or its substratum will be rendered nugatory.
  - (iv) Whether the public interest will be served or prejudiced by decision to exercise discretion to grant or deny a conservatory order.”



43. On establishment of a prima facie case, the Applicant submitted that in the absence of a valid legal explanation as to the re-advertisement, the appointment of the 5<sup>th</sup> Respondent was calculated and based on grounds of nepotism and discrimination, in breach of his rights under Article 27 and Article 47 the 2010 Constitution.
44. The Applicant submitted that without a cogent rebuttal of the Applicant's allegations by the Respondents, the Applicant meets the threshold for a prima facie case as set out in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR), *Ndii & others v Attorney General & others*[2021] KEHC 8196 (KLR) and *Mirugi Kariuki vs Attorney-general*[1992] KECA 34 (KLR).
45. On whether the grant of conservatory relief enhance the constitutional values, the Applicant submitted that the Respondents did not to provide any reasons for re-advertising of the position of Chief II runs counter to the letter and spirit of Article 10(1) of the Constitution as it is shrouded in opaqueness, a lack of integrity and thrusts us back to an era where government lacked accountability for its decisions. It erodes the gains made under the constitutional dispensation and offers a breeding ground for corruption, discrimination and nepotism.
46. It is the Applicant's submission that by granting of an extension of conservatory reliefs upon proof of a prima-facie violation as has been demonstrated by the Applicant gives meaning and life to the provisions of Article 20 as it gives the benefit of doubt to an individual claiming their rights have been violated, in line with the letter and spirit of the law.
47. The Applicant submitted that the grant of conservatory reliefs would help protect the him from a violation of his rights under Article 27(4) of the constitution as he has indicated that he was discriminated on account of his ethnicity. This will enhance the protection of and objects of Article 27(4).
48. The Applicant submitted that his right to employment and freedom from discrimination were at risk and consequently violated at the time the Respondents made the unilateral decision to re-advertise the position and no reasons were given. This was in flagrant violation of the Applicant's rights under Article 47(2) of the Consitution. A conservatory order would help prevent the crystallization of this illegality, thereby enhancing the Applicant's rights.
49. It is the Applicant's submission that the 1<sup>st</sup> to 4<sup>th</sup> Respondents are yet to effect the appointment of the 5<sup>th</sup> Respondent. The conservatory orders seek to prevent the same on account of breach of constitutional and statutory provisions. If the court does not grant conservatory relief, the appointment would be completed and as a person would have been violated without the possibility of the same being undone, with the aid of the court.
50. The Applicant submitted that not extending conservatory orders would bring about irreparable damage for the duration of the hearing and determination of the substantive Petition as no one would compensate the taxpayer should the court find that there was a breach of constitutional provisions in the appointment of the 5<sup>th</sup> Respondent. Additionally, the 5<sup>th</sup> Respondent would enjoy other benefits such as medical cover, mortgages and grants enjoyed by the bearer of the office, at the taxpayers' expense.
51. The Applicant submitted that if the conservatory orders are not extended, the 5<sup>th</sup> Respondent would make decisions during the course of his occupation of office. Should the court eventually find that he ascended to his position illegally, it would mean that all the decisions he made, during the duration of his occupation of office, flowed from an illegal appointment and their legality would be impugned, necessitating their undoing. This may also cost the taxpayer more. It would also be difficult to undo



these decisions and it may invite more court cases, further burdening an already burdened judiciary with more caseloads.

52. The Applicant further submitted that if the conservatory orders are not extended, and the court finds that the 5<sup>th</sup> Respondent ascended to office illegally, it would mean that the 1<sup>st</sup> to 4<sup>th</sup> Respondents would have to begin another recruitment process, following the 5<sup>th</sup> Respondents vacation of office and after he has enjoyed salaries and benefits during the pendency of the suit. This would also affect the coffers of the taxpayers.
53. It is the Applicant's submissions that preserving the substratum of the Petition for the few more months that it would take to hear and determine the Petition and arrive at a final determination of the dispute before the Court is the more prudent and just avenue to take.

#### **1<sup>st</sup> to 4<sup>th</sup> Respondent's Submissions**

54. The Respondents submitted on four issues: whether Whether the recruitment process for the Assistant Chief II position complied with the principles of fairness and natural justice as espoused in Article 47 of *the Constitution* and the Fair Administrative Actions Act, 2015; whether the Petitioner's right to equality and freedom from discrimination under Article 27 of *the Constitution* was violated; whether the Petitioner has demonstrated that the decision to appoint the 5<sup>th</sup> Respondent was unreasonable, irrational, or actuated by improper motives; and whether the reliefs sought by the Petitioner are merited.
55. The Respondents submitted that the Petitioner and all interviewees actually participated in the interview process, thereby being afforded equal opportunity to present their case and qualifications. Further, when the Petitioner placed first on merit, his name was forwarded for recommendation for appointment for the position. The 5<sup>th</sup> Respondent's name was similarly forwarded for recommendation for appointment based on merit. The decision to appoint the 5<sup>th</sup> Respondent was likewise based on a comprehensive evaluation of all candidates against pre-determined criteria.
56. They submitted that the Court of Appeal in Republic v. Public Procurement Administrative Review Board & 2 others Ex-parte Saracen Media Ltd [2018] eKLR reiterated that administrative bodies must act fairly and reasonably, and their decisions should not be arbitrary. The 4<sup>th</sup> Respondent's decision was neither arbitrary nor unreasonable.
57. It is the Respondents' case that the Petitioner has not provided any evidence to suggest that he was treated differently due to any prohibited ground under Article 27(4) and (5). The mere fact that another candidate was selected does not, by itself, constitute discrimination. In Gwer & 5 others v Kenya Medical Research Institute & 3 others [2020] KESC 66 (KLR), the court held that the burden of proving discrimination rests on the party alleging it. The Petitioner has failed to discharge this burden.
58. On rationality of the decision, the Respondents submitted that the recruitment process was meticulously conducted, with interviews chaired by the Deputy County Commissioner and scoring criteria applied consistently. There is no evidence of any ulterior motive or bad faith on the part of the 4<sup>th</sup> Respondent in making the appointment.
59. They submitted that the "Wednesbury unreasonableness" test, as adopted in Kenya through cases law, dictates that a decision can only be quashed if it is so unreasonable that no reasonable person acting reasonably could have made it. The decision herein does not meet this high threshold.
60. It is the Respondents' submission that it is evident that the Petitioner has failed to establish any violation of his constitutional rights or any procedural impropriety on the part of the 4<sup>th</sup> Respondent.



61. It is the Respondents' submission that recruitment process was conducted fairly, transparently, and in accordance with the law and established administrative procedures. The decision to appoint the 5<sup>th</sup> Respondent was based on merit and was a legitimate exercise of administrative discretion.

### **5<sup>th</sup> Respondent's Submissions**

62. The 5<sup>th</sup> Respondent submitted on six issues: whether there was concealment of material facts or material non-disclosure by the Applicant as at the time he obtained the ex-parte orders; whether conservatory orders of injunction granted on 29<sup>th</sup> April 2025 should be vacated; whether the Applicant has established a prima facie case with probability of success to warrant issuance of injunctive orders; whether the Applicant can rely on the scoresheets as they are illegally obtained evidence; whether the recruitment and appointment process was procedurally fair, transparent and lawful; whether there is any merit to the Applicant's allegations of irregularities, nepotism and favouritism.
63. On the first issue, the 5<sup>th</sup> Respondent submitted that the grant of interim conservatory orders was made on a representation to this court that the assumption of office was to take place at a later date, a fact that is demonstrably false. The Applicant failed to disclose that the recruitment had culminated in an appointment letter issued to the 5<sup>th</sup> Respondent by the 1<sup>st</sup> Respondent on 2<sup>nd</sup> April 2025. The legitimate administrative process had already been concluded and the 5<sup>th</sup> Respondent was legally occupying the contested position, thus, the omission by the Applicant is not minor issue, but goes to the root of the issues being litigated.
64. The 5<sup>th</sup> Respondent submitted that courts have also reinstated the importance of disclosing all material facts known to the applicant in ex-parte proceedings in the case of *Said Tahir & 2 others v County Government of Mombasa & 5 others* [2015] eKLR) which quoted (*The Andria (Vasso)* 119841 OB477
- “It is axiomatic that in ex parte proceedings there should be full and frank disclosure to the Court of facts known to the applicant, and that failure to make such disclosure may result in the discharge of any order made upon the ex parte application, even though the facts were such that, with full disclosure, an order would have been justified.”
65. The 6<sup>th</sup> Respondent submitted that application leading to the grant of interim conservatory orders was made on a representation to this court that the assumption of office was to take place at a later date, a fact that is demonstrably false.
66. It is the 5<sup>th</sup> Respondent's submissions that the Applicant cannot obtain any advantage from the proceedings, and the interim orders be vacated and the Applicant should not be granted the orders as prayed due to concealment of material facts or material non-disclosure.
67. The 5<sup>th</sup> Respondent submitted that the ex-parte conservatory orders of 29<sup>th</sup> April 2025 were granted after his appointment and were premised on erroneous or incomplete information by the Applicant to this court, thus the application is moot and has been overtaken by events and the court should vacate the interim conservatory orders granted on 29<sup>th</sup> April 2025.
68. On the second issue, the 5<sup>th</sup> Respondent submitted that the applicant has failed to establish a prima facie case as the interview and selection process was carried out with strict adherence to the relevant laws and the applicant has not adduced any evidence to demonstrate that the Respondents acted ultra vires their constitutional and statutory mandate.



69. On the third issue, the 5<sup>th</sup> Respondent submitted that the scoresheets relied upon by the Applicant were obtained irregularly. Neither are they signed nor dated by the interviewing panel, and there is no evidence that they constitute official documentation. The Applicant also failed to show that they wrote to the Ministry of Interior & National Administration to request for the information.
70. It is the 5<sup>th</sup> Respondent's submissions that the proper procedure under Article 35 of *the Constitution* (Right to Access to Information) and the *Access to Information Act* require that official information be lawfully obtained. The Applicant failed to demonstrate any attempt to request the scoresheets lawfully from the relevant authorities as has been directed in the case of Nairobi Law Monthly Company Limited V Kenya Electricity Generating Company & 2 Others [2013] KEHC 6054 (KLR) which held that:
- “The petitioner has an obligation to request for information and the state has the obligation to disclose the said information unless there are sufficient reasons for non-disclosure. The use of clandestine means in the face of clear Constitutional means is unwarranted.”
71. The 5<sup>th</sup> Respondent submitted that the scoresheets lack probative value as they were never published nor disseminated officially to unsuccessful candidates or the general public.
72. On the fourth issue, the 5<sup>th</sup> Respondent submitted that no evidence was tendered by the Applicant to substantiate that the laid down procedures were breached or that the process was shrouded in secrecy. Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act* require fair administrative action, which was evidently observed by the Respondents.
73. On the final issue, the 5<sup>th</sup> Respondent submitted that there is no cogent or credible evidence before this Court to suggest he is fully qualified for the position. Mere assertions are insufficient to impeach a recruitment process that has otherwise satisfied the conditions of transparency and fairness established under law.
74. I have examined all the evidence and submissions of the parties herein. From the evidence submitted before court the position for Assistant Chief Hadado Sub Location in Hadado Sub County in Admasajida Division was advertised on 19<sup>th</sup> May 2023 and one of the requirements was that the applicant should not be below 30 years of age.
75. There was a re advertisement on 29<sup>th</sup> March 2024 and the said age limit was still part of the requirements for the applicant. On 28/10/24 there was still a re-advertisement of the said position and the age limit of 30 years was still retained as a pre requisite for appointment to the said position.
76. The petitioner has averred that following the interview, the 5<sup>th</sup> respondent was recommended for appointment despite not meeting the age requirement of 30 years.
77. The respondent opposed the petition averring that the appointments were above board. The 5<sup>th</sup> respondent Jibril Abdi Abdikarim Id No 34993520 as per the list of candidates interviewed is aged 26 years and so is not qualified for the position. It is also apparent that the petitioner herein Abdi Ahmed Adan emerged 2<sup>nd</sup> in the process of interviews and possesses the requisite qualification for appointment as Assistant Chief.
78. I do find that the application is therefore merited and it is indeed true that the respondents breached the petitioner's rights to employment under article 41 of *the Constitution* by purporting to appoint an unqualified person.
79. In the circumstances, I find for the petitioner and render the following orders:



1. That the appointment of the 5<sup>th</sup> respondent herein as assistant chief II of Hadado sub county in Ademasajida division is rendered null and void.
2. I also hereby direct that there be a fresh requirement for the position of Assistant Chief II of Hadaado sub location in Ademasajida division whilst following the law and the requisite qualification.
3. The respondents will pay the petitioner damages for violation of his rights amounting to kshs 500,000/-.
4. The respondents will also pay costs of this petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**HELLEN WASILWA**

**JUDGE**

