



**Elondanga & 4 others v DCC Navakholo Subcounty & 3 others;  
Barasa (Interested Party) (Constitutional Petition E008 of 2025)  
[2025] KEELRC 2552 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2552 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
CONSTITUTIONAL PETITION E008 OF 2025**

**DN NDERITU, J**

**SEPTEMBER 22, 2025**

**IN THE MATTER OF VIOLATION OF ARTICLES 1,2(3)(4)  
10,4(1) 47,73, 75 AND 232,259 (8) OF THE CONSTITUTION**

**BETWEEN**

**SAMUEL AMAMBIA ELONDANGA ..... 1<sup>ST</sup> PETITIONER  
WYCLIFFE ASHUMA ..... 2<sup>ND</sup> PETITIONER  
ERICK MUKOYA ..... 3<sup>RD</sup> PETITIONER  
HUMPHREY AMBUNDO ..... 4<sup>TH</sup> PETITIONER  
MILDRED TABITHA NYONGESA ..... 5<sup>TH</sup> PETITIONER**

**AND**

**DCC NAVAKHOLO SUBCOUNTY ..... 1<sup>ST</sup> RESPONDENT  
REGIONAL COMMISSIONER ..... 2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
THE PUBLIC SERVICE COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**JOHN ANDATI BARASA ..... INTERESTED PARTY**

**RULING**

**I. Introduction**

1. The petitioners commenced these proceedings by way of a petition dated 12th March 2025 through Oscar Wachilonga & Associates seeking for the following reliefs –



- a. An order of mandamus directing the respondents to supply information sought as set out in paragraph 41 of the petition.
  - b. A declaration that the respondents are in breach of the petitioners right to information under Articles 35(1) and 35(2) of *the constitution* and should therefore pay damages.
  - c. Costs of the petition.
2. The petitioners pleaded that they are residents of Matiha Sub-location and participated in an interview for the vacancy of assistant chief in 2022/2023. One John Barasa Andati was a candidate too and was appointed to fill the vacancy.
  3. Subsequently, the petitioners filed Kakamega ELRC No. E001 of 2024 that was ultimately compromised upon the 2nd respondent withdrawing the letter of appointment that had been issued to the interested party herein. It is pleaded that the interested party was not qualified for the position as he had not attained the requisite age.
  4. It is the petitioners' case that no subsequent interviews were conducted and hence they legitimately expected that the second ranked candidate was to be appointed to fill the vacant position.
  5. However, to their amazement and bewilderment, the interested party was again issued with a letter of appointment to fill the vacancy in February 2025.
  6. Vide a letter dated 24th February 2025 the petitioners wrote to the 2nd respondent seeking details and particulars of the letter of appointment and other details concerning the entire recruitment and appointment process. Their request was ignored and or neglected as no response was received in their end. It is the petitioners' case that the said conduct on the part of the 2nd respondent violated their rights under Articles 10, 35, 73, & 232 of *the Constitution*.
  7. The petitioners filed documents in support of their petition based on averments in the supporting affidavit.
  8. Upon service of the petition the interested party filed a preliminary objection (PO) dated 26th March 2025 through D.A. Omwenga & Co Advocates raising the following issues for determination by the court ahead of the hearing of the petition –
    1. That this Honourable court does not have the jurisdiction to hear and determine this matter.
    2. That this Honourable court does not have jurisdiction to entertain the petition herein by dint of Articles 162(1), (2)(a) and 3 as well as Articles 165 (5) (b) of *the constitution* of Kenya, 2010.
    3. That this Honourable court does not have jurisdiction to entertain this matter by dint of section 12(1) (a)-(f) of the *Employment and Labour Relations Court Act*.
    4. That there exist no employment relationship and there has never been any employment relationship between the petitioners herein and the respondents herein to warrant this petition.
    5. That the jurisdiction of this Honourable is only limited to employment disputes between an employer and employee(s) as provided by the provisions of *the constitution* herein and the provisions of the *Employment and Labour Relations Act* slated herein.
    6. That the issues raised in the petition dated 12<sup>th</sup> March 2025 herein are sub-judice as there is a similar matter that was heard and determined in respect of the same parties through a ruling dated 30<sup>th</sup> April 2024 in the Employment and Labour Relations court at Kakamega, ELRC



JUDICIAL REVIEW NO.001 OF 2024 by Lady Justice J. W. Keli, the copy of the said ruling is marked as SM-3 in the petitioners supporting affidavit dated 12<sup>th</sup> March 2025.

7. That the petition herein is therefore misconceived, bad in law, scandalous, frivolous, vexatious, unsubstantial, ill-advised, an abuse of the court process and ought to be dismissed with costs.
9. On 3rd April 2025 the court directed that the PO be heard ahead of the petition and that the same be canvassed by way of written submissions.
10. Mr. Omwenga for the interested party filed written submissions dated 11th April 2025 while Mr. Munyendo for the petitioners filed submissions dated 12th May 2025. Miss Wangechi for the 4th respondent opted not to file any submissions. The 2nd and 3rd respondents did not appear.

## II. Submissions

11. Counsel for the interested party submitted that on 25th August 2023 the interested came across an advert for a vacancy in the office of the sub-chief for Matiha Sub-location posted on the area chief's notice board. He applied and was invited for an interview conducted on 6th October 2023. He was successful and issued with a letter of appointment and started working on 6th February 2024.
12. That the above appointment of the interested party was challenged by the petitioners herein in Kakamega ELRC JR No. E001 of 2024 but the proceedings in court were withdrawn after the appointment of the interested party was revoked. It is submitted that the interested party challenged the revocation of his appointment with the 4th respondent on 29th April 2024 and on 11th February 2025 he was reinstated as confirmed a letter dated 19th February 2025.
13. It is important to note at this juncture that other than the PO the respondents and the interested party did not file any response to the petition and all that is submitted by counsel for the interested party as above are mere allegations from the bar.
14. Counsel for the interested party isolated the following issues for determination by the court –
  - a. Who are the petitioners herein?
  - b. Whether there is an employment relationship between the petitioners herein and the respondents?
  - c. Whether this honourable court has jurisdiction to hear and determine this matter?
  - d. Who bears the costs of this suit?
15. On the first issue it is submitted that the petitioners are described in the petition as persons who applied and were interviewed for the position now occupied by the interested party.
16. On the second issue it is submitted that there is no evidence availed establishing an employment relationship between the petitioners and the respondents and or any of them based on the facts and evidence presented in the petition and the supporting affidavit thereof.
17. On the third issue the court is reminded of the sentiments of Nyarangi J in Owners of the Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd (1989) KLR to the effect that without jurisdiction a court labours in vain. Further, citing S.K. Macharia V Kenya Commercial Bank Limited & 2 Others (2012) eKLR it is submitted that this court lacks constitutional AND or statutory mandate to entertain this petition.
18. It is submitted that the jurisdiction of this court is found in Article 162 of *the Constitution* and the Labour Relations Court Act (sic!). Citing Public Service Commission & 4 Others V Cheruioyot &



- 20 Others (2022) KECA 15 (KLR) and Republic V Karisa Chengo & Another (2017) eKLR it is submitted that without an employment relationship between the petitioners and the respondents this petition is dead on arrival and must be struck out with costs at this early stage.
19. Counsel for the petitioners submitted that upon revocation of the appointment of the interested party as admitted above the petitioners in the very least expected a re-advertisement of the vacancy or in the minimum appointment of the second highest ranked candidate but neither of the two occurred. Instead, the interested party was reappointed under what the petitioners consider to be unclear circumstances. Further, it is the foundation of this petition that the 4th respondent failed, refused, and or neglected to supply the petitioners with the records, details, and information on how the interested party was reappointment after the earlier revocation of his appointment.
  20. It is submitted that a PO should meet the threshold set out in Mukhisa Biscuits Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA.
  21. Citing the decisions in “Lilian S” (supra) and S.K Macharia (supra) and further relying of Article 162(2) of *the Constitution* and Section 12 of the *Employment and Labour Relations Court Act*, it is submitted that this court (ELRC) has jurisdiction over the subject matter of this petition as the subject matter is about employment and labour relations and more specifically the recruitment and hiring of the interested party into the impugned position. It is submitted that the petition does not directly attack the employment of the interested party but the same seeks for relevant information concerning his hiring and more so the reappointment after the initial appointment had been revoked. It is further submitted that under Articles 22 and 238 of *the Constitution* the petitioners have the locus to file and present this petition in court.
  22. It is submitted that the 4th respondent is in violation of the rights of the petitioners as pleaded in the petition for its failure to provide and avail the info and details and particulars sought by the petitioners. Citing Kenya Tea Growers & 2 Others V NSSF & 13 Others it is submitted that this court is properly seized of the matter. It is further submitted that the reappointment of the interested party was in contravention of Articles 10, 35, 41, 73, & 232 of *the Constitution*. It is emphasized that by failing to provide the information sought for the respondents are in violation of Article 35(1) of *the Constitution*.
  23. The court is further urged to construe and interpret Article 258 of *the Constitution* as per Mumo Matemo V Trusted Society of Human Rights & Others (2021) eKLR and find that the petitioners have the requisite locus in filing and prosecuting this petition.
  24. The PO is thus opposed and the court urged to dismiss the same with costs.

### III. Issues for Determination

25. In my considered view there is only one main issue for determination in this application – Is the PO by the interested party merited as to be allowed at this stage effectively striking out and terminating the petition?
26. One has to ask – What is this petition about? What is the subject matter thereof? What is it that the petitioners want from the court? What is it that the petitioners are complaining about?
27. The above questions are important in establishing and determining whether the PO raised by the interested party has any merits. As noted elsewhere in this ruling the respondents and the interested did not respond to the petition in whatever form or manner. Ordinarily, the respondents ought to have filed replying affidavits to counter the factual basis and foundations of the petition.



28. It is also germane to note that the PO herein has been raised and filed by the interested party against whom no orders have been sought. The facts and circumstances upon which the interested party was reappointed into the impugned position have not been alluded to in an affidavit as the law demands. Rather, it is the interested party's counsel who has purported to allude to them in the submissions from the bar. That is not the proper way of contesting the said facts as the petitioners have been denied an opportunity to respond thereto as no replying affidavit was filed in that regard.
29. In any event, it is about those facts and circumstances of the interested party's reappointment that the petitioners have filed the petition after the 4th respondent failed and or refused to supply information on the same. The petition does not directly challenge the reappointment as such but the failure by the 4th respondent to supply the petitioners with the information leading to the same. In fact, other than that the interested party may have some interest in that regard, just in case the information supplied and availed may not be correct or my disadvantage or prejudice him, the interested party is just that - an interested party - and not an active participant in the proceedings. This position was alluded to by Keli J in a ruling in ELRC Kakamega JR No. E001 of 2024 dated 30th April 2024.
30. In the view of the foregoing the court finds and holds that the interested party is completely out of order and without locus in filing the PO. He should not be an active participant in the proceedings and in any event no orders are sought against him. On this ground alone, the PO shall fail.
31. But then, even if the interest party had the locus to file the PO, which is however not the case, the PO and the submissions by his counsel raise factual issues that cannot be ascertained as no replying affidavits or responses have been filed by the respondents in opposition, support, or admission of the petition. This means that facts as raised by the petitioners are uncontested, in which event the petition should then proceed to hearing as unopposed or uncontested.
32. For the foregoing reasons the PO as raised by the interested party blatantly fails the principles set out in Mukhisa Biscuits Manufacturing Co. Ltd (supra).
33. The court has said enough in demonstrating that the PO by the interested party is completely devoid of merit and the same is hereby dismissed.

#### **IV. Orders**

34. The court makes the following orders –
  - a. The preliminary objection by the interested party has no merits and the same is hereby denied and dismissed.
  - b. Costs to the petitioners.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 22<sup>ND</sup> DAY SEPTEMBER, OF 2025.**

.....

**DAVID NDERITU**

**JUDGE**

