



Dida v National Cohesion and Integration Commission; Attorney General & another (Interested Parties) (Petition E046 of 2025) [2025] KEELRC 2657 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2657 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E046 OF 2025
HS WASILWA, J
OCTOBER 1, 2025

BETWEEN

MOHAMED TACHE DIDA PETITIONER

AND

NATIONAL COHESION AND INTEGRATION COMMISSION . RESPONDENT

AND

THE HON ATTORNEY GENERAL INTERESTED PARTY

DR DANIEL MUTEGI GITI INTERESTED PARTY

RULING

1. The Petitioner/Applicant filed an Amended Notice of Motion dated 28th April 2025 seeking orders That: -
 1. spent
 2. pending the hearing and determination of this application, a conservatory order to issue suspending the appointment of the 2nd Interested Party, Dr. Daniel Mutegi Giti, to the office of Secretary/Chief Executive Officer of the National Cohesion and Integration Commission.
 3. pending hearing and determination of the Petition, a conservatory order to issue suspending the appointment of the 2nd Interested Party, Dr. Daniel Mutegi Giti, to the office of Secretary/Chief Executive Officer of the National Cohesion and Integration Commission.
 4. pending the hearing and determination of the Application and Petition, a conservatory order to issue restraining the 2nd Interested Party from carrying on duties as, and related to and/or incidental to, the Secretary/Chief Executive Officer of the National Cohesion and Integration Commission.



5. costs be provided for.

Petitioner/Applicant's Case

2. The Petitioner avers that the Respondent advertised the vacancy position of Commission Secretary/Chief Executive Officer and invited qualified persons to apply for the post. The applications were to be received on or before 4th February 2025, and the advert indicated the qualifications required for one to be considered for the position.
3. The Petitioner avers that he expressed his interest in the vacant position and applied for it, indicating his qualifications and ticked all boxes that the Commission indicated as the apparent requirements and/or qualifications for the position.
4. The Applicant avers that he received information that about 68 persons applied for the position and he had legitimate expectation was to be shortlisted and interviewed for the position. However, he has received information that the Respondent has sent letters to selected applicants to appear for interviews commencing 25th March 2025 and ending on 27th March 2025. The Respondent did not indicate in its advert that only shortlisted applicants would be contacted.
5. It is the Petitioner's case that upon receiving information of the filing of this Suit, hurriedly published in its website (www.cohesion.go.ke) a "Commission Secretary/CEO Shortlist 2025" that indicated 15 persons as shortlisted. In the same notice, the Commission published a list of 67 applicants who had apparently applied for the position.
6. The Petitioner avers that the list of applicants included the Acting Commission Secretary and Chief Executive Officer, Harrison Gikonyo Kariuki, who was shortlisted. The Acting Secretary/CEO has been in charge of the Secretariat and was actively involved in the receiving and processing of the applications despite being overtly interested in the vacant position and having a clear conflict of interest.
7. It is the Petitioner's case that the rush with which the shortlisting, interviewing and appointment of the Secretary/CEO was done shows lack of transparency and failure to transmit to the public information that is both timely and accurate. Additionally, these were done after news of this suit had become public is evidently an effort to defeat justice.
8. The Petitioner avers that on 1st April 2025, the first working day after the conclusion of the interviews, Dr. Daniel Mutegi Giti was sworn in as the Respondent's Secretary/CEO in a ceremony presided over and administered by Chief Justice Martha Koome and he believed to have commenced undertaking the functions of that office. He contends that this is quite telling that the events leading to the ceremony remained a mystery until the new appointee was sworn in.
9. The Petitioner contends that the appointment of the 2nd Interested Party is a gross violation of the Constitution, the NCI Act, the Public Service (Values and Principles) Act, 2015, amongst others.
10. It is the Petitioner's case that the interviews for the advertised positions is were bound to be opaque and in contravention of the rights enshrined in the Constitution of Kenya and integrated in the NCIC Act. Additionally, the Respondent is a public body and it is expected to conduct its employee recruitment process transparently and it should not be shrouded in mystery and/or secrecy.

Respondent's Case

11. In response to the Application, the Respondent a replying affidavit dated 1st July 2025 sworn by Rev. Dr. Samuel Kobia, the Chairperson of the National Cohesion and Integration Commission.



12. The Respondent avers that it published a public advertisement in the mainstream media inviting applications from suitably qualified candidates for the position of Commission Secretary/CEO on 21st January 2025.
13. The Respondent avers that the position expressly required candidates to hold, at minimum the following requirements for appointment:
 - i. Cumulative period of 18 years in a relevant field in the Private or Public Sector, 8 of which must have been in a Senior Management position;
 - ii. Bachelor's Degree in either Peace and Conflict Resolution, International Relations, Conflict Resolution and Humanitarian, Computer Science, Statistics, Public Administration, Law, Information Technology, Governance, Audit or any other relevant qualification;
 - iii. Master's Degree in either Criminology, Anthropology, Conflict Management, International Relations, Law, Conflict Resolution, Humanitarian Assistance, Public Administration, Security Studies, Disaster Management, Gender Development, Diplomacy & Peace Studies, Public Administration, Security Studies, Forensics, Data Communication, Computer Science, Statistics or any other Social Science;
 - iv. Certificate in strategic leadership, corporate governance course or equivalent qualification from a recognized institution;
 - v. Computer proficiency;
 - vi. Meet the requirements of Chapter 6 of the *Constitution*;
 - vii. Demonstrated managerial, administrative, and professional competence in work performance and results; and exhibited a thorough understanding of national goals, policies, objectives and ability to relate them to the NCIC.
14. The Respondent avers that it received a total of 67 applications by the deadline of 4th February 2025, the Petitioner being among the applicants. The list of all applicants and those shortlisted was published on the Commission's website and remains accessible to date for public reference.
15. The Respondent avers that it established that his academic qualifications and professional experience did not meet the minimum eligibility criteria as stipulated in the vacancy advertisement. The Petitioner possessed a Master of Science in Electrical Engineering, a qualification which, though commendable, falls outside the scope of the social sciences as contemplated in the call for applications.
16. The Respondent avers that the Petitioner did not submit evidence of membership to any recognized professional body or have any certification or training in strategic leadership, governance or public administration which were mandatory requirements.
17. Additionally, the Petitioner's public sector experience is confined to service at the County Government of Marsabit as Principal Administrative Secretary (2017–2022) and more recently as County Chief Officer. These roles, while significant, are not comparable in depth or scope to those of the shortlisted candidates, many of whom possessed national and international leadership experience.
18. The Petitioner further did not meet the mandatory requirement of having served in a senior management position for at least eight years. The Petitioner's tenure in what may be considered a semi-senior capacity commenced in or about August 2017, and as at the close of the application period in February 2025, he had accumulated only seven years and six months of such experience. This falls short of the prescribed threshold under the vacancy criteria.



19. It is the Respondent's case that the Petitioner was not shortlisted, following a rigorous, competitive, and merit-based shortlisting process that culminated in the selection of 15 candidates. Furthermore, his unsuccessful application was duly communicated to him by way of a letter dated 15th April 2025, following the conclusion of the recruitment process.
20. The Respondent aver that the recruitment process was conducted openly and in strict adherence to the provisions of the *Constitution*, the *National Cohesion and Integration Act*, the *Public Service (Values and Principles) Act*, and all other applicable laws, regulations, and policy guidelines.
21. The Respondent avers that the call for applications was made through an open and public advertisement published on 21st January 2025 in the MyGov newspaper, and on its official website. The advertisement clearly outlined the requisite qualification criteria for the vacancy, specified the mode and address for submission of applications, and indicated the deadline by which all applications were to be received.
22. The Respondent avers that upon closure of the application period, the Commission undertook a rigorous evaluation exercise, and on 25th March 2025, duly published on its official website both the longlist and shortlist, thereby affirming the transparency and procedural regularity of the recruitment process.
23. The Respondent asserts that the publication of the longlist and shortlist was independent of and antecedent to any knowledge of these proceedings. The pendency of this petition was first reported in the media prior to service, with the earliest publication appearing on Citizen Digital on 26th March 2025 at 4:39 p.m., and subsequent coverage by other outlets on 27th March 2025. Additionally, service upon it was not effected until 27th March 2025.
24. The Respondent avers that the evaluation and selection process undertaken by the Respondent is conducted in a strictly confidential manner, with access thereto limited solely to duly authorized officers. The confidentiality of the process is a deliberate and essential procedural safeguard instituted to insulate the recruitment exercise from any form of canvassing, external interference, or improper influence, and to uphold the integrity, impartiality, and fairness of the process.
25. The Respondent avers that the details of the process are not disclosed to the Commission's general staff or any third parties until the outcome is formally published. Accordingly, it stands to reason that the Petitioner or any other person could only have accessed such information upon its official publication on its website, and not through any prior or informal source.
26. In the alternative, and without prejudice, if the Petitioner is to be believed that he obtained such information from sources other than the Commission's official website, the same amounts to an admission of canvassing, an act that is expressly prohibited and unlawful in public recruitment processes. By his own averments, the Petitioner may have effectively confessed to engaging in improper conduct, thereby undermining the integrity of the process and rendering his application fatally defective and unmeritorious in its entirety.
27. The Respondent avers that the constitutional requirement of public participation as set out under Article 10(2)(a) and (c) does not apply to the recruitment of public officers. The process of appointment and promotion within the public service is governed exclusively by the principles enumerated under Article 232 of the *Constitution* that it be based on fair competition, merit, and inclusivity, and does not envisage or require public participation as a condition precedent to a valid recruitment process.



28. It is the Respondent's case that the recruitment process was conducted in an open, transparent, competitive and accountable manner, with the general public being adequately informed at every material stage.
29. The Respondent avers that the fact that Mr. Kariuki, who previously served as Acting Commission Secretary/CEO and the Commission's sitting Director of Corporate Services, and Ms. Millicent Okatch the Commission's sitting Director of Research & Knowledge Management were not appointed to the substantive position further underscores the fairness, competitiveness, transparency, and impartiality of the recruitment process. Had the process been biased or tainted by impropriety, either Mr. Kariuki or Ms. Okatch would have been the presumptive beneficiary.
30. The Respondent avers that the Petitioner's allegation of tribal discrimination is not only devoid of evidentiary support but is also fundamentally misdirected. It pointed out that the Mr. Hassan Sheikh Mohammed, a distinguished member of the same ethnic community as the Petitioner, previously served as the Respondent's Commission Secretary/CEO for three consecutive terms between June 2010 and April 2019, thus, this conclusively rebuts any suggestion of systemic exclusion or ethnic marginalization within the Commission.
31. The Respondent avers that the 2nd Interested Party, Dr. Daniel Mutegi Giti, emerged as the highest-scoring candidate and was duly appointed as its Secretary/Chief Executive Officer (CEO) on 1st April 2025 before the Hon. Chief Justice and lawfully assumed his responsibilities as the substantive CEO.
32. It is the Respondent's case that the appointment and commissioning of Dr. Giti was widely publicized. National media outlets were present during the swearing-in ceremony held on 1st April 2025, and several mainstream and community-based stations carried news reports of the event. In addition, the Commission's official website and social media handles were promptly updated to notify the general public of Dr. Giti's appointment and formal assumption of office on the said date. These steps were taken to ensure full transparency, public awareness, and accountability in the transition of leadership.
33. The Respondent avers that by the time Dr. Giti was appointed, the Commission had operated without a substantive CEO for nearly two (2) years. Following the determination of Nakuru ELRCJR/E003 of 2023 on 19th November 2024, the Commission immediately commenced the necessary steps to fill the vacancy in accordance with its mandate and applicable law.
34. The Respondent avers that the prolonged absence of a substantive CEO had significantly hindered its operations and institutional continuity; Given the heightened national tensions and civic unrest falling within the Commission's mandate on peacebuilding and national cohesion it was imperative to expeditiously fill the position to ensure the Commission could execute its constitutional functions effectively.
35. It is the Respondent's case that the Applicant has failed to demonstrate or satisfy any of the legal thresholds for the grant of conservatory relief.

Petitioner/Applicant's Submissions

36. The Applicant submitted on three issues: whether the process of recruitment was done in a lawful manner and was transparent, competitive, procedurally sound, and accountable; whether or not the process was exempt from public participation and whether the public was accorded a reasonable opportunity to participate; and whether the Petitioner is entitled to the reliefs sought.
37. On the first issue, the Applicant submitted that the Respondent breached the rule of law and principle of open and transparent recruitment of public servants in its failure to publicly and timeously give



information as to the full list and particulars of the candidates who applied for the advertised job and the whole shortlisted candidates.

38. It is the Applicant's submission that the Respondent failed to exhibit the relevant decisions or minutes for declaration of vacancy, advertisement, receipt of applications, longlist and its analysis, analysis on shortlisting, interview scorecards, interview results analysis, and, how the 2nd Interested Party was evaluated as the best. Thus, the Respondent has failed to show that indeed merit, transparency and genuine competition took place.
39. On public participation, the Applicant submitted that the position of CEO/Secretary to the Commission is a public office; and the rules of natural justice require that applicants for public office be confronted with the concerns raised by the public at the interview stage to enable them to respond before the recruitment panel can decide that an applicant meets the threshold expected of public office.
40. The Applicant submitted that the Respondent failed to provide, as required, a reasonable opportunity for the public to participate at some stage in the process leading to the appointment. Therefore, the Respondent is in breach of the requirement of public participation as envisaged by Article 10(2)(a) and (c) of the Constitution and Section 3 of the Public Service (Values and Principles) Act provides for public participation by State Organs.
41. It is the Applicant's submission that the publication of the longlist and the shortlist of applicants and the subsequent publishing of the news on the appointment of the 2nd Interested party on the Respondent's website, which has a low public viewership, fell short of the constitutional right to disclosure of such information and failed to meet the dictates of Mwongozo Code of Corporate Governance.
42. On conflict of interest, the Applicant submitted that the Respondent admits that its then acting CEO, Mr. Harrison Kariuki, was an applicant for the then vacant position and also Ms. Millicent Okatch, the Commission's sitting Director of Research & Knowledge Management, applied for the position. As acting Secretary, it is presumed (in line with the Clause 3.12.2 of the NCIC Human Resources Manual) that Mr. Kariuki actively participated in the recruitment process, at least in the initial stage. This has not been rebutted.
43. It is the Applicant's submission that the fact that Mr. Kariuki participated in the process, with no apparent declaration of conflict of interest, goes against the provisions of Section 12 of the Public Officer Ethics Act.
44. The Applicant submitted that the Respondent being a public organ, invited qualified persons to apply for the position of CEO/Secretary. This created a legitimate expectation that the process of appointing the new CEO /Secretary would be open, transparent, competitive, procedurally sound, accountable and not shrouded in secrecy, and the Respondent violated this expectation as the process was not transparent, competitive, procedurally sound, accountable.
45. On the second issue, the Applicant submitted that the application meets the threshold for grant of conservatory orders. The Amended Petition is arguable and if the orders are not issued, the Petition will be rendered nugatory and equally that the issuance is in public interest.
46. It was submitted that the Petitioner has indeed demonstrated that the process that led to the appointment of the 2nd Interested Party as CEO of the Respondent was indeed flawed. If an interim conservatory order is not granted, the amended petition or its substratum will be rendered nugatory. It is indeed the business of the court to ensure and secure so far as possible that any transitional motions before the court do not render nugatory the ultimate end of justice.



Respondent's Submissions

47. The Respondent submitted that the Applicant has failed to meet the threshold for grant of conservatory orders laid down in *Wilson Kaberia Nkunja v Magistrates and Judges Vetting Board & another* [2016] eKLR, by Lenaola J. (as he then was) as follows: “i. Establishment of a prima facie case with a likelihood of success; ii. Real danger of prejudice absent the order; iii. That the order serves the public interest.”
48. On prima facie case, the Respondent submitted that the recruitment process was conducted in a transparent, open, competitive, and lawful manner. Accordingly, the Petitioner’s averments that the process contravened the provisions of the Constitution and the National Cohesion and Integration Act are, without merit, misconceived in law and fact, and devoid of evidentiary foundation.
49. The Respondent submitted that the position was publicly advertised on 21st January 2025 in MyGov and on the Respondent’s website with full application details. Whereas there is no legal requirement for the Respondent to publish the shortlisted candidates or make details of the interviews public as was held in *Ayieko v National Industrial Training Authority & another* [2024] KEELRC 2307 (KLR), it nevertheless published the longlist of 67 and a shortlist of 15 candidates on its website on 25th March 2025, a fact admitted to by the Petitioner.
50. It is the Respondent’s submission that the recruitment process is not subject to the requirement of public participation as contemplated under Article 10 of the Constitution; rather, it is governed by the distinct constitutional principles applicable to public service appointments, as outlined under Article 232 of the Constitution, which expressly mandates that such recruitment shall be based on fair competition, merit, and accountability.
51. The Respondent further submitted that Article 232 does not envisage public participation as a procedural requirement in recruitment processes as affirmed in *Havi & 2 others v Kenya Medical Supplies Authority & 4 others; Ramadhani (Interested Party)* [2023] KEELRC 2010 (KLR), where the Court held that recruitment within public bodies is guided by merit and fair competition, and not by the public participation obligations applicable to legislative or policy formulation.
52. The Respondent submitted that the Petitioner’s allegation that Mr. Harrison Kariuki participated in the receipt or processing of applications is wholly unsubstantiated and devoid of evidentiary basis. In the absence of credible or admissible evidence to support such a serious claim, the allegation should be disregarded in its entirety. The Respondent asserts that Mr. Kariuki played no role whatsoever in the recruitment process, either in an official or unofficial capacity.
53. The Respondent submitted that the Petitioner’s claim of tribal discrimination is vague, unparticularized, and misdirected as the Commission’s inaugural Chairperson, Mr. Hassan Sheikh Mohammed, who hails from the same ethnic community as the Petitioner, served three consecutive terms from June 2010 to April 2019. Further, the composition of the shortlisted candidates reflects broad ethnic, gender, and disability representation, including, for instance, Ms. Justa Wawira Mwangi, a person living with a disability. This diversity underscores the Commission’s commitment to the constitutional values of equality, inclusion, and non-discrimination, as embodied in Articles 10, 27, and 232 of the Constitution.
54. On irreparable harm, the Respondent submitted that Applicant has neither pleaded nor demonstrated the existence of irreparable harm, save for the allegation that he was a qualified candidate who ought to have been shortlisted. However, the Petitioner’s application did not meet the minimum eligibility criteria, and he was accordingly not shortlisted as a suitable candidate.



55. It is the Respondent's submission that conservatory orders are not granted to remedy personal disappointment or administrative dissatisfaction, but are instead reserved for instances where a party demonstrates that the orders sought are necessary to preserve the public interest. The Applicant has not demonstrated how the lawfully conducted recruitment process offends the public interest
56. On public interest, the Respondent submitted that the public interest in preserving the uninterrupted functioning of the Commission far outweighs the Applicant's private grievance. The conservatory orders sought do not satisfy the public interest threshold, and if granted, would occasion prejudice to the very national good the Commission is constitutionally mandated to safeguard.
57. I have examined all the averments and submissions of the parties herein. The applicant seeks to suspend an appointment which has already taken place and the 2nd interested party already sworn in and taken possession of the office.
58. The applicant has not demonstrated the harm he stands to suffer if the interested party stays in office pending the hearing and determination of this petition. In essence, the applicant has not established the existence of a prima facie case to warrant suspension of an employment. These are issues to be canvassed and determined in main petition. I decline to grant any conservatory orders and dismiss the application accordingly. The parties to proceed with the main petition. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

