



**Kimulwo v Chairman, University of Eldoret Council & another (Petition E009 of 2024) [2025] KEELRC 2724 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2724 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION E009 OF 2024  
MA ONYANGO, J  
OCTOBER 3, 2025**

**BETWEEN**

**HILLARY KIMULWO ..... PETITIONER**

**AND**

**THE CHAIRMAN, UNIVERSITY OF ELDORET COUNCIL . 1<sup>ST</sup> RESPONDENT**

**UNIVERSITY OF ELDORET ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**The Petition**

1. The Petitioner, Hillary Kimulwo, filed this Petition dated 4<sup>th</sup> July 2024 challenging the recruitment and appointment process undertaken by the Respondents pursuant to an advertisement dated 29<sup>th</sup> February 2024.
2. The Petition invokes various provisions of the *Constitution*, including Articles 10, 22, 23, 47, 73, 165, and 232, as well as sections of the *Public Service Commission Act*, 2017. It seeks for the following orders: -
  - i. A declaration that failure to publicize the recruitment process including providing the long list of Applicants, providing shortlisted candidates and providing opportunity for stakeholder views on the candidates the University Council failed in their obligation under the law to be transparent and accountable.
  - ii. A declaration that the University Council's failure in its obligation under the law to provide for public participation in the recruitment process is fatal to the exercise.
  - iii. A declaration that the Board's failure to develop a roadmap and guidelines for recruitment is fatal to the exercise.



- iv. A declaration that the Council's failure to comply with Sections 37(4)(e) and 37(1) of the *Public Service Commission Act, 2017* is fatal to the recruitment process.
  - v. A declaration that the recruitment process is unconstitutional therefore null and void.
  - vi. An order quashing the recruitment/appointment process.
  - vii. An order compelling the Council to carry out the fresh recruitment process in accordance with the law.
  - viii. That there be orders as to costs of these proceedings, and the Respondent to bear the Petitioner's cost of the Petition.
3. The Petitioner contends that there was no public participation before the advertisement dated 29<sup>th</sup> February 2024 was made and further that the list of the Applicants was never published in any form or in the media. In addition, he alleges that neither a list of shortlist nor list of successful candidates was ever published as required.
  4. It is further averred that the time, date and place of the interviews for the purported successful candidates was never made known to the public.
  5. On this basis, the Petitioner asserts that the failure to publish the list of qualified candidates, place, date and time of the interviews impeaches the whole process and renders the recruitment process as carried out by the Respondents opaque, unfair and inconsistent with Article 10 values of transparency, accountability and participation of the people.
  6. It is the Petitioner's thus averment that the court's intervention is necessary to ensure the recruitment process and appointments meet the requirements of chapter six of the *Constitution* and to ensure that the process adheres to equity in terms of merit, gender, regional and ethnic balance.
  7. The Petitioner concurrently filed a notice of motion brought under Articles 22,23,53 and 165(3) (b) of the *Constitution* of Kenya and Rules 3, 5, 6, 7(1) and (2), 22 and 23 of the Kenya Subsidiary Legislation, 2013 No. 47 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*. The application was based on the grounds stated therein and the supporting affidavit of the Petitioner. The Petitioner sought for orders that: -
    - i. Spent
    - ii. That pending the inter parties hearing and determination of this application, an injunctive order do issue barring and /or restraining the Respondents from concluding and continuing with the recruitment and or appointing anyone or filing the positions advertised on 29<sup>th</sup> February 2024.
    - iii. That pending the hearing and determination of the Petition herein, an injunctive order do issue barring and/or restraining the Respondents from concluding and continuing with the recruitment and or appointing anyone or filing the positions advertised on 29<sup>th</sup> February 2024.
  8. On 29<sup>th</sup> October 2024, the Court directed that the Application and the Petition be consolidated to be heard and determined through written submissions as the application and the Petition seek similar remedies of a substantive nature.



## The Respondents' Case

9. In opposition to the Petition and the application, the Respondents filed a joint response and a Replying Affidavit respectively sworn by Professor Wilson Ng'etich, the 2<sup>nd</sup> Respondent's Deputy Vice Chancellor in charge of Administration and Finance.
10. The Respondents denied violating the *Constitution* as alleged by the Petitioner and averred that there is no requirement in law, practice or policy requiring public participation in the recruitment process of the Respondents.
11. They aver that the recruitment process for the positions advertised on the 29<sup>th</sup> February 2024 was duly considered and was the subject of approval to advertise by the University Council at its meeting held on the 26<sup>th</sup> January 2024.
12. Further, that the University Council subsequently at its meeting held on the 27<sup>th</sup> January 2024 approved the request from the University management to recruit staff.
13. The Respondents assert that in compliance with the University Council resolutions, the University Management proceeded to advertise the positions via advertisement dated 26<sup>th</sup> February 2024 which advertisement required prospective candidates to present their applications by the 11<sup>th</sup> March 2024.
14. It is the Respondents' case that there was a lapse of the application time-line and the the Vice Chancellor appointed an ad hoc tender opening Committee and on 25<sup>th</sup> March 2024, the tender opening Committee proceeded to open and record the applications as received, duly noting the relevant contents of candidates' applications in the form of a report.
15. That an ad hoc Committee of the Human Resource Committee sat on the 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> May 2024 for purposes of considering criteria for shortlisting<sup>th</sup> and 13<sup>th</sup> June 2024. and thereafter, candidates were invited for interviews on diverse dates between the 10
16. The Respondents state that after the University Council conducted the interviews, an interview report was prepared accompanied by the overall score sheets for each position as evidenced by the interview report and scoresheets annexed to the affidavit.
17. The Respondents maintain that the recruitment process has since been concluded, some appointments made and other positions re-advertised. They insist that the process was conducted transparently and in line with Article 232 of the *Constitution*.
18. The Court was thus urged to dismiss the Petition with costs.

## The Submissions

19. I have perused the record and only found submissions for the Respondents dated 27<sup>th</sup> January 2025.
20. In their submissions to the application, the Respondents framed the issue for determination to be:-
  - i. Whether the Applicant has satisfied the standard for granting of the orders sought.
  - ii. Who should bear the costs of the Application?
21. On the first issue, the Respondents while citing the case of *Board of Management of Uhuru Secondary School v City County Director of Education, Duncan Juma & Teachers Service Commission* (Petition 359 of 2015) [2015] KEHC 2174 (KLR); *East African Portland Cement Company Limited v Attorney General & Another* 2013 eKLR; *Kanini Kega v Okoa Kenya Movement & 6 Others* [2014] eKLR



- submitted that on the face of the application before court, there is no prima facie case to warrant this court to grant the orders sought.
22. It is the Respondents submission that the Applicant has failed to demonstrate a prima facie case with a likelihood of success and that in the absence of the conservatory orders, he is likely to suffer prejudice.
  23. The court has thus been urged to dismiss the application with costs.
  24. In the submissions to the Petition, the Respondents identified the issues for determination to be: -
    - i. Whether the Petitioner has satisfied the standard for granting of the remedies sought.
    - ii. Who should bear the costs of the Petition
  25. On the issue whether the Petitioner has satisfied the standard for granting of the remedies sought, the Respondents submitted that the Petitioner has not clearly established that some right recognised by the Constitution has been violated or infringed that would call for the intervention of this court.
  26. It is the Respondents' submission that the whole recruitment process was open and carried out within the ambits of the law as there was no secrecy or opaqueness in the process.
  27. The Respondent thus maintained that the instant Petition is misconceived due to the fact that the allegations made by the Petitioner are baseless and unsupported with evidence.
  28. Consequently, the court was urged to dismiss the Petition with costs

### **Determination**

29. From the Petition, the responses thereto and the submissions on record, the issues that fall for this court's determination are: -
  - i. Whether public participation is a mandatory requirement in the recruitment of university staff.
  - ii. Whether the recruitment process by the Respondents violated constitutional or statutory principles of transparency and accountability.
  - iii. What reliefs, if any, should issue.

### **Whether public participation is a mandatory requirement in the recruitment of university staff.**

30. There is no dispute that the 2<sup>nd</sup> Respondent took out an external advertisement on 29<sup>th</sup> February 2024 for the recruitment of candidates for the position of finance officer, Registrar, University Librarian, Chief Internal Auditor and Internal Auditor.
31. It is now a requirement under the Constitution that state organs, state officers and organs, in all their decisions or activities, must reflect the national values and principles of governance stipulated under Article 10 of the Constitution of Kenya 2010.
32. The question before this Court is whether the law requires that, in university recruitments process, the public must always be directly involved.
33. The principle of public participation in the context of recruitment was addressed by the court in the case of Prof. Gitile Naituli v Multimedia University Council [2018] eKLR where it was observed that whereas recruitment processes require transparency, it is not necessarily to have open public forums.
34. In my view, public participation in recruitment of staff does not mean calling for public meetings. Instead, it means the process must be open, fair, and accountable. The law does not impose a duty



on the Respondents to conduct public forums or solicit views from the general public before or during the recruitment process. The advertisement of the positions in the press is sufficient notification to the public of the intention to carry out such recruitment and the process is provided for in the relevant university statutes and regulations which the Petitioner did not fault the Respondents for not complying with.

**Whether the recruitment process by the Respondents violated constitutional or statutory principles of transparency and accountability.**

35. The Petitioner contends that the recruitment process carried out by the Respondents violated the constitutional principles of transparency and accountability in that before the advertisement dated 29<sup>th</sup> February 2024 was made the list of the applicants was never published in any form or in the media and that neither a list of shortlist nor list of successful candidates was ever published as required.
36. Article 232(1)(g) of the *Constitution* requires public service to be conducted transparently and accountably. The Petitioner's complaint is that the process was opaque.
37. I have looked at the Council minutes, committee reports, interview reports, and score sheets. These show that the University Council and its committees went through the applications, made shortlists and carried out interviews. The score sheets also confirm that candidates were properly assessed. From these records, I am satisfied that the recruitment process was carried out openly and fairly, as required by Articles 10 and 47 of the *Constitution*.
38. Further, the Petitioner did not demonstrate that he or any other candidate was unfairly excluded or discriminated against. The allegations of opaqueness of the process were thus not proved in my view.
39. Consequently, I find that the Petitioner has not proved that the Respondents violated the *Constitution* or the *Public Service Commission Act* in the recruitment process.
40. The Petition dated 4<sup>th</sup> July 2024 is without merit and is hereby dismissed.
41. Each party shall bear its own costs.

**DATED, DELIVERED AND SIGNED THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**

**JUDGE.**

