



**Republic v Bukura Agricultural College & 2 others (Judicial Review
E002 of 2025) [2025] KEELRC 2672 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2672 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
JUDICIAL REVIEW E002 OF 2025
DN NDERITU, J
OCTOBER 2, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

BUKURA AGRICULTURAL COLLEGE 1ST RESPONDENT

**THE PRINCIPAL SECRETARY, MINISTRY OF AGRICULTURE 2ND
RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

I. Introduction

1. On 13th March 2025 the ex-parte applicant (the applicant) was granted leave to commence judicial review proceedings against the respondents seeking for various orders.
2. Pursuant to the leave the applicant filed a notice of motion (the application) dated 25th March 2025 through Marisio Luchivya & Co Advocates, seeking for the following orders –
 1. That the preogative order of mandamus do issue directing the 1st and 2nd respondents to provide the following information;
 - a. The list of panelist who participated in the interview for CEO on 14th day of February, 2025
 - b. The ranking list of each candidate by each panelist.
 - c. The final tallying list/sheet;



2. That an order of certiorari do issue to bring into this court the decision of the 1st and 2nd respondents of appointing a CEO based on the interviews held on 14/2/2025 and who as per the letter dated 10th March 2025 was to be unveiled or ratified on 14/3/2025 during the Board of Management meeting of the 1st respondent.
3. That cost hereof be provided for.
3. The application is expressed to be brought under Order 53 Rules 3(1) & 7 of the Civil Procedure Rules and Sections 8 & 9 of the *Law Reform Act*. It is based on the grounds on the face of the application and supported with a statement of facts and an affidavit signed by the applicant on 25th March 2025 with several annexures thereto.
4. Upon service the 1st respondent through the Attorney General filed a replying affidavit sworn by Evelyn Lusimbo on 17th April 2025 with several annexures thereto. The same deponent swore a further affidavit on 20th May 2025 with several annexures thereto.
5. On 14th May 2025 the court directed that the application be canvassed by way of written submissions. Counsel for the applicant filed written submissions dated 6th May 2025 while the counsel for the respondents filed submissions dated 20th May 2025. Counsel for the applicant filed supplementary submissions dated 8th June 2025.

II. The Evidence

6. In the affidavit in support of the application that is based on the filed statement of facts, it is deposed that sometimes in December 2024 the respondent declared a vacancy in the office of the principal/CEO – a copy of the notice declaring the vacancy is annexed. It is further deposed that a total of 10 applicants were shortlisted for interviewing – a copy of the list of the names is annexed. It is further deposed that the interviews took place on 14th & 15th of February 2025 between 9am and 12midnight. It is deposed that the interviews were thus carried outside the official working hours of conducting public affairs.
7. It is deposed that as carried out the entire process of interviewing, selection, and appointment was marred with illegalities and irregularities and the interviewed candidates were neither informed of nor contacted on the outcome thereof as promised in the advert for the vacancy.
8. It is deposed that the 1st respondent is in violation of Articles 35 & 47 of *the Constitution* for failing to avail the information sought through these proceedings. It is deposed that there was no public participation in the entire process as required under Article 10 of *the Constitution*. It is deposed that the purported appointment of any person as the principal/CEO of the respondent is thus illegal and unlawful and the decision thereof should be quashed by the court.
9. In the replying affidavit sworn by Evelyn Lusimbo, the acting director strategy & corporate governance, in opposition to the application, it is deposed that this court lacks jurisdiction over the subject matter by dint of Article 162(2)(a) of *the Constitution* and Section 12 of the *Employment and Labour Relations Court Act*. It is further deposed that the applicant lacks the locus standi to file and prosecute the proceedings herein. It is deposed that the applicant was neither an applicant for the vacancy nor has he demonstrated illegality, irrationality, or procedural unfairness in the entire recruitment process as to invite the intervention of this court.
10. It is deposed that the subject matter of these proceedings was heard and determined by the High Court in JR E005 of 2022 and the respondent was directed to advertise and recruit for the vacancy. It is stated that the process of the advertisement and recruitment of the vacancy was carried out in accordance



with the law from the advert, receiving applications, shortlisting of candidates, interviewing, and recruitment. The documentation of the entire process is annexed to the affidavit.

11. It is deposed that the shortlisted candidates were interviewed on 14th February 2025 between 9am and 4.30pm within the official hours of business for government/public offices. It is vehemently denied that interviews were conducted outside the official working hours. The names of the interviewees are attached alongside the time they appeared for the interviews as well as the scoring for each interviewee.
12. It is deposed that the names of the best three candidates were subsequently submitted to the Principal Secretary, Ministry of Agriculture and Livestock Development. The letter forwarding the same is attached to the affidavit. It is stated that the Cabinet Secretary in the Ministry appointed the best candidate on merits and in accordance with Section 9 of the *Bukura Agricultural College Act*.
13. It is deposed that the entire process of recruitment and appointment was fair, just, and in accordance with the law. It is deposed that the 1st respondent is improperly joined in the proceedings as it did not and has no power for making the impugned appointment.
14. In his supplementary affidavit sworn on 23rd April 2025 in response to the foregoing replying affidavit, the applicant deposed that he has lodged the proceedings herein based on his rights under Articles 22 and 258 of *the Constitution*. It is stated that he did not know which candidate was ranked first as at the time of initiating the proceedings and that the candidate ranked first one Mr. Paul Njogu is aged 58yrs and was the acting CEO and a member of the Board of Management and that he participated in the process of his own selection, recruitment, and appointment, against the principles of fairness and conflict of interest.
15. It is deposed that the said candidate can only serve for two years before reaching the mandatory retirement age of 60yrs and this will cause unnecessary costs to the institution in conducting interviews for the same vacancy so soon. It is deposed that this is contrary to the national values and principles of good governance in Article 10 of *the Constitution*.
16. It is deposed that this court has jurisdiction over the subject matter under Article 162(2)(c) of *the Constitution*.
17. In the further affidavit by Evelyn Lusimbo sworn on 20th May 2025 in reply to the supplementary affidavit by the applicant above, it is deposed that the meeting of the Board of Management of the 1st respondent on 14th March 2025 was to discuss the contract to be offered to the already appointed Principal/CEO as per the letter of the Cabinet Secretary dated 3rd March 2025 – this letter is attached to the affidavit.
18. It is deposed that the principal/CEO was appointed on merits and it purely coincidental that he acted in the same position which fact, in any event, did not disqualify him from applying for consideration and appointment to the substantive position on merits as it eventually happened. It is vehemently denied that the said appointee took any part in or influenced his own appointment to the position.
19. It is further deposed that excluding the said applicant on the basis of his age should have amounted to discrimination under Article 27 of *the Constitution*.
20. It is deposed that the minutes of the interview sessions confirm that the interviews were conducted and concluded within the official working hours as per the interview report annexed to the affidavit. It is further deposed that the publication and advertisement of the vacancy in the local dailies with national circulation and on the 1st respondent's website and notice board was adequate publicity for the vacancy informing all qualified persons to apply. It is deposed that the said publicity generally and adequately informed the public, all and sundry, of the vacancy and the process that was to follow.



III. Submissions by Counsel

21. Counsel for the applicant in the written submissions cited Judicial Service Commission & Another V Lucy Njora (2021) KECA as a decision that provides for the role of a court in judicial review proceedings. It is urged that the current jurisprudence is that in judicial review proceedings a court should not only be concerned with the process but also merit review of the decision taken.
22. It is submitted that the 1st respondent is a state corporation established under a statute – *Bukura Agricultural College Act*. It is submitted that on 10th March 2025 a letter was written by Evelyn Lusimbo, the acting director of strategy and corporate services of the 1st respondent, calling for a meeting for ratification of the appointment of the principal/CEO and discussion of the terms and conditions of the contract. It is submitted that this letter was authored and signed for and on behalf of the acting CEO, Mr. Paul Njogu, who was the appointee for the vacancy.
23. It is submitted that the said Mr. Paul Njogu was involved in the planning and organization of the interviews as the acting principal and a member of the Board of the 1st respondent yet he was an applicant and interviewee for the vacancy. It is submitted that he ought to have resigned from the position of acting principal before applying for the vacant position and attending the interview to avoid bias and conflict of interest. It is submitted that the said candidate was actively involved in his own recruitment process.
24. It is submitted that in the ensuing circumstances, the recruitment and appointment of the said Mr. Paul Njogu into the impugned vacancy did not meet the values and principles of governance in Articles 10 and 232 of *the Constitution*. It is submitted that by allowing the said Mr. Paul Njogu to participate in the interviews and failing to invite public participation in the appointment process and, further by appointing the said individual at the age of 58yrs, the 1st respondent violated those principles and values of governance.
25. It is further submitted that the applicant herein and the public were not informed of the outcome of the interviews before the appointment of the said Mr. Paul Njogu.
26. Citing *Pastoli V Kabale District Local Government Council & Others* (2008) 2 EA 300 and *Benson Ritho Mureithi V J.W. Wakhungu* (2014) eKLR amongst other decisions, it is submitted that upon shortlisting the suitable candidates to be interviewed the 1st respondent ought to have invited the public for comments.
27. Further, it is submitted that the 1st respondent has not disclosed the scoring of the interviewees by each of the panelists. Counsel cited Articles 118 and 196 of *the Constitution* on what entails public participation.
28. Citing the Supreme Court in *Kenya Tea Growers & 2 Others V National Social Security Fund (NSSF) & 13 Others* it is submitted that this court has jurisdiction over the subject matter.
29. It is submitted that while some of the information sought by the applicant has been supplied in these proceedings, the court is urged to order the respondents to supply and disclose all the information sought in prayer 1 of the application.
30. Counsel for the respondents submitted that the recruitment and appointment of Mr. Paul Njogu as the principal/CEO of the 1st respondent was fair, competitive, transparent, and in accordance with the law and more so as ordered by the High Court in *Kakamega JR EOO5 of 2022*. It is submitted that in demonstrating the transparency and legality of the process the respondents have given a detailed



account of entire process of the recruitment, selection, and appointment in the two affidavits filed for the respondents alongside the annexures thereto.

31. It is submitted that what the applicant is urging the court to do is to discriminate the appointed candidate based on his age and alleged but unsubstantiated claims of conflict of interest.
32. Counsel for the respondents isolated the following two issues for determination – Whether this court has jurisdiction; and, Whether the applicant is entitled to the reliefs sought.
33. On the first issue, it is submitted that this court lacks jurisdiction over the subject matter by dint of Article 162(2)(a) and Section 12 of the *Employment and Labour Relations Court Act*. Citing the Supreme Court in Kenya Tea Growers Association V NSSF (supra) and the Court of Appeal in London Distillers Kenya Limited & Another V Kenya Union of Commercial Food Allied Workers Union (2021) eKLR it is submitted that there is no established employer-employee relationship between the applicant and any of the respondents and as such this court lacks the jurisdiction over the subject matter. Counsel further cited Clive Nyaaga Ogwora V Governor Nyamira County & Another (2021) on this aspect of the argument.
34. It is emphasized that for the lack of an employer-employee relationship in the subject matter of these proceedings, the court lacks jurisdiction.
35. On the issue of reliefs, it is submitted that judicial review proceedings are about the process rather than the merits or substance of the outcome of the process challenged. In this regard counsel cited Municipal Council of Mombasa V Republic Umoja Consultants Ltd (2002) eKLR and the Commissioner of Lands V Kunste Hotel Limited (1997) eKLR amongst other decisions.
36. It is submitted that the evidence by the respondents as contained in the affidavits filed and the annexures thereto confirms that the recruitment process as undertaken, culminating in the appointment of Mr. Paul Njogu as the Principal/CEO of the 1st respondent was transparent and in accordance with the law. It is submitted that the said process was fair and lawful both in the procedure/form and the substance/merit. It is submitted that the said individual did not take any part in his own recruitment and appointment as alleged by the applicant. The allegations of conflict of interest are vehemently denied.
37. Further citing Havi & 2 Others V Kenya Medical Supplies Authority & 4 Others (2023) eKLR it is submitted that the applicant has not proved that any public participation was required in filling the vacancy beyond the open, transparent, and competitive process. It is submitted that public participation does not entail a public body knocking doors of homes and extracting opinions from members of the public on each public matter or issue.
38. In the supplementary submissions by the applicant, it is re-emphasized that this court has the jurisdiction over the subject matter based on Section 12 of the *Employment and Labour Relations Court Act*. It is repeated that the applicant has the locus to file these proceedings under Articles 22 & 258 of *the Constitution*.

IV. Issues for Determination

39. The fundamental facts in this matter are rather straight-forward. In a decree dated 6th November 2024 issued in Kakamega High Court JR E005 of 2022 it was ordered that the Board of the 1st respondent shall re-advertise the position of the principal/CEO.
40. On 29th November and on 2nd December, 2024, the 1st respondent advertised the said vacancy in two local daily newspapers with national circulation calling for suitable candidates to apply. A total of



28 applications were received and a total of 10 candidates were shortlisted for interviewing. Letters of invitation for the interview, all dated 7th February 2025, were sent out to the shortlisted candidates. The interviews were conducted on 14th February 2025.

41. The interview attendance register, the score-sheet showing the score for each candidate, and all the documents in support of the foregoing process were annexed to the affidavits for the 1st respondent and the same are not contested by the applicant.
42. The 1st applicant then submitted the names of the three top candidates to the Principal Secretary, State Department for Agriculture, Ministry of Agriculture and Livestock Development (the Ministry) for the appointment of the best suited candidate vide a letter dated 14th February 2025. The said letter and the report on the interview were produced in court by the respondent.
43. In a letter dated 3rd March 2025 the Cabinet Secretary in the Ministry appointed Mr. Paul Kuria Njogu to be the Principal/CEO of the 1st respondent. It is noteworthy that this is the candidate who scored the highest marks during the interviews.
44. On 21st March 2025 the applicant filed the proceedings herein seeking for the orders set out in the introductory part of this judgment. The first prayer is seeking for the information stated therein in items (a) to (c) and hence issuance of an order of mandamus for the respondents to avail and supply the information and details stated therein. The second prayer is for an order of certiorari for the court to set aside the appointment of Mr. Paul Kuria Njogu to the vacancy.
45. However, in the course of the hearing of the application the respondents raised the issue of lack of jurisdiction of this court to hear and determine the subject matter and hence this became a contested issue for determination before the court determines the merits of the subject matter of the proceedings.
46. In the considered view of the following issues commend themselves to the court for determination –
 - a. Is the subject matter of these proceedings within the jurisdiction and purview of this court?
 - b. Should the court grant the orders sought by the applicant? Put differently, is the application merited?
 - c. Costs.

V. Jurisdiction

47. A court that proceeds without jurisdiction labours in vain. The pronouncements by Nyarangi JA in *Owners of Motor Vessel “Lilian S” V Caltex Oil (Kenya) LTD* hold true to this day. Many other decisions have come up thereafter expounding on that position while maintaining the rationale of that landmark holding. For example, the Supreme Court in *Samuel Kamau Macharia & Another V Kenya Commercial Bank LTD & Another* (supra) affirmed that same position.
48. It is on the basis of the foregoing that the issue of jurisdiction as raised by the respondents in the submissions by their counsel must be tackled as a preliminary issue. It is argued that the applicant has not established an employer-employee between him and any of the respondents and hence the subject matter does not fall within the jurisdiction of this court (ELRC) as envisaged in Article 162(2)(a) of [the Constitution](#) and Section 12 of the [Employment and Labour Relations Court Act](#).
49. In the considered view of the court, counsel for the respondents misapprehended the jurisdiction of this court. While the above cited constitutional and statutory provisions somehow delineate the jurisdiction of the court, it does not limit on the persons that may file or present matters before the court in regard to the issues spelt out in the said provisions. More so that petitions and judicial review



proceedings may be filed in the public interest by persons who are not parties to the employment relationship.

50. It is admitted by the respondents that the said Mr. Paul Kuria Njogu, now the Principal/CEO of the 1st respondent, was recruited into the impugned position and as at the time of filing of the proceedings herein he had been appointed to that position by the Cabinet Secretary in the Ministry vide a letter dated 3rd March 2025. Surely, there is an employer-employee between the said Mr. Paul Kuria Njogu and the 1st respondent and it is that process and the appointment that created the said relationship that is challenged by the applicant through these proceedings. The applicant states in his application that he has presented and filed the proceedings herein in the public interest.
51. It is the finding and holding of this court that the issue(s) raised in this matter falls squarely within its jurisdiction and purview as the same is challenging an employer-employee relationship and the process that created that relationship. This is the same view that was expressed in *Kenya Tea Growers Association & 2 Others V NSSF & 13 Others (supra)* and *London Distillers Kenya Limited & Another V Kenya Union of Commercial Food Allied Workers (supra)* amongst many other decisions.
52. Counsel for the respondents appear to have taken a very narrow and restrictive interpretation of the law concerning the jurisdiction of this court. In my considered view this court has jurisdiction over all matters relating to employment and labour relations and those incidental thereto – see the preamble to the Employment Labour Relations Court Act. Within the purview and jurisdiction of this court is not only the employment-employee relationship but also the recruitment process and the appointment. Further, in the foregoing context, it is not only the parties to such relationships or processes who can file or present a matter in court over the subject matter but also a public-spirited litigant, such as the applicant herein.
53. In the circumstances, and for all the foregoing, the court returns that this matter is properly before the court and the same shall be considered and determined on merit.

VI. Merits

54. As far as the court understands the complaints from the applicant, he is firstly seeking to be supplied with the information in prayer 1. In the considered view of the court, all that information has been supplied by the respondents via the affidavits and the annexed documents as summarized elsewhere in this judgment. There is no evidence on record that the applicant wrote to the respondents seeking the information before filing the proceedings in court. Nonetheless, the court finds and holds that the information sought by the applicant has now been supplied and the applicant is free to deal with the same as he may deem fit.
55. In regard to prayer 2, the applicant is asking the court to quash the appointment of Mr. Paul Kuria Njogu as the Principal/CEO of the 1st respondent on various grounds. In general, the applicant argues that the entire recruitment process and the appointment lacked transparency and was executed in secrecy. It is submitted that the said appointee conducted and or facilitated the interviews and hence breached the principle of conflict of interest. It is further argued that the interviews were conducted outside the official working hours. It is further argued that there was no public participation in the recruitment and appointment rendering the entire process unlawful, null, and void.
56. It is a basic presumption of the law that he/she who alleges shall prove to the facts alleged to – see Sections 107, 108, & 109 of the *Evidence Act*. It was thus upon the applicant to prove the above allegations and demonstrate in law and fact that the process and the appointment of the said appointee was unlawful, null, and void, for the court to issue the orders sought.



57. In the considered view of the court, the applicant failed to prove the allegations made. Firstly, as stated elsewhere in this judgment, the vacancy was advertised in two local dailies with national circulation and qualified candidates invited to apply. Thereafter, 10 candidates were shortlisted and nine of those attended the interviews on 14th February 2025. The score for each candidate has been availed as per the score-sheet and the report of the interviews.
58. According to the undisputed evidence on record, the ultimate appointee was scored highest at an average score of 75.4. Thereafter, names of the three top candidates were submitted to the Cabinet Secretary for appointment. It is thereafter that Mr. Paul Kuria Njogu was appointed into the vacant position.
59. There is no evidence that interviews were conducted at night or beyond or outside the official working hours as alleged by the applicant. There is also no evidence that the appointee participated and/or played any role in the interviews beyond that of a candidate for the vacancy. In fact, the evidence on record is that Mr. Paul Kuria Njogu, then acting Principal/CEO, issued an internal memo dated 10th February 2025 wherein he indicated that he was to be away from 11th to 13th February, 2025 and that Mr. John Suge, the Registrar Academic and Student Affairs, was to perform the duties of the principal. Ostensibly, this was to allow Mr. Paul Kuria Njogu to attend the interview. In any event, the evidence on record confirms that the said appointee attended was interviewed and the report confirms that he did not play any other role in the process other than that of being a candidate for the vacancy.
60. Further, there is no evidence by the applicant that the said appointee was barred from applying for the vacancy either by virtue of age or by virtue of having acted in the same position.
61. While it is a constitutional imperative that members of the public should participate in public affairs, it is equally important that such participation should not be carried out in a manner that impedes performance and functioning of public institutions. The court cannot fathom how else the process was supposed to be public and open beyond what the respondents did. The vacancy was advertised in two dailies with public circulation and all qualified persons invited to apply. Nine of the 10 shortlisted candidates attended the interviews and the entire process has been explained and verified by the respondents in the affidavits filed and the annexed documents.
62. Does the applicant imply that upon shortlisting members of the public should have been invited to comment or does he imply that members of the public ought to have attended the interviews?
63. While it is important that members of the public be informed of and involved in the decision making process of public affairs, it is equally important to note that in most public processes time is of essence and it is germane that costs in such processes be minimized to avoid waste. Further, Article 1 of *the Constitution* is clear that the sovereign power of the people shall be exercised directly or through duly elected, appointed, or authorized persons, agencies, institutions, or bodies. In the considered view of the court the Board of the 1st respondent and the Cabinet Secretary lawfully executed their constitutional and statutory duty in recruitment and appointment of the said appointee. The court finds absolutely no reason(s) for interfering with the said appointment.
64. The court has this far said enough and demonstrated that the application herein has no merits at all and the same is for dismissal.

VII. Orders

65. The court makes the following orders –



- a. The proceedings by the applicant as presented and embodied in the notice of motion dated 21st March 2025 has no merits and the same is hereby dismissed.
- b. There is no order as to costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 2ND DAY OF OCTOBER, 2025.

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DAVID NDERITU
JUDGE
ELRC KAKAMEGA

