



**Baringo Human Rights Consortium v Nyayo Tea Zones Development Corporation  
(Petition E011 of 2024) [2025] KEELRC 3054 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3054 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION E011 OF 2024**

**MA ONYANGO, J**

**OCTOBER 29, 2025**

**IN THE MATTER OF ARTICLES 3(1),22,23,48,50(1),162(2)  
(A),165(5),258 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION OF ARTICLES  
1,2,3,10,19,20,21,22,24,27,41(1),47,73,129,153(4)(A), 232  
AND 259(1) OF THE CONSTITUTION OF KENYA,2010**

**AND**

**IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 37(1) & (4)  
(E) OF THE PUBLIC SERVICE COMMISSION ACT,2017; MWONGOZO THE  
GOVERNMENT CIRCULAR NO. OP/CAB.9/1A; AND THE GUIDELINES ON  
TERMS AND CONDITIONS OF SERVICE FOR STATE CORPORATIONS 2004**

**AND**

**IN THE MATTER OF THE CONSTITUTIONAL AND LEGAL VALIDITY OF THE BOARD'S  
ONGOING PROCESS OF RECRUITING OF BOTH THE CHIEF EXECUTIVE OFFICER AND  
164 OTHER OFFICERS OF THE NYAYO TEA ZONES DEVELOPMENT CORPORATION.**

**BETWEEN**

**BARINGO HUMAN RIGHTS CONSORTIUM ..... PETITIONER**

**AND**

**NYAYO TEA ZONES DEVELOPMENT CORPORATION ..... RESPONDENT**



## JUDGMENT

### The Petition

1. The Petitioner is described in the Petition as a human rights consortium that champions the protection of human rights, democracy and justice for the people of Kenya.
2. The Respondent is a State Corporation registered through gazette notice LN265/1986 as amended by gazette notice GN30/2002 as a parastatal.
3. The Petitioner filed the instant petition dated 14<sup>th</sup> August 2024 against the Respondent invoking various Articles of *the Constitution* and sections of the *Public Service Commission Act* seeking the following reliefs:
  - a. A declaration that the recruitment process of the Chief Executive Officer of Nyayo Tea Zones Development Corporation and any subsequent decision is null and void
  - b. A declaration that the participation of the current Chief Executive Officer in the recruitment of his successor is ultra vires, unconscionable, against the law and contrary to best practice in corporate governance.
  - c. A prayer that the recruitment of new Chief Executive Officer be conducted when the position of the Chief Executive Officer is vacant or declared vacant
  - d. A prayer that recruitment process of the new Chief Executive Officer and 164 officers be conducted in accordance with *the constitution*, *State Corporations Act* and Mwongozo Code of Governance for State Corporations.
  - e. A declaration that the recruitment process of the 164 other positions and any subsequent decision is null and void
  - f. The costs of this Petition be provided for.
4. The basis of the Petition is that on 18<sup>th</sup> June 2024, the Respondent published a vacancy for the position of Chief Executive Officer on its website, with a closing date for applications of 9<sup>th</sup> July 2024. The same vacancy was also advertised in The Star newspaper and applications were directed to the Chairperson of the Board of Nyayo Tea Zones Development Corporation.
5. The Petitioner contends that the position of the Chief Executive Officer had not been declared vacant and the current office holder remained in office until November 2024.
6. The Respondent also initiated the recruitment of 164 other employees through an advert published on its website, with a closing date for submissions of 26<sup>th</sup> August 2024.
7. It is the Petitioner's contention that at the time of publication of the vacancy for Chief Executive Officer there existed a substantive office holder who also sat as a member of the Board responsible for recruiting the new CEO.
8. The Petitioner avers that the current Chief Executive Officer's contract runs until November 2024 and that he has not taken terminal leave, continuing to perform his duties, including participating as a member of the Board.



9. The Petitioner asserts that the recruitment of the CEO and the 164 other employees was neither approved by the Annual General Meeting of the affiliate companies nor subjected to public participation as required by law.
10. It is further alleged that the involvement of the current Chief Executive Officer in the recruitment of his successor is ultra vires, as the Board is required to independently recruit and appoint a CEO through a fair, transparent and impartial process. Such involvement, it is argued, undermines Articles 73(2)(a) (b) and 232(1)(g) of *the Constitution* and the provisions of the *State Corporations Act*.
11. The Petitioner contends that the participation of the current CEO in the recruitment process constitutes a conflict of interest and undermines the Mwongozo Code of Governance for State Corporations.
12. It is further contended that such participation offends Articles 73(2)(a) and 232(1)(g) of *the Constitution*, which emphasize personal integrity, competence, suitability, fair competition and merit as the basis for appointment and promotion in public service.
13. The Petitioner maintains that the impugned recruitment process fails to meet the standards of fair administrative action as required under Article 47(1) of *the Constitution*.
14. Additionally, the Petitioner contends that the recruitment of the 164 officers contravenes the government's directive on rationalization of salaries and the freeze on employment announced by the Cabinet Secretary for Public Service, Performance and Delivery for one year from July 2024.

#### **The Respondent's case**

15. The Respondent opposed the Petition through a Reply dated 15<sup>th</sup> April 2025 in which it averred that its Board comprises of ten (10) members of diverse expertise, including a Chairperson who presides over all Board meetings and the Chief Executive Officer, who sits as an ex-officio member without voting rights. This composition, according to the Respondent, ensures public representation and compliance with the Mwongozo Code of Governance for State Corporations and section 6 of the *State Corporations Act*.
16. It is the Respondent's case that all decisions of the Board, including those relating to recruitment were made collectively and not by the Chief Executive Officer acting individually. That as such, the recruitment of the new Chief Executive Officer was a collective undertaking of the full Board.
17. The Respondent maintains that the outgoing CEO is not barred by *the Constitution*, the Mwongozo Code, or any statutory provision from performing his functions as a Board member during the transition period.
18. The Respondent asserts that the Board initiated the recruitment of a new CEO to ensure continuity in leadership and uninterrupted service delivery upon the expiry of the incumbent's term in November 2024 and the outgoing CEO was to remain in office until the expiry of his contract in November 2024.
19. It is the Respondent's contention that the recruitment process was conducted meticulously and in full compliance with all constitutional and legal requirements. The Respondent argues that the Petitioner has not demonstrated how the presence of the incumbent Chief Executive Officer on the Board prejudiced, influenced or otherwise compromised the integrity of the recruitment process and further, that the Petitioner has not demonstrated any violation or threat of violation of *the Constitution*.
20. In response to the allegation regarding the recruitment of 164 officers contrary to the government's hiring freeze, the Respondent stated that the Chief of Staff and Head of the Public Service, through a



letter dated 26<sup>th</sup> September 2024, granted express authority to the Respondent to fill critical positions necessary for its efficient operations.

21. Further, the Respondent maintained that the Petition has been overtaken by events, as a new Chief Executive Officer has already been appointed and is currently in office.
22. In the end, the Respondent urged the court to dismiss the Petition with costs arguing that the Petitioner has not demonstrated that it is deserving of the orders it seeks.
23. Pursuant to the directions of the Court issued on 7<sup>th</sup> May 2025, the Petition was canvassed by way of written submissions, with both parties duly filing their respective submissions.

### Submissions

24. The Petitioner in its written submissions dated 29<sup>th</sup> June 2023 framed three issues which it asked this court to determine namely:
  - i. Whether the Petitioner has requisite locus standi to bring the instant petition,
  - ii. Whether the Respondent acted ultra vires in allowing the then chief executive officer to participate in the recruitment of a new chief executive officer
  - iii. Whether the lack of public participation in recruitment of the 164 other employees renders the process null and void
  - iv. Who should bear the costs
25. On the first issue, the Petitioner submitted that it has the requisite locus standi to institute the present Petition as it is empowered under Article 22(1), as read with Article 258(2)(c) of *the Constitution*, to institute proceedings seeking to protect *the Constitution* from violation. The Petitioner described itself as a human rights consortium based in Eldama Ravine, engaged in the promotion and protection of human rights, democracy, and justice for the people of Kenya.
26. The Petitioner contended that several provisions of *the Constitution*, including Articles 73(2)(a) and (b) and 232(1)(g), which guarantee a fair, impartial, and transparent process in the appointment of State officers, were violated by the Respondent in the recruitment of its new Chief Executive Officer.
27. It is therefore the Petitioner's case that pursuant to Article 22(3) of *the Constitution*, the Chief Justice promulgated Legal Notice No. 117 of 28<sup>th</sup> June 2013, commonly known as "The Mutunga Rules", to operationalize and facilitate the enforcement of fundamental rights and freedoms which rules reiterate that any person, including one acting in the public interest, has the right to institute proceedings under Articles 22(2) and 258 of *the Constitution*.
28. Relying on *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR, the Petitioner urged the Court to find that it has the requisite locus standi to institute these proceedings in the public interest.
29. On the issue whether the Respondent acted ultra vires in allowing the outgoing Chief Executive Officer to participate in the recruitment of a new chief executive officer, the Petitioner submitted that at the time of recruitment of the new Chief Executive Officer, the then sitting CEO was still in office, with his term set to lapse in November 2024.
30. It was contended that the said CEO initiated the recruitment process approximately four months before the end of his tenure contrary to good governance practice which requires that an outgoing CEO proceeds on terminal leave to allow the Board to independently conduct the recruitment of a



- successor, thereby avoiding any conflict of interest. The Petitioner cited the case of Okiya Omtatah Okoiti v Kenyatta University Council & Others [2016]eKLR to buttress this position.
31. The Petitioner maintained that the Respondent's decision to allow the outgoing CEO to participate in the recruitment of his successor violated the national values and principles of governance enshrined under Article 10(2)(c) of *the Constitution*, including good governance, integrity, transparency, and accountability
  32. The Petitioner therefore urged the Court to find that the involvement of the then CEO in the recruitment of his successor was ultra vires, procedurally improper, and in violation of Articles 10(2)(c), 73(2)(a), and 232(1)(g) of *the Constitution*. The cases of Geoffrey Andare v Attorney General & 2 Others [2016]eKLR, Miguna Miguna v Permanent Secretary, Office of the Prime Minister & Another [2011]eKLR and Keroche Breweries Limited & 6 Others v Attorney General & 10 Others [2016] eKLR were cited in support of this point.
  33. On the third issue, the Petitioner submitted that the recruitment of 164 other employees failed to adhere to the constitutional principles of transparency and public participation under Articles 10 and 232 of *the Constitution*. On this basis, it is submitted that the process was undertaken without the involvement of the Respondent's affiliate companies, which are key stakeholders, and contrary to Government policy freezing public sector recruitment for one year.
  34. The Petitioner asserted that the Respondent failed to demonstrate that public participation was conducted prior to the recruitment, rendering the process null and void for want of compliance with *the Constitution* and Chapter 2 of the Mwongozo Code of Governance for State Corporations, which emphasizes transparency and disclosure in public appointments.
  35. Lastly, on the issue of costs, the Petitioner sought to be granted costs of the Petition.
  36. On its part, the Respondent in its submissions dated 13<sup>th</sup> June 2025 framed the issues for determination to be:-
    - i. Whether the Respondent undertook the process of recruitment of its Chief Executive Officer contrary to *the Constitution*, *State Corporations Act* and the Mwongozo Code of Governance for State Corporations
    - ii. Whether the recruitment of the 164 positions by the Respondent contravened *the Constitution*, Legislation or any government directive
  37. On the first issue, the Respondent submitted that the Petitioner failed to adduce any evidence, such as minutes of Board meetings to demonstrate that the former CEO participated in the recruitment process. It was argued that the Petitioner ought to have exercised its right under Article 35 of *the Constitution* to request such information if it believed impropriety existed.
  38. The Respondent reiterated that its Board comprises ten (10) members drawn from diverse professional backgrounds, with the Chief Executive Officer serving as an ex-officio member without voting rights. The Respondent thus maintained that the former CEO did not participate in the advertisement, longlisting, shortlisting, interviews, or appointment of the new CEO, nor was he involved in drafting the job description or specifications.
  39. It is the Respondent's submission that the recruitment process was conducted by the Human Resource Committee of the Board, and the final appointment was made by the Cabinet Secretary for Agriculture and Livestock Development.



40. The Respondent further submitted that all decisions of the Board, including those relating to recruitment, are made collectively and not by individual members. It was therefore contended that the recruitment of the current Chief Executive Officer was undertaken in full compliance with *the Constitution*, relevant statutes, and applicable governance frameworks.
41. On the issue regarding the allegation made by the Petitioner that the recruitment of the 164 officers was contrary to a government directive freezing public sector hiring, the Respondent submitted that the Petitioner failed to disclose that the directive, which was purely executive in nature and not a statutory instrument under the *Statutory Instruments Act*, expressly exempted recruitment in cases justified by operational necessity as was the case for the Respondent.
42. According to the Respondent, the recruitment of the 164 officers was necessitated by genuine operational requirements, and the Ministry of Agriculture and Livestock Development, being the parent Ministry, duly approved the exercise.
43. The Respondent maintained that it fully complied with constitutional and statutory requirements, and no provision of law was contravened. It argued that the Petition was filed in bad faith, with the intent to frustrate and discredit a fair, transparent, and merit-based recruitment process.
44. With regard to the allegation made by the Petitioner that there was no public participation in the recruitment of the 164 officials, the Respondent submitted that in compliance with Section 37 of the *Public Service Commission Act* and Articles 10 and 232 of *the Constitution*, it published vacancy notices on 6<sup>th</sup> August 2024 in newspapers of nationwide circulation and on its online platforms, thereby providing reasonable opportunity for public participation. In support of the position that the advertisement met the conditions for public participation, the Respondent relied on the Court of Appeal's decision in *Independent Electoral and Boundaries Commission v National Super Alliance (NASA) & 6 Others* [2017] eKLR.
45. In response to the averment by the Petitioner that the recruitment was not approved by affiliate companies, the Respondent clarified that it is a State Corporation established under the Nyayo Tea Zones Development Corporation Order No. 30 of 2002 regulated by the *State Corporations Act* and the Mwongozo Code, and has no affiliate companies as alleged by the Petitioner.
46. In addition, the Respondent submitted that the matter has since been overtaken by events, as shortlisted candidates for the advertised positions were competitively interviewed and successful candidates duly appointed.
47. Lastly, on costs, the Respondent submitted that having successfully demonstrated that the Petition lacks merit, it is entitled to costs as the successful party.
48. The Respondent therefore prayed that the Petition be dismissed in its entirety with costs, as the Petitioner failed to demonstrate any violation or threat of violation of the cited constitutional provisions.

### **Determination**

49. Having carefully considered the Petition, the response thereto and the rival submissions on record, the issues that fall for determination are: -
  - i. Whether the Petitioner has the requisite locus standi to institute this Petition
  - ii. Whether the Respondent acted ultra vires the law in allowing the then Chief Executive Officer to participate in the recruitment of his successor



- iii. Whether the recruitment of 164 officers contravened *the Constitution*, legislation, or any government directive
- iv. What orders should issue, including on costs.

### **Whether the Petitioner has the requisite locus standi to institute this Petition**

50. The Petitioner herein has described itself in the Petition as a human rights consortium established to champion for the protection of human rights, democracy, and justice for the people of Kenya. It filed the present Petition in what it termed as the public interest.
51. Article 22(1) and (2) of *the Constitution* entitles every person to institute court proceedings claiming that a right or fundamental freedom has been denied, violated, infringed, or threatened. Article 258(2) (c) further extends that right to any person acting in the public interest.
52. In *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR, the Court of Appeal affirmed that a party may bring proceedings in the public interest so long as the alleged violation implicates constitutional values or rights. The court observed: -
  - (29) It may therefore now be taken as well established that where a legal wrong or injury is caused or threatened to a person or to a determinate class of persons by reason of violation of any constitutional or legal right, or any burden is imposed in contravention of any constitutional or legal provision, or without authority of law, and such person or determinate class of persons is, by reason of poverty, helplessness, disability or socio-economic disadvantage, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Articles 22 and 258 of *the Constitution*.
  - (30) It is our consideration that in filing the petition the 1<sup>st</sup> respondent was acting not only on behalf of its members and in accordance with its stated mandate, but also in the public interest, in view of the nature of the matter at hand. The 1<sup>st</sup> respondent, its members and the general public were entitled to participate in the proceedings relating to the decision-making process culminating in the impugned decision.”
53. Guided by the above, this Court is satisfied that the Petitioner has the requisite locus standi to institute the present proceedings, the Petition having been brought to safeguard alleged violations of constitutional principles of governance.

### **Whether the Respondent acted ultra vires the law in allowing the then Chief Executive Officer to participate in the recruitment of his successor**

54. The Petitioner contends that at the time of advertising the position of Chief Executive Officer, there existed a substantive office holder whose term had not lapsed and who continued to discharge his duties as a member of the Board. It was argued that his continued participation in Board meetings during the recruitment process created a conflict of interest and contravened Articles 10, 73, and 232 of *the Constitution*.
55. The Respondent, on its part, submitted that the Chief Executive Officer is an ex-officio member of the Board and does not have voting rights and therefore does not participate in the decision-making process relating to recruitment. It further contended that the recruitment exercise was conducted by the Human Resource Committee of the Board and the final appointment made by the Cabinet Secretary for Agriculture and Livestock Development.



56. Section 6 of the *State Corporations Act* provides for the composition of the Board of a State Corporation and recognizes the Chief Executive Officer as an ex-officio member. Clause 1.19 of the Mwongozo Code of Governance for State Corporations similarly provides that the role of the Chief Executive Officer includes implementing the decisions of the Board, providing strategic leadership, and ensuring the day-to-day administration of the Corporation's affairs.
57. The *State Corporations Act* and the Mwongozo Code do not have an express provision barring an outgoing CEO from attending Board meetings or performing official duties pending the expiry of their contract term.
58. The Petitioner did not place before the Court any minutes, correspondence, or documentary evidence to demonstrate that the outgoing CEO took part in shortlisting, interviewing, or decision-making in respect of the recruitment of his successor.
59. It is trite that allegations of impropriety must be proved by credible evidence. In the absence of such proof, this Court finds no basis in the Petitioner's argument that the Respondent acted ultra vires or in violation of *the Constitution* by allowing the outgoing CEO to remain in office until the expiry of his term.

**Whether the recruitment of 164 officers contravened *the Constitution*, legislation, or any government directive**

60. The Petitioner contended that the Respondent proceeded with the recruitment of 164 officers in contravention of a government directive freezing new employment for one year from July 2024, and without public participation or stakeholder involvement.
61. In its defence, the Respondent asserted that the recruitment was undertaken pursuant to approval by the Ministry of Agriculture and Livestock Development, its parent Ministry, which authorized the filling of critical positions to meet operational needs.
62. Section 5(3) of the *State Corporations Act* provides: -
  - “(3) A state corporation may engage and employ such number of staff, including the chief executive, on such terms and conditions of service as the Minister may, in consultation with the Committee, approve.”
63. Government directives, circulars, and policy statements, while important in guiding administrative action, do not have the force of law unless anchored in a statutory instrument or enacted legislation. They operate as executive policies meant to promote uniformity and accountability in the public service but cannot override express statutory provisions.
64. In my view, the directive by the Cabinet Secretary for Public Service was an administrative guideline requiring justification for recruitment within the public sector, but it did not amount to a legal prohibition.
65. In addition, from a perusal of the correspondence between the Respondent and the Principal Secretary, Ministry of Agriculture and Livestock Development, the letter dated 16<sup>th</sup> July 2024 annexed to the Respondent's Replying Affidavit demonstrates that the Respondent sought and obtained approval to recruit staff due to acute shortages occasioned by retirements, resignations, and expansion of operations. The subsequent approval granted on 22<sup>nd</sup> July 2024, in my view, satisfied the requirements of Section 5(3) of the *State Corporations Act*.



66. With regard to public participation, the Respondent, in its Replying Affidavit sworn on 5<sup>th</sup> September 2024 in response to the application filed alongside the Petition, annexed a newspaper extract from The Star marked “JG-7” and a reprint of the advertisement on the Respondent’s website marked “JG-8.” The annexures demonstrate that the vacancies were publicly advertised in two newspapers of national circulation and on the Respondent’s online platforms on 6<sup>th</sup> August 2024.
67. In my view, this mode of notification satisfied the constitutional threshold of reasonable public participation and transparency as envisaged under Articles 10 and 232 of *the Constitution* as the public was accorded a fair opportunity to apply and participate in an open, competitive process.
68. The Petitioner did not demonstrate how the recruitment process violated constitutional or statutory provisions, or how the alleged lack of stakeholder consultation prejudiced any identifiable interest.
69. The Court is therefore satisfied that the recruitment of the 164 officers was lawful, transparent, and in conformity with *the Constitution*, the *State Corporations Act* and the Mwongozo Code of Governance for State Corporations.

**What orders should issue, including on costs.**

70. From the foregoing analysis, the Court finds that the Petitioner has failed to prove, on a balance of probabilities, that the Respondent violated or threatened to violate any constitutional provisions in the recruitment of its Chief Executive Officer and the 164 officers.
71. Consequently, the Court finds no merit in the Petition.
72. In view of the fact that this Petition was filed in the public interest, I direct that each party shall bear its own costs.
73. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**

**JUDGE**

