



**Kiira & another v Mwaringa & another; Muga & 2 others (Interested Parties)  
(Petition E059 of 2024) [2025] KEHC 15331 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15331 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PETITION E059 OF 2024  
J NGAAH, J  
OCTOBER 31, 2025**

**BETWEEN**

**FRANCIS KIIRA ..... 1<sup>ST</sup> PETITIONER**

**OKOTH OWINO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**DR. DANIEL KATAMA MWARINGA ..... 1<sup>ST</sup> RESPONDENT**

**ENG. MARTIN TSUMA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**HON. ERICK MUURITHI MUGA ..... INTERESTED PARTY**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... INTERESTED PARTY**

**RULING**

1. This is a ruling on a preliminary objection raised by the respondents against a constitutional petition in which the petitioners seek, inter alia, several declarations and judicial review reliefs against the respondents.
2. In the petition, the petitioners have described themselves as “male adults of sound mind and a Human Rights crusaders under the aegis of Mwangaza Social Justice Movement based in Kilimani Nairobi County”.

The prayers in the petition have been framed as follows:

- “ a) An order of declaration declaring that the Respondents' actions are in breach of the law and he should therefore be sanctioned for the same.



- b) An order of declaration declaring that the Respondents' actions are in violation of the constitution and other legislation.
- c) An order mandamus, directed to the coast water service board to declare the position vacant and to pave way for a fresh interviews and appointment of a Chief Executive Officer (CEO) by the appointing authority.”
- d) An order barring the Respondents from assummg any other Responsibilities in Coast Water Service Board.
- e) An order compelling the 2<sup>nd</sup> Respondent to refund to the exchequer all monies received to his benefit including but not limited to Salaries, per diems and allowances for the time that he unlawfully and illegally occupied office as Chief Executive Officer of the Coast Water Service Board.
- f) An order of mandamus compelling the 2<sup>nd</sup> Interested Party to criminally investigate and, if culpable, instruct the Yd Interested Party, Director of Public Prosecutions (D.P.P), to criminally prosecute the Respondent for his flagrant breach of the law.
- g) An order of declaration be issued that the Respondents are unfit to hold any other public office because they have grossly violated the Constitution and other laws, and is guilty of gross misconduct.
- h) That the Honorable Court be pleased to issue and hereby issues a permanent order of Prohibition prohibiting the Respondents from holding their offices any further.
- i) That the Honorable Court be pleased to exercise its powers under article 23(3) of the Constitution, to issue any other appropriate relief.
- j) An order that the Respondents do pay the costs of this Petition.”

3. According to the affidavit sworn by Francis Kiira in support of the petition, the petitioners appear to be complaining about some recruitment process at the Coast Water Services Board.

4. The facts upon which their petition is based appear rather disjointed but from what I gather, the petitioners are complaining about a delay in the recruitment of the Chief Executive Officer of the Coast Water Services Board. It is also alleged that the shortlisting process, apparently for this position, was skewed in favour of unqualified candidates and eliminated qualified candidates.

5. The 2<sup>nd</sup> respondent is said to have been acting in the position of the Chief Executive Officer since 2021 yet he ought to have acted for six months only. Allegations of bribery have been made against the 2<sup>nd</sup> respondent and he is alleged to have received money to interfere with the recruitment process of recruitment.

It is also alleged that a rights group wrote to Alice Wahome, the cabinet secretary in the relevant ministry, to initiate a new process of recruitment.

6. In response to the petition, the Attorney General filed a notice of preliminary objection objecting to the petition on the grounds that the petition violates article 162(2)(a) of the Constitution and, for this reason, this Honourable Court is bereft of jurisdiction to determine the petition. It is also alleged that the petition is vexatious and is based on innuendos and hearsay.



7. Although I directed parties to file their respective submissions on the preliminary objection, only the Attorney General did.
8. According to the Attorney General, the court with jurisdiction to determine this matter is the Employment and Labour Relations Court ostensibly because matters to do with recruitment of the Chief Executive Officer to the Coast Water Service Board and terms under which any person may act in that position are employment and labour relations matters. To quote Mr. Penda, the learned counsel for the Attorney General:
  - “4. Recruitment is a purely a human resource function that can only be governed within the ambits of the Employment and *Labour Relations Act* and the *Employment Act*.”
9. It may be true that the questions of recruitment of the Chief Executive Officer of the Coast Water Service Board and for how long one may act in that position feature prominently in the petition before court. Equally true is the question whether *the Constitution* has been violated or is threatened with violation.
10. The jurisdiction of this Honourable Court is defined in article 165(3)(d)(ii) to include determination of the question whether any action done under *the Constitution* or any law is inconsistent with or in contravention of *the Constitution*. This provision reads as follows:
  - (3) Subject to clause (5), the High Court shall have—
    - d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
      - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
      - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
      - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
      - (iv) a question relating to conflict of laws under Article 191;  
(Emphasis added)
11. That this Honourable Court can interrogate the constitutionality of any action purportedly done under *the Constitution* or any law goes to demonstrate how wide the latitude its jurisdiction is. The fundamental question is not whether any particular conduct or action is subject to interrogation by courts of status equal to that of this Honourable Court but whether that particular conduct or action can be properly described as “anything said to be done under the authority of this Constitution or of any law”. In such a case, this Honourable Court is entitled to interrogate whether such a conduct or action “is inconsistent with, or in contravention of, this Constitution.”
12. I am minded that clause 5 of article 165 of *the Constitution* bars this Honourable Court from, among other things, exercising jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162(2) of *the Constitution*. But the interrogation of any question on the



constitutionality of any matter or action purportedly done under the Constitution or any other law, cannot be said to be within the exclusive jurisdiction of the courts of the status equal to the High Court merely because the facts out of which the question arises relate to employment and labour relations or relate to, title to, the use of or ownership of land. As long as the underlying question in the matter is the constitutionality of the action or conduct in issue, this Honourable Court is seized of the requisite jurisdiction under article 165 of the Constitution to dispose of the matter.

13. Of course, where the resolution of any particular dispute turns on the determination of certain facts and the application of the relevant statutory provisions in the context of an ordinary civil suit, the intervention of this Honourable Court would be unwarranted. In such circumstances, it does not matter that what is otherwise an ordinary civil suit of which any of the courts of status equal to the High Court is seized of jurisdiction to determine and mete out appropriate remedy, has been presented as a constitutional petition. It is in such a case, I think, that this Honourable Court will be enjoined to down its tools for want of jurisdiction.
14. This is the perspective from which I will consider the petitioners' petition. The question of whether the allegations made are innuendos or scandalous is a question that I will properly interrogate at the hearing of the main petition. Needless to say, it is not a question that can be determined in the context of a preliminary objection.
15. For the foregoing reasons, the preliminary objection is overruled. The petition shall proceed to full hearing. Orders accordingly.

**SIGNED, DATED AND DELIVERED ON 31 OCTOBER 2025**

**NGAAH JAIRUS**

**JUDGE**

