

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E132 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

JULIUS MATOKE
ANYOKA.....PETITIONER

VS

SILVIA MUSEIYA, PRINCIPAL SECRETARY.....1ST
RESPONDENT

HON. ATTORNEY GENERAL.....2ND
RESPONDENT

AND

PUBLIC SERVICE COMMISSION.....INTERESTED
PARTY

RULING

1 The Petitioner/Applicant filed a Notice of Motion dated 7th August 2025 seeking orders that: -

1. *Spent*
2. *pending the inter partes hearing and determination of this Application and/or the Petition herein, the Honourable court be pleased to reinstate conservatory orders discharged/and or vacated on 21st July, 2025.*
3. *pending hearing and determination of the Petition herein, the Honourable court be pleased to review, vacate, and/or discharge the order issued on 21st July, 2025.*

4. *the 1st Respondents bears the costs of this Application.*

Petitioner/Applicant's

- 2 The Applicant avers that on 3rd July, 2025, the court issued conservatory orders restraining the Respondent, from proceeding with recruitment process pursuant to Advert No. 1/2025, inviting applications from suitably qualified applicants for the position of Principal Wildlife Officer Grade CSG '8'.
- 3 The Applicant avers that on 21st July 2025 upon an application by the interested party to discharge the conservatory orders in force then, the court indeed proceeded to discharge the orders upon the Applicant being unable to produce any evidence of the law, manual, policy, guidelines and/or regulation that specifically provides that certain level of job groups cannot be delegated by the Interested Party.
- 4 The Applicant avers that he has now found the relevant law that provides that such delegated power is statutorily limited to the appointment of officers to Job Group L and below but the Commission reserves to itself the appointment power of officers to Job group M and above.
- 5 He avers that Clause 7.0 (a) of the instrument dated 30th July, 2018 Ref No. PSC/SEC/93/37/VOL.IV/(37) provides that recruitment at entry level for lower cadres at Job Group 'A'

to 'G' is delegated to the authorized officer. Whereas Clause 7.0 (b) provides that recruitment at entry levels for diploma holders and graduates at Job groups 'H', 'J', 'K' and 'L' will however be undertaken by the Public Service Commission.

6 Further, Section 4(2) of The Public Officer Ethics Act, which operationalizes Part IV & V of the PSC Act, states clearly that: *"The Public Service Commission may delegate powers and functions only with respect to public officers in job group below M or its equivalent."* That means any role at Job Group M or higher, the PSC must retain direct authority for recruitment and cannot delegate those powers.

7 It is the Applicants' case that it is in the interest of justice for the court to uphold and protect the law by restraining the 1st Respondent from continuing with a process that is clearly in violation of the constitution and the law.

8 The Applicant avers that unless conservatory orders of injunction restraining the 1st Respondent from accepting applications, considering, shortlisting, interviewing and appointing any person pursuant to the advert No 1/2025, the 1st Respondent shall continue exposing innocent members of the public to an illegal and unconstitutional exercise to their detriment.

Petitioner/Respondent's Case

- 9 In opposition to the application, the Respondents filed a replying affidavit dated 24th September 2025 sworn by its Assistant Director, Human Resource Management and Development, State Department for Wildlife; Ministry of Tourism & Wildlife, Rosemary Njau.
- 10 The Respondents aver that the Delegated Instrument on the Exercise of Human Resource Powers and Functions in the Public Service Ref. No. PSC/SEC/93/37/(37) dated 30th June 2018 as referenced by the Petitioner in his supporting affidavit, was repealed by another Delegated Instrument on the Exercise of Human Resource Powers and Functions in the Public Service Ref. No. PSC/SEC/93/37/VOL.VI/(31) dated 14th December 2022. The latter was subsequently repealed by the current Delegated Instrument on the Exercise of Human Resource Powers and Functions in the Public Service Ref. No. PSC/SEC/93/37/NOLVI/(140) dated 13th January, 2023
- 11 The Respondent avers that the current Delegated Instrument left it open for the Public Service Commission to delegate to the Authorized Office, recruitment of all Groups. Additionally, the advert was for those already in the public service; 'Served as a Senior Wildlife Officer, CSG '9' or in a comparable and relevant position for a minimum period of three (3) years in the Public Service.
- 12 It is the Respondents' case that the application is anchored on non-existent delegation instrument without force of law, is incompetent, lacks merit, is scandalous,

frivolous and vexatious and amounts to an abuse of the court process hence should be dismissed with costs to the Respondents.

Interested Party's Case

- 13 In response, the Interested Party filed a replying affidavit dated 25th September 2025, sworn by its Secretary/Chief Executive Officer, Paul Famba.
- 14 The Interested Party avers that it may, where appropriate and in writing, delegate any power or assign a duty conferred to it under the Constitution or the Public Service Commission Act, 2017 to an officer, body or authority in the public service in accordance with the provisions of section 31 of the Act.
- 15 The Interested Party avers that the duty judge on 3rd July 2025 granted temporary conservatory injunction restraining the 1st Respondent from accepting applications processing and appointing persons pursuant to an advert No. 1/2025 dated 17th June 2025 pending inter-partes hearing of the application on 10th July 2025.
- 16 In response, the Interested Party filed replying affidavit deponed on 14th July 2025 and attached its approval for the filling of the vacant post including the impugned post subject of these proceedings to the 1st Respondent vide letter dated 12th February 2025.

- 17 On 24th July, 2025 upon hearing arguments from the Petitioner and Interested Party on whether the *ex-parte* interim orders should be vacated or not, the court vacated/discharged/waived the interim orders upon perusal of the Commission's authority to the 1st Respondent to fill the impugned positions subject of these proceedings.
- 18 The Interested Party avers that the instant application is anchored on the delegation instrument issued on 30th July 2018 which instrument was revoked by the delegation instrument issued on 14th December 2022 and which instrument was further revoked by the delegation instrument issued on 19th January 2023 and currently in force. Under the current delegation instrument, the Commission may from time to time on a case to case basis delegate recruitment to Authorized Officers. The delegation instrument does not limit the cadres to be filled by the Authorized Officers.
- 19 It is the Interested Party's case that the applicant's pleadings are anchored on misguided facts for personal gain. It contends that the Petitioner/Applicant has misconstrued the advertisement No. 1/2025 as new recruitment yet the same is an internal advertisement for promotion to the grade of CSG '8'.
- 20 The Interested Party avers that the Petitioner's allegation that the 1st Respondent can only recruit officers at Job Group 'L' and below is a new issue not pleaded in his

petition. The allegation is directly opposite of the issues and reliefs raised in the petition and should be disregarded unless the petition is amended to capture the same. In any event, the allegation lacks merit as it is anchored on a revoked instrument.

- 21 It is the Interested Party's case that the application is anchored on non-existent delegation instrument without force of law, is incompetent, lacks merit, is scandalous, frivolous and vexatious and amounts to an abuse of the court process hence should be dismissed with costs to the interested party.

Petitioner/Applicant's Submissions

- 22 The Applicant submitted on three issues: whether the PSC can delegate the subject powers with respect to public officers in job group " N " or above; whether the 1st Respondent 's advertisement dated 17th June 2025 is unlawful for failing to provide for the requisite 21 day period for submitting applications; and whether this Court ought to reinstate the orders dated 3rd July 2025.

- 23 On the first issue, the Applicant submitted that Section 4 of the Public Officer Ethics Act, Cap 185B Laws of Kenya [now repealed as of 19th August 2025] provided: *“(1) Subject to subsection (2), the Public Service Commission may, by notice in the Gazette delegate to another person or body any of its powers and functions under Part IV or*

Part V with respect to classes of public officers specified by the Public Service Commission and that person or body shall be deemed to be the responsible Commission with respect to such delegated powers and functions. (2) The Public Service Commission may delegate powers and functions only with respect to public officers in a job group below job group "M" or its equivalent." At the time of the issuance of the impugned Delegation Instrument dated 14th December 2022 which purports to allow unrestricted delegation across all cadres ("the impugned Delegation Instrument") the Act was still in force.

- 24 The Applicant submitted that the impugned Delegation Instrument was issued in direct contravention of Section 4 of the Public Officer Ethics Act which was still operative at the material time.
- 25 It is the Applicant's submission that impugned Delegation Instrument purports to confer powers beyond the statutory threshold of Job Group "M" or its equivalent, thereby rendering it *ultra vires*, null and void *ab initio*. The 1st Respondent's reliance on the said Instrument to justify the impugned advertisement and recruitment process is therefore legally untenable and procedurally defective.
- 26 On the second issue, the Applicant submitted that Clause 7.3 of that the Ministry will advertise all vacant posts in a manner that reaches the widest pool of potential applicants and allow for at least twenty-one (21) days before closing the advert. However, the impugned

advertisement was published on 17th June 2025 with a closing date of 1st July 2025; this provided only fifteen (15) days for submission of applications contrary to the provisions

- 27 The Applicant submitted that the deviation from the prescribed minimum period violates his legitimate expectation that recruitment processes would adhere to the standards set out in the applicable Delegation Instrument. He therefore invites this court to find that the impugned advertisement is procedurally defective and legally untenable.
- 28 On the third issue, the Applicant submitted that the reinstatement of the conservatory orders issued on 3rd July 2025 is not only warranted but imperative in safeguarding the rule of law and preserving the substratum of the instant petition. The said orders were vacated on the strength of a Delegation Instrument that has now been demonstrated to be legally defective and statutorily void.
- 29 It is the Applicant's submission that in the absence of the said impugned delegation framework, the 1st Respondent lacks the requisite legal authority to initiate or undertake recruitment for positions in Job Group "N" or its equivalent. The continued implementation of the impugned advertisement and recruitment process would therefore amount to an abuse of power and a violation of the Applicant's legitimate expectation of a lawful and procedurally sound process.

Respondent's Submissions

- 30 The Respondent submitted on three issues: whether the Applicant has met the threshold for grant of conservatory or mandatory injunctive relief; whether the Application is founded on valid and subsisting legal instruments; and whether the Application discloses a prima facie violation of the Constitution or law warranting intervention of this Honourable Court.
- 31 On the first issue, the Respondent placed reliance in [**Board of Management of Uhuru Secondary School v City County Director of Education & 2 others \[2015\] KEHC 2174 \(KLR\)**](#): *“Foremost, the applicant ought 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. As was stated by Musinga J (as he then was) in the case of **Centre for Rights Education and Awareness and 7 Others -v- The Attorney General [HCCP No. 16 of 2011]**: “[Arguments] in this ruling relate to the prayer for a conservatory order in terms of prayer 3 of the Petitioner’s application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer*

prejudice as a result of the violation or threatened violation of the Constitution”.

*It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis. In these respects, I would quickly make reference to M. Ibrahim J (as he then was) in the case of **Muslims for Human Rights [MUHURI] & Others -v- Attorney General & Others CP No. 7 of 2011**, who whilst agreeing with Musinga J’s statement in **Centre for Rights Education and Awareness [CREAW] and 7 Others -v- The Attorney General (Supra)** stated as follows: -*

“I would agree with my brother that an applicant seeking conservatory orders in a Constitutional case must demonstrate that he has a prima facie case with a likelihood of success”

- 32 The Respondent submitted that it has fully satisfied all the requirements for grant of stay of execution set out in **NAIROBI HCC 5400 OF 1991 HALL EQUITORIAL LIMITED VS OLYMPIC FRUIT PROCESSERS**, wherein it was held: *“he must demonstrate to the satisfaction of this Court that substantial loss will ensue if the Order is not granted; that the application has been filed without delay and that he is willing and able to give such security as is*

ordered by the Court for the due performance of the decree.”

- 33 The Respondent submitted that application rests on a repealed Delegation Instrument dated 30th July 2018 (Ref. No. PSC/SEC/93/37/VOL.IV/ (37)), which the Applicant claims restricts the PSC’s power of delegation to Job Group “L” and below. However, this Instrument was expressly repealed by subsequent instruments, the latest being Ref. No. PSC/SEC/93/37/VOL.VI/ (140) dated 19th January 2023, which left it open for the Public Service Commission to delegate to the Authorized Office, recruitment of all Groups. Therefore, there exists no legal foundation for the Applicant’s claim that the 1st Respondent acted ultra vires.
- 34 It is the Respondent’s submission that the Applicant has not demonstrated a prima facie case based on admissible evidence which shows an infringement of a right.
- 35 The Respondent submitted that the order sought is in nature mandatory, as it seeks to reinstate conservatory orders previously vacated. It cited the Court of Appeal in ***Kenya Breweries Limited & another v Washington O. Okeyo [2002] KECA 284 (KLR)***: *“The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury’s Laws of England 4th Edn. para 948 which reads: “A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one*

which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff a mandatory injunction will be granted on an interlocutory application”.

- 36 It is the Respondent’s case that a mandatory injunction should not be issued where material facts are disputed or where the Applicant’s right is doubtful. The Petitioner’s reliance on a repealed instrument and his failure to show how the ongoing recruitment contravenes the current law makes his case very far from clear. Consequently, the Applicant fails both the ***Giella v Cassman Brown [1973] EA 358*** test (for interlocutory injunctions) and the ***CREAW*** constitutional standard for conservatory orders.
- 37 On the second issue, the Respondent submitted that the 2018 Instrument was repealed by the Delegation Instrument dated 14th December 2022 (VOL.VI/(31)), was repealed by the current Delegation Instrument dated 19th January 2023 (VOL.VI/(140)). The current instrument expressly empowers the Public Service Commission to delegate to authorized officers recruitment powers for all job groups, subject to oversight. The impugned advertisement for Principal Wildlife Officer, CSG 8 was therefore lawfully issued by the 1st Respondent under delegated authority.
- 38 The Respondent submitted that the Applicant’s reliance on Section 4(2) of the Public Officer Ethics Act is

fundamentally misconceived. The section operated solely within the context of the Public Officer Ethics Act and in relation to the administration of Parts IV and V thereof which dealt with declarations of income, assets, and liabilities. It did not, and could not, operationalize the delegation of functions or powers under the Public Service Commission Act or the Constitution.

39 It is the Respondent's submission that the delegation of powers under the PSC Act is governed independently by Section 31 of the Public Service Commission Act, 2017, which empowers the Commission to delegate its constitutional and statutory functions to authorized officers or bodies subject to prescribed conditions. Accordingly, any attempt to import the limitations in Section 4(2) of the repealed Act into the PSC's constitutional or statutory mandate is legally untenable.

40 The Respondent submitted that the Public Officer Ethics Act, 2003 has since been repealed by the Conflict of Interest Act, Act No. 11 of 2025, which was assented to on 30th July 2025 and came into force in August 2025. The effect of that repeal is that the Public Officer Ethics Act no longer forms part of Kenya's operative law. It therefore follows that where an application is founded on a repealed or non-existent law, the same is rendered incompetent for want of jurisdiction.

41 On the third issue, the Respondent submitted that the Applicant has not demonstrated any violation of Articles

10, 232, or 234 of the Constitution as alleged. The recruitment process was conducted pursuant to existing delegated authority and within constitutional and statutory frameworks. Further, the advertisement invited applications only from serving public officers meeting specified qualifications, the process in issue does not prejudice the public or violate the Constitution. Instead, halting it would disrupt lawful operations of the Ministry, contrary to public interest.

Interested Party's Submissions

- 42 The Interested Party submitted on three issues: whether the Commission can delegate the subject powers with respect to public officers in job group "N" or above; whether the respondent's advertisement dated 17th June, 2025 is unlawful for failing to provide for the requisite 21-day period for submitting applications; whether the applicant has satisfied the threshold governing review for warrant the orders sought.
- 43 On the first issue, the Interested Party submitted that delegation referred to in section 4(1) of the Public Officer Ethics Act relates to performance of the Commission's powers and functions under Part IV or Part V of the Act which comprises provisions dealing with: Declarations of Income, Assets and Liabilities; and Enforcement of Code of Conduct and Ethics. Therefore, the Petitioner's interpretation is out of touch with the section itself and the purpose and object of the Public Officer Ethics Act.

44 The Interested Party submitted that the law governing delegation of powers in relation to Human Resource functions at the Ministries is section 31 of the Public Service Commission Act, 2017 which provides: follows:

“Delegation of powers

(1). The Commission may, where appropriate and in writing, delegate any power or assign a duty conferred to it under the Constitution or this Act to its members, an officer, body or authority in the public service.

(2). A delegation or assignment under subsection (i) shall not prevent the Commission from exercising the power.

(3) A delegation under this section—

(a) shall be subject to any conditions that the Commission may impose;

(b) shall not divest the Commission of the responsibility concerning the exercise of the powers or the performance of the duty delegated, and

(c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or amended by the Commission.

(4) The Commission may, at any time, institute an audit, investigation, inquiry or visit to determine whether the delegated powers are properly exercised by the authorized officer.

(5) Where the audit, investigation, inquiry or visit establishes that an authorized officer has breached any condition or improperly exercised delegated powers, the Commission shall take corrective measures including revoking the delegation.”

- 45 It is the Interested Party's submissions that the Petitioner has misconstrued the advertisement to mean fresh recruitment which is not the case. The position being filled through the impugned advertisement is CSG "8" and the key requirement is for those who have served as Senior Wildlife Officers, CSG '9' for a minimum period of 3 years.
- 46 On the second issue, the Interested Party submitted that there is no allegation in the main suit or any prayer seeking for declaration that the impugned advertisement violates any named provision of the PSC Act, PSC Regulations or any clause of the delegation instruments dated 19th January 2023 now in force. Considering there is no prayer seeking that the advertisement is unlawful, it would be contrary to the doctrine of unpleaded issues to issue conservatory orders in the application on issues not pleaded in the main suit; instead, the petitioner could have to amended his petition and attack the advertisement which has not happened.
- 47 The Interested Party cited [Justice Kalpana H. Rawal v Judicial Service Commission & 3 others \[2016\] eKLR](#) wherein the court held: *"The principles of law on unpleaded issues, as stated by the appellant, are correct and not in dispute. A court will not determine or base its decision on unpleaded issues."*
- 48 On the third issue, the Interested Party submitted that Regulation 74 (1) of the Employment and Labour Relations

Court (Procedures) Rules, 2024 provides: *“A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling— (a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; (b) on account of some mistake or error apparent on the face of the record; (c) if the judgment or ruling requires clarification; or (d) for any other sufficient reason.”*

49 The Interested Party submitted that the petitioner has not invoked any provisions of law dealing with review in particular Regulation 74 of the ELRC (Procedure) Rules, 2024, therefore, the application ought to fail. It was submitted that the provisions of the law under which the application is anchored upon do not deal with review at all. It therefore urged the court to dismiss the application for being anchored under wrong provisions of the law summarily.

50 It is the Interested Party’s submission that the Public Officer Ethics Act has been in force since 2003 and the Delegation Instrument of 30th July 2018 is now obsolete having been revoked by the Delegation Instrument of December, 2022. The Interested Party submitted that these discoveries are irrelevant to the present case, as the

Act and Delegation Instrument of 2018 are not new. The Petitioner has not demonstrated that despite the exercise of due diligence, the same was not within his knowledge or could not be produced at the time when the court was granting *ex-parte* orders and subsequently discharged them on 24th July 2025.

51 The Interested Party submitted that the 2018 delegation instrument lacks force of law having been revoked, the onus is upon the Petitioner to demonstrate that some clauses which he has relied were preserved for prospective application. The Petitioner has not proved the prospective application of any clause under the revoked 2018 Delegation Instrument. After every election new Delegation Instruments are issued owing to the change in Principal Secretaries who are authorized officers in State Departments.

52 I have examined all the averments and submissions of the parties herein. The applicant seeks reinstatement of conservatory orders issued on 3/7/25 and vacated by court on 21/7/25. The vacated orders discharged the orders which had hitherto restrained the respondents from processing the recruitment process to advert no 1/2025 inviting applications from suitably qualified applicants of the position of principal wildlife officer grade CSG '8'.

53 The applicants aver that the 1st respondent does not have authority to carry out the recruitment process under the relevant instruments and they cited delegation

instrument dated 30th July 2018 which at clause 7.3(a) provides that: *“the Ministry will advertise all vacant posts in a manner that reaches the widest pool of potential applicants and allow for at least twenty one (210) days before closing the advert”*.sz

- 54 The respondents on their part aver that the instrument relied upon by the applicant was repealed by another of 14th December 2022 vol VI/(31) which was further repealed by the court one dated 19th January 2023 (VOL VI/402). They aver that the current instrument allows the PSC to delegate to authorised officers recruitment powers for all job groups subject to oversight.
- 55 The applicant has not submitted any new or contrary evidence to the one provided by the interested party that they delegated powers to the 1st respondent to carry out the recruitment. In absence of such evidence, it is my finding that there is no valid reason to grant the orders sought. The application cannot stand and is therefore dismissed accordingly. The parties are free to proceed with the main petition if necessary.

Dated, Signed and Delivered Virtually at Nairobi this 19th Day of November, 2025.

**HELLEN WASILWA
JUDGE**

ORIGINAL