



**Ariwomoi & 3 others v West Pokot County Assembly Service Board & another
(Petition E004 of 2025) [2025] KEELRC 3138 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3138 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E004 OF 2025
MA ONYANGO, J
NOVEMBER 6, 2025
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E004 OF 2025
MA ONYANGO, J**

BETWEEN

**JULIUS ARIWOMOI 1ST PETITIONER
ISSA ELANYI CHAMAO 2ND PETITIONER
PATRICK KARANI EKIRAPA 3RD PETITIONER
PAUL NGWEYWO KIRUI 4TH PETITIONER**

AND

**WEST POKOT COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT
WEST POKOT COUNTY ASSEMBLY 2ND RESPONDENT**

RULING

1. The Petitioners filed a Notice of Motion dated 28th October 2025 seeking the following orders:
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. Pending the hearing and determination of this Petition, this Honourable Court be pleased to issue a temporary conservatory order suspending and or staying the scheduled interviews arising from the impugned recruitment process initiated on 29th September 2025 for the



position of Clerk of the County Assembly of West Pokot, including the interviews slated for 3rd November 2025.

- v. Pending the hearing and determination of the Petition, this Honourable Court be pleased to issue a conservatory order compelling the 1st Respondent to preserve, maintain, and avail the full record of the concluded 2023 recruitment process, including the score sheets, minutes, correspondence, and evaluation records.
 - vi. Costs of this application.
2. The application is premised on the grounds that sometime in 2023, the 2nd Respondent initiated a recruitment process for the position of Clerk through a public advertisement. However, the process was abruptly cancelled on account of alleged “errors” in the advertisement after approximately Kshs. 4,000,000 of public funds had already been expended on the exercise.
 3. The Petitioners aver that thereafter, a subsequent advertisement was published inviting qualified and interested candidates to apply for the position in accordance with the Human Resource Manual where shortlisted candidates underwent a fully constituted selection and vetting process, attended interviews, and participated in assessments conducted openly and competitively.
 4. The Petitioners contend that the process was completed in its entirety, and the only pending step was the release of results. According to the Petitioners, the Respondents failed, neglected, or declined to communicate the outcome despite having concluded every stage of the recruitment which process was frozen without any notice, explanation, or justification.
 5. It is the Petitioner’s case that the 1st Petitioner and other participants were left in prolonged administrative uncertainty while the office continued to be held on an acting basis from 2023 to date, contrary to the principles of merit-based recruitment and regularized occupancy of public office.
 6. The Petitioners allege that the concealment of results appears calculated to frustrate a lawful process and allow external manipulation of the vacancy.
 7. The Petitioners assert that on 29th September 2025, the Respondents published a fresh advertisement for the same position without disclosing that a fully concluded recruitment exercise already existed for the same vacancy. According to the Petitioners, the new advertisement altered the terms of service from a three-year contract to permanent and pensionable terms thereby altering the process midway to achieve a different outcome.
 8. In addition, it is stated that the advertisement introduced a new qualification not provided in the Human Resource Manual or any applicable law to wit; that the successful candidate must obtain approval of the County Assembly upon the recommendation of the County Assembly Service Board.
 9. According to the Petitioners, the County Assembly Human Resource Manual explicitly sets out the requirements for appointment to the office of Clerk as follows:
 - i. Served as Deputy Clerk or in a comparable position for a minimum period of three (3) years;
 - ii. Bachelor’s degree in Social Sciences or Political Science, Sociology Economics, Public Administration, Law, Business Administration, Education, or its equivalent qualification from a recognized institution;
 - iii. Master’s degree in Social Sciences or Political Science, Sociology Economics, Public Administration, Law, Business Administration, Education, or its equivalent qualification from a recognized institution;



- iv. Registration with a professional body;
 - v. Proficiency in computer applications; and
 - vi. Demonstrated merit and ability as reflected in work performance and results.
10. The Petitioners further contend that instead of issuing a public notice inviting objections, memoranda, or participation from members of the public, the Respondents concealed the recruitment process and privately issued an internal memo dated 24th October 2025 purporting to shortlist candidates and fix interviews for 3rd November 2025 at the Assembly precincts.
 11. It is alleged that the Respondents did not publish any interview notice in at least two newspapers of national circulation, did not publicly notify the citizenry of the date of the interviews, and did not allow public scrutiny or objections.
 12. The Petitioners therefore argue that the exclusionary process deliberately denied the public the opportunity to engage with, question, or challenge the suitability of the shortlisted individuals.
 13. The Petitioners assert that they reasonably expected the 2023 process to be concluded through the issuance of results, having participated fully and in good faith but that instead, the Respondents discarded it and replaced it with a process designed to shield scrutiny and advance a pre-determined appointment through opaque steps.
 14. The Petitioners maintain that the cumulative conduct of the Respondents of abandoning a concluded process, withholding of results, alteration of recruitment criteria, concealment of interview scheduling, and failure to issue public notifications demonstrates bad faith, lack of transparency, and administrative manipulation inconsistent with fair competition for public office.
 15. They further argue that since the impugned re-advertisement closed on 21st October 2025, and by a memo dated 24th October 2025 shortlisted candidates were invited for interviews on 3rd November 2025, urgent intervention by this Court is necessary to prevent the Petition from being rendered nugatory.
 16. In opposition, the Respondents filed a Replying Affidavit sworn on 31st October 2025 by Hon. Fredrick Kaptui, the Speaker and Chairperson of the 2nd Respondent. He avers that the Petitioners have not demonstrated any nexus with the impugned recruitment process nor have they produced evidence of participation in the 2023 recruitment exercise. On this basis, the deponent argue that the Petitioner lack locus standi to institute or sustain the Petition, having failed to show any personal or direct legal interest capable of protection under Articles 22 or 258 of *akn ke act 2010 constitution the Constitution*.
 17. According to the Respondents, a recruitment process for the position of Clerk was indeed initiated in 2023 but was lawfully discontinued after procedural and substantive anomalies were identified in the advertisement and evaluation criteria, rendering the process incapable of producing a credible or sustainable appointment.
 18. It is deponed that the discontinuation of the 2023 process was an administrative decision squarely within the discretion of the County Assembly Service Board under Section 12(7) of the *akn ke act 2012 17 County Governments Act*, and consistent with the Human Resource Manual, which empowers the Board to review, annul, or recommence recruitment where irregularities are discovered.
 19. The Respondents further states that no candidate had acquired any vested or legitimate expectation to appointment since no results or offers had been communicated.



20. It is contended that the decision to re-advertise the position on 29th September 2025 was made in good faith and in a transparent manner. Further, that the re-advertisement aligned with the need for stability in the administrative leadership of the Assembly, changing the terms from contract to permanent and pensionable in accordance with Article 232(1)(b) and (d) of *akn ke act 2010 constitution the Constitution*.
21. The Respondents deny allegations of concealment and aver that the recruitment process was duly advertised in newspapers of national circulation. They maintain that the memo dated 24th October 2025 was merely an internal administrative document.
22. The Respondents assert that the Petitioners have failed to establish any violation or threatened violation of *akn ke act 2010 constitution the Constitution* or the *akn ke act 2015 4 Fair Administrative Action Act* and have thus not satisfied the principles for the grant of conservatory orders as laid down in *Giella v Cassman Brown, Mumo Matemu v Trusted Society of Human Rights Alliance & Others* [2013] eKLR, and *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR.
23. The Respondents further aver that the Petitioners have neither established a prima facie case nor demonstrated irreparable harm or that the balance of convenience favours them.
24. It is the Respondents' case that halting the recruitment would be contrary to the principles of effective governance, public service continuity, and responsible use of public resources enshrined under Article 232(1)(a), (b), and (d) of *akn ke act 2010 constitution the Constitution*.
25. The Respondents therefore urge that the application be dismissed with costs as it is speculative, unsubstantiated, and contrary to public interest.
26. The application was argued orally on 3rd November 2025, with Counsel Kibiti holding brief for Counsel Wanyama for the Petitioners, and Counsel Wanyonyi appearing for the Respondents. The oral submissions largely reiterated and emphasized the respective grounds upon which the application is made and the Respondents' affidavit on record.

Analysis and Determination

27. I have considered the Notice of Motion dated 28th October 2025, the grounds appearing thereon, the Replying Affidavit and the rival oral submissions made by counsels for the parties. The issue for determination at this interlocutory stage is whether the Petitioners have met the legal threshold for the grant of conservatory orders pending the hearing and determination of the Petition.
28. The nature and principles governing interlocutory applications for conservatory orders are within the framework of Article 23 of *akn ke act 2010 constitution the Constitution*. At this point, the Court is required to evaluate the pleadings and determine whether denial of conservatory orders will prejudice the applicant as was stated in the case of the Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General, Nairobi High Court Petition No. 16 of 2011; {2011} eKLR: where the Court held;

“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 *akn ke act 2010 constitution the Constitution*.”



29. In the case of *Judicial Service Commission v. Speaker of the National Assembly & Another* [2013] eKLR, Odunga J, as he then was stated as follows:
- “Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under *akn ke act 2010 constitution the Constitution*, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.”
30. The parameters governing the grant of conservatory orders are well settled in Kenyan jurisprudence. In *Mumo Matemba v Trusted Society of Human Rights Alliance & Others* [2013] KECA 445 (KLR) the Court of Appeal held that an applicant must demonstrate a prima facie case with a likelihood of success, show that they will suffer prejudice if the order is not granted, and establish that the public interest favors the granting of the orders sought.
31. The Petitioners’ case, as gleaned from the grounds on the Motion and the pleadings in the Petition, is that the Respondents unlawfully abandoned a completed recruitment process conducted in 2023, withheld results, and initiated a new process in September 2025 under altered terms and without public participation. They argue that unless the Court intervenes, the ongoing interviews will render the Petition nugatory.
32. The Respondents, on the other hand, maintain that the earlier recruitment process was discontinued due to procedural irregularities and that the re-advertisement of 29th September 2025 was lawfully undertaken in compliance with the *akn ke act 2012 17 County Governments Act* and their Human Resource Manual. They further argue that the Petitioners have not demonstrated participation in the 2023 process or any legal interest to clothe them with locus standi.
33. The question, therefore, is whether the Petitioners have demonstrated an arguable case of constitutional or statutory violation. The Petitioners have raised issues touching on transparency, fair administrative action, and accountability in public recruitment processes, which fall within the ambit of Articles 10, 27, 47, and 232 of *akn ke act 2010 constitution the Constitution*.
34. Although the Respondents contend that the Petitioners have not proved personal participation or locus standi, Article 258 of *akn ke act 2010 constitution the Constitution* grants any person the right to institute proceedings to protect *akn ke act 2010 constitution the Constitution*, even without demonstrating personal injury, provided the public interest is implicated.
35. On the material before the Court, the Petitioners have presented correspondence, public notices, and administrative memos suggesting that a recruitment process was indeed initiated and concluded in 2023, though without official results being communicated. Whether that process was validly terminated or irregularly abandoned is a triable constitutional issue that warrants interrogation at the substantive hearing.
36. Accordingly, the Court is satisfied that the Petitioners have established a prima facie case with arguable constitutional questions deserving consideration by the court.
37. On the issue whether irreparable harm has been demonstrated, it is not disputed that the interviews were scheduled for 3rd November 2025. Further, although the advertisements were published on 29th September, 2025, the Respondents waited until just before the interviews to approach the courts. The prayers to stop the interviews is therefore overtaken by events.



38. Further, the list of qualified applicants having been published by the time the applicants came to court, the Applicants ought to have joined them as they would be affected by any orders of this court stopping the process.
39. Finally, should the appointments be effected, the suit would not be rendered nugatory as the court has powers to nullify the process should the process be found to be unconstitutional after the parties have been heard.
40. It is further not in the public interest to stop the process at this juncture before the weighty issues raised in both the petition and the replying affidavit are considered by the court. In any event, substantial public funds had already been expended by the time this petition was filed, which would go to waste should the process be stopped and then found to be regular after hearing the parties.
41. The Court is therefore not persuaded that the process of recruitment of the Clerk for the County Assembly of West Pokot should be temporarily suspended at this stage. The application is accordingly declined.

DATED, SIGNED AND DELIVERED VIRTUALLY

THIS 6TH DAY OF NOVEMBER, 2025.

M. ONYANGO

JUDGE

