



**Enow v Kenya Film Classification Board & 2 others (Employment and Labour Relations
Petition E199 of 2024) [2025] KEELRC 3111 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3111 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E199 OF 2024**

**HS WASILWA, J
NOVEMBER 5, 2025**

BETWEEN

ADAN OMAR ENOW PETITIONER

AND

KENYA FILM CLASSIFICATION BOARD 1ST RESPONDENT

**THE CABINET SECRETARY, MINISTRY OF YOURTH AFFAIRS, CREATIVE
ECONOMY AND SPORTS 2ND RESPONDENT**

THE HON ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. By an Amended Petition dated 10th December 2025, the Petitioner sought for the following reliefs; -
 - a. That a declaration be issued under articles, 41, 47, 23 and 232(g) of *the Constitution* and Section 4 - 6 of the Fair Administrative Act, No 4 of 2015, that the Respondents are under a duty to have regard to competence and suitability, experience and qualities, merit and ability as assessed by the 1st Respondent through their recommendation for the Petitioner’s appointment as the Chief Executive Officer of the 1st Respondent.
 - b. That a declaration be issued that the Respondents have failed to have regard to competence and suitability, experience and qualities, merit and ability as assessed by the 1st Respondent through their Recommendation for the Petitioner’s appointment as the Chief Executive Officer of the 1st Respondent.
 - c. That a declaration be issued that the 2nd Respondent’s failure and omission to have regard to competence and suitability, experience and qualities, merit and ability as assessed by the 1st Respondent through their recommendation when approving the Petitioner’s appointment as the Chief Executive Officer of the 1st Respondent illegal and unconstitutional.



- d. That a declaration be issued that the decision not to appoint the Petitioner as the Chief Executive Officer of the 1st Respondent is null and void ab initio and ought to be reversed so as to pave way for his appointment which is merited, genuine and constitutional.
- e. An order do issue to remove to this court and q quash the decision of the Respondents to decline to appoint the Petitioner to the position of Chief Executive Officer of the 1st Respondent.
- f. That a permanent mandatory order do issue directing the 2nd Respondent to appoint the Petitioner, as the most successful candidate duly recommended for the appointment by the 1st Respondent.
- g. That the cost of this Petition be borne jointly and severally by the Respondents.
- h. That this court be pleased to grant such further order or orders as it may deem to be just and appropriate.

Petitioner's Case

2. The Petitioner avers that he applied for the post of the 1st Respondent's Chief Executive Officer and he was invited for an interview on 14th May 2024 which he attended. Subsequently, the 1st Respondent recommended to the 2nd Respondent that he be appointed, as he emerged the successful candidate.
3. It is the Petitioner's case that contrary to the recommendation, the 2nd Respondent has failed to appoint him thus overlooking his credentials, abilities, experience and qualities that meet the needs of the advertised position.
4. The Petitioner avers that the 1st Respondent has re-advertised the position requiring all applications to be made by close of business on or before 25th November 2024, a clear indication that he would not be appointed to take up the position which he is qualified for and having competently earned it.
5. It is the Petitioner's case that the re-advertisement of the same position is irregular and motivated probably by nepotism, partiality and/or by political considerations contrary to the stipulated considerations under the applicable law and regulations.
6. The Petitioner avers that the decision not to appoint him to the position he is qualified for is illegal, unconstitutional, wrong and thus it is null and void ab initio. The Respondent's conduct violated Articles 2(1) and (2), 3(1), 10(1), 19, 20(1) and (2), 21(1), 22(1), 23, 27(1) and (2), 41(1), 47, 232, 258 and 259(1) of *the Constitution*.
7. The Petitioner avers that the 2nd Respondent failure to appoint him to the advertised position is due to political considerations, nepotism and other reasons best known to it. The 2nd Respondent's actions discriminated against him and violated the rule of law and principal of transparency as he is the competent and qualified candidate.
8. The Petitioner avers that by failing to appoint him, the Respondents are in violation of Article 19 which cements the Bill of Rights as an integral part of Kenya's democratic state and preserves the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. The Respondents further violated his right to fair labour practices and fair administrative action.
9. The Petitioner avers that this court has the jurisdiction to entertain this matter and grant the orders sought pursuant to the aforementioned Article of *the Constitution*.



10. The Petitioner avers that he had a legitimate expectation that he would be appointed to the advertised position of the 1st Respondent's Chief Executive Officer in light of his emergence as the most successful candidate and his recommendation for appointment by the 1st Respondent, as he presumed such appointment to be based on merit. The right to fair labour practices requires that the most successful candidate for a position be offered the said position.
11. The Petitioner avers that Article 47, every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. If a right or fundamental freedom of a person has been or likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
12. The Petitioner avers that the 2nd Respondent's failure to appoint him to the advertised position was/is not lawful, reasonable, procedurally fair, and/or transparent or accountable. This is owing to be fact that the procedures that were put in place for the said appointment, including interview before the 1st Respondent who would then recommend a candidate for appointment have evidently not been complied with.
13. The Petitioner avers that under Article 232 of *the Constitution* sets out the values and principals of public service as including; high standards of professional ethics, involvement of the people in the process of policy making, accountability and transparency, fair competition and merit as the basis of appointments and promotions and affording adequate and equal opportunities for appointment, training and advancement at all levels of public servants. The Respondents have not adhered to the said values and principals.
14. It is the Petitioner's case that failing to appoint him to the position is a deliberate and premeditated scheme to deny him his meritorious position and as well propagate corruption, impunity, arbitrariness and wastage of public resources.

1st Respondent's Case

15. In opposition to the petition, the Respondents further filed a replying affidavit dated 27th February 2025 sworn by Paskal M. Opiyo, its Acting Chief Executive Officer.
16. The Respondent avers that the Board, is established under Section 11 of The *Films and Stage Plays Act*, Chapter 222, Laws of Kenya, with the mandate to regulate the creation, broadcasting, possession, distribution, and exhibition of films. Section 11A further establishes a Board of Directors whose functions include the appointment of the Chief Executive Officer.
17. Pursuant to Section 2.12 of the Board's Human Resource Policy and Procedures Manual, the Chief Executive Officer shall be appointed by the Board through an open, competitive, fair and merit-based process while adhering to national values and principles of governance provided for under Article 10 of *the Constitution*.
18. The 1st Respondent avers that on 11th December 2023, the Board published an advertisement for the position of the Chief Executive Officer and 3 managers, inviting application for a period of 21 days. The deadline of receiving applications was on 25th December 2024 to which the total number of applicants including the Petitioner, were 36 in number.
19. The prospective candidates were invited to attend the interviews conducted by the Board which were scheduled on 13th and 14th May 2024; the Petitioner attending on 14th May 2024.



20. The 1st Respondent avers that the Board of Directors in the minutes of the 4th Special Board Meeting of the Financial Year 2023/2024 held on 13th – 17th May 2024 ascertained that the Petitioner was the second-best candidate in his category after garnering 77.3 points.
21. Subsequently, the Board held another meeting on 28th May 2024 where it was agreed that further due diligence through background checks be conducted on the shortlisted candidates by obtaining reports from various government institutions as well as academic institutions the respective candidates attended and their previous work places.
22. It is the 1st Respondent's case that vide letters dated 30th May 2024, the Board requested integrity reports for the top three candidates for the CEO position from the Directorate of Criminal Investigations (DCI), National Intelligence Service (NIS) of Kenya and the Ethics and Anti-Corruption Commission (EACC). They further informed, Hon. Ababu Namwamba the then Cabinet Secretary (CS) for the Ministry of Youth Affairs, Creative Economy, and Sports of their resolutions.
23. The 1st Respondent avers that EACC responded to vide a letter dated 11th June 2024 and indicated that it had not undertaken any investigations on the Petitioner. Additionally, the Petitioner's previous employer, the County Government of Wajir through the County Public Service Board sent a confidential report dated 19th June 2024 where his previous employment details were noted.
24. The 1st Respondent avers that the Board sent a letter dated 18th June 2024 to Hon. Ababu Namwamba forwarding the profiles of the top three candidates for the CEO position. Further vide its letter dated 3rd July 2024, the Board forwarded the candidates' confidential reports received from EACC and their previous employers and informed the CS it was yet to receive the report from DCI.
25. It is the 1st Respondent's case that owing to ministerial changes by the government of Kenya in July 2024, Hon. Kipchumba Murkomen was then appointed as the CS for the Ministry of Youth Affairs, Creative Economy, and Sports.
26. The 1st Respondent avers that the Board vide its letter dated 23rd August 2024, the Board informed Hon. Kipchumba Murkomen of its ongoing vetting of the Board's Chief Executive Officer. Further, vide its letter dated 26th August 2024, the Board highlighted the 2nd Respondent's role in appointment of the 1st Respondent's CEO and informed him they are yet to receive the confidential reports from the DCI.
27. The 1st Respondent avers that the 2nd Respondent vide a letter dated 23rd September 2024, declined the Board's concurrence of approval for the appointment of the proposed candidates noting that various documents needed for the same had not been availed at the time and under powers conferred to him, directed the Board to re-advertise the position.
28. It is the 1st Respondent's case that pursuant to Regulations 2 and 17 of the Public Service Commission Regulations, 2020, the Board neither received communication verifying the candidates' academic credentials as well as their qualifications nor the reports on the Petitioner requested from the DCI and EACC. These reports were critical in ascertaining the candidates' leadership and integrity eligibility as provided under Chapter Six of *the Constitution* and as such appointment of the CEO could not proceed.
29. It is the 1st Respondent's case that without the reports and verified documents, the 2nd Respondent could not approve any of the candidates' details forwarded.



30. The 1st Respondent avers that the Petitioner could not have had knowledge that he emerged as the successful candidate for the CEO position as during the recruitment process and verification period, none of the candidates were informed of the interview scores, suitability or the Board's decision regarding the position.
31. The 1st Respondent avers that it is strange the Petitioner had knowledge of the Board's resolution and/or background activities thus making it apparent the Petitioner engaged in collusion to obtain confidential information with the intention to influence the appointment thereby prejudicing the integrity of the recruitment process.
32. It is the 1st Respondent's case that the Petitioner never wrote to the Board demanding and/or requesting for information on the recruitment process before instituting this Petition as well as the application, thus, the prayers sought are premature and violates Section 9 of the *Fair Administrative Action Act*.
33. The 1st Respondent avers that the Board never recommended or resolved to appoint the Petitioner as the CEO and the petition is based on speculations and unverified information and is in breach of the *Public Officer Ethics Act* since it is founded on illegally and fraudulently obtained confidential information.
34. The 1st Respondent avers that the cancellation of the initial recruitment process was done to ensure due process and compliance with statutory requirements.
35. Further, halting the recruitment of a substantive CEO which is essential for decision making, policy implementation and overall operational efficiency of the 1st Respondent and as such public interest and policy demands that the process is repeated and concluded.
36. The 1st Respondent avers that the Petitioner has not demonstrated any violation of his constitutional rights or any procedural irregularities to warrant the orders sought and the contention that he was the best candidate for the CEO position is a lie as evidenced by the interview reports.

2nd and 3rd Respondent's Case

37. In opposition to the petition, the Respondents filed grounds of opposition dated 12th February 2025 on the following grounds:
 1. That the petition does not satisfy the threshold of what constitutes a constitutional petition as per the principle in the case of *Anarita Karimi Njeru v The Republic (1979) eKLR*. The well-established principle provides that the Petitioner ought to demonstrate how the Respondents' conduct and actions amount to a violation and contravention of fundamental rights and freedoms. The principle is enunciated as thus: The violations must be pleaded with a reasonable degree of precision. The violations must be particularized in a precise manner. The manner in which the alleged violations were committed and to what extent.
 2. That it is indisputable for a constitutional petition to be sustainable as such, it must at a minimum satisfy a basic threshold. It must with some degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of violation.
 3. The above principle was restated by the Court of Appeal in the case of *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others (2013) eKLR*. The Court at paragraph 44 of the judgment stated as follows: - "(44) We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru (supra)*. In view of this, we find that the petition before



the High Court did not meet the threshold established in that case. At the very least, the 1st Respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply.”

4. That the Petitioner has not demonstrated before the Honourable Court how the Respondents have violated his constitutional Rights. The Petitioner herein ought to illustrate that the Respondents actions were unreasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
5. That the Petitioner cannot invite the invocation of violation of Constitutional provisions requiring enforcement by way of a petition whereas there exists sufficient
6. statutory legal provisions.
7. That the conduct of the Respondents does not constitute any violation of fundamental rights and freedoms.
8. That the petition is not sustainable and constitutes an abuse of the process of the Court and should be accordingly ordered struck out as there exists proper forums and avenues in law that ought to be explored and exhausted by the Petitioner.
9. That constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation and the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.
10. That it is not sufficient to merely cite constitutional violations as it was observed in the case of *Grays Jepkemoi Kiplagat v Zakayo Chepkoga Cheruiyo* where the court upheld the Respondent’s Preliminary Objection. In the aforementioned matter it was held that there was no infringement of any Constitutional provisions under the Bill of Rights to justify the Petitioner to invoke the Constitutional jurisdiction of the Court and that the petition was not sustainable,
11. That the amended petition is misconceived, incompetent and an abuse of the court process and the same ought to be struck out.
12. On the foregoing the amended application is misconceived, a non-starter and is devoid of any merits and a proper candidate for dismissal.

Petitioner’s Submissions

39. The Petitioner submitted that by failing to appoint the Petitioner as the Chief Executive Officer following the 1st Respondent’s recommendation; the Respondents’ actions violated and infringed his rights and fundamental freedoms by the blatant breach of the express provisions of Articles 2 (1) and (2), 3 (1), 10 (1) and (2)(c), 19, 20 (1) and (2), 21 (1), 22 (1), 23, 27 (1) and (2), 41 (1), 47, 232, 258 and 259 (1) of *the Constitution*.
40. The Petitioner submitted that the 2nd Respondent failed to appoint him due to political considerations, nepotism and/or any other discriminatory reasons despite having been recommended for the appointment by the 1st Respondent on merit.
41. The Petitioner submitted that Article 41 (1) of *the Constitution* provides for the right to fair labour practices which requires the most successful candidate for a position be appointed but in the current case, the Respondents have breached this constitutional right of the Petitioner by failing to appoint



him as the Chief Executive Officer for the 1st Respondent. He cited *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] eKLR.

42. The Petitioner submitted that Section 5 of the *Employment Act* provides for non-discrimination in employment and also stipulates that an employer who contravenes the provision of this section commits an offence. The *Employment Act* does not provide an equitable remedy thus the institution of this constitutional petition.
43. It is the Petitioner's submission that Article 47 of *the Constitution* provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. He cited *Suchan Investments Limited v Ministry for National Heritage & Culture & 3 others* [2017] eKLR wherein the court stated that if a right or fundamental freedom of a person has been or likely to be adversely affected by an administrative action, the person has the right to be given written reasons for the action. The Petitioner contends that he was not given any justifiable written reasons for failure to be appointed by the 2nd Respondent following the recommendation done by the 1st Respondent.
44. The Petitioner submitted that the 1st Respondent action of re-advertising the position contravened Article 232 of *the Constitution* which sets out the values of public service which include: high standards of professional ethics, involvement of the people in the process of policy making, accountability and transparency, fair competition and merit as the basis of appointments and promotions and affording adequate and equal opportunities for appointment, training and advancement at all levels of public servants.
45. It is the Petitioner's submission that he has been denied his right to appointment following a fair interviewing process conducted by the 1st Respondent whereby he emerged the most suitable candidate for the position and a recommendation forwarded to the 2nd Respondent to appoint him. He asserts that it is impunity that ought to be firmly discouraged by this court.
46. The Petitioner submitted that he has established on a balance of probabilities that he should be granted the orders sought. As regards to the costs of this case we submit that, in civil litigation it is a well-established principle law that costs follow the event thus he prays to be awarded costs.

1st Respondent's Submissions

47. The 1st Respondent submitted on five issues: whether the Petitioner was the best candidate after the interview conducted by the 1st Respondent; whether the Petitioner was the most suitable candidate for appointment as the 1st Respondent's Chief Executive Officer; whether the Petitioner's constitutional rights were violated; whether the Petitioner is entitled to the orders sought; and whether the Petitioner should be liable for the costs of the petition.
48. On the first issue, the Respondent submitted that its public advertisement dated 11th December 2023 was pursuant to the Section 2.14 of the 1st Respondent's Human Resource policy and Procedures Manual which provides for the terms and conditions of employment. Section 2.14 provides for the recruitment procedure and Section 2.14.4 states that senior posts, Grades KFCB 1 to KFCB 4 will be advertised externally in an open, competitive, fair and merit-based process.
49. The 1st Respondent submitted that 1st Respondent invited applications for a period of 21 days. Accordingly, the deadline for receiving the Applications was on 25th December 2023 to which the total number of applicants, including the Petitioner were 36. The prospective Candidates were then invited to attend interviews by the 1st Respondent which were scheduled on 13th and 14th May 2024. The Petitioner was vide a letter dated 22nd April 2024 invited to attend his interview on 14/05/2024.



50. The 1st Respondent submitted that vide the minutes of the 4th Special Board Meeting of the Financial Year 2023/2024 held from 13th – 17th May 2024 whereby it considered, inter alia, the interview results/scores, of the Candidates for the CEO position, ascertained that the Petitioner was the 2nd best Candidate in his category after garnering 77.3 points.
51. The 1st Respondent submitted that the Petitioner's claim of being the most successful candidate is untrue, given that he was in fact ranked second, after Dr. Harun Karanja who scored 80.4 points and it is thus evident that the petition is founded on falsehoods and baseless assumptions intended to mislead the court.
52. The 1st Respondent submitted that Section 2.12.1 of its Respondent's Human Resource policy and Procedures Manual provides for merit-based appointments as: "The CEO shall be appointed by The Board through an open, competitive, fair and merit-based process. While making the appointment, The Board shall adhere to national values and principles of Governance and the values and principles of public service as set out in *the constitution*." Additionally, Section 36 (1) (a) of The Public Service Commission provides that: "In selecting candidates for appointment or promotions, the Commission or other lawful appointing authority shall have regard to: merit, equity, aptitude and suitability."
53. It is the 1st Respondent's submission that the Petitioner could not be considered for appointment as he did not emerge as the most successful candidate in the interviews; he was placed second in the interviews.
52. On the second issue, the 1st Respondent submitted that Section 2.1.4 of its Human Resource policy and Procedures Manual provides for the terms and conditions of employment and states that: "When making a decision on selection on first appointment, information _concerning a candidate's general background and/or previous employment shall be verified. No appointment shall be offered to any employee prior to such verification." In addition, Section 2.16.4 provides that the Board shall conduct background checks for candidates to be recruited.
53. The 1st Respondent submitted that it conducted another meeting on 28th May 2024 whereby it discussed, alongside other agenda items, the finalization of the recruitment process for the CEO and the managers pursuant to Section 2.19.5 of its Human Resource policy and Procedures Manual that provides for the vetting of documents. Moreover, it was resolved that due diligence as well as the candidates' verification of academic and professional qualifications as mandated by the 1st Respondent's manual, on the first three candidates for the CEO position as well as the above-mentioned managers be undertaken by forwarding their names to the DCI, EACC, NIS, their respective academic institutions and former employers for clearance
54. The 1st Respondent submitted that forwarding the names of the top three candidates vide letters dated 30th May 2024 to the aforesaid mandated agencies was intended to facilitate background integrity checks on the Candidates and to ensure compliance with Chapter 6 of *the Constitution*, as expressly required in the job advertisement.
55. The 1st Respondent submitted that Section 2.19.4 of its Human Resource policy and Procedures Manual provides for compliance with Chapter 6 of *the Constitution* that: "For compliance with Chapter 6 of *the Constitution*, job applicants will be required to obtain clearance from the following state agencies as shall be specified in the job advertisement: Higher Education Loans Board; Ethics and Anti-Corruption Commission; Kenya Revenue Authority; Criminal Investigation Department; any other agencies as shall be prescribed by the Government from time to time; and clearance from the Criminal Investigation Department and obtaining a certificate of good conduct shall be mandatory for all job applicants.



56. The 1st Respondent submitted that notwithstanding its request for the integrity and background reports from the mandated agencies, none were furnished to facilitate the clearance of the candidates, and consequently, the appointment could not proceed as any such appointment would be illegal, null and void. It cited *Benson Ritho Mureithi -vs- J.W. Wakhungu & 2 Others* [2014]eKLR whereby the court held that the Cabinet Secretary's failure to have regard to the integrity of the first interested party when appointing him as the Chairman of the Athi Water Services Board was unlawful and unconstitutional and was thus quashed.
57. The 1st Respondent submitted that vide a letter dated 23rd August 2024, it apprised the 2nd Respondent of the CEO recruitment process and attached: the advert, the long-list and short-list of the candidates for the position, minutes of the outcome from the interviews and the confidential reports from the candidates' former employers. In response, the 2nd Respondent vide a letter date 23rd September 2024 pointed out that the requisite vetting and integrity checks including academic certificate verification had not been undertaken by the relevant agencies as mandated by the law, and thus declined to appoint any of the top three candidates and advised the 1st Respondent to re-advertise the position.
58. The 1st Respondent submitted that the position was re-advertised owing to the failure of the mandated agencies to avail the requisite integrity reports, and since due diligence could not be undertaken, it was prudent and necessary to re-advertise the position in order to commence a process that adhered to legal requirements.
59. The 1st Respondent submitted that the Petitioner's assertion that it recommended him is unfounded and misleading, as no recommendation letter nor offer letter was ever issued to him in accordance with the law, given that he did not satisfy the suitability test, which can only be achieved upon clearance.
60. The 1st Respondent submitted that the Petitioner was neither the best nor most suitable candidate and, further, that he was never issued with an offer letter as required by law and Section 2.17 of its Respondent's Human Resource policy and Procedures Manual.
61. On the third issue, the 1st Respondent submitted that the Petitioner was not the most suitable or successful candidate and, further, was not issued with any offer letter as he alleges. Consequently, no legitimate expectation of appointment could arise. It cited *Communications Commission of Kenya & 5 Others -vs- Royal Media Services Limited & 5 Others* [2014]eKLR whereby the Supreme Court held that: "Legitimate expectation could only arise on: an express, clear and unambiguous promise given by a public authority, the expectation itself must be reasonable; the representation must be one which it was competent and lawful for the decision maker to make and there cannot be a legitimate expectation against clear provisions of the law or constitution."
62. The 1st Respondent submitted that circular PSC/ADM/13(42) from the Public Service Commission addressed the authentication of academic and professional certificates within the public service and gave effect to the provisions of Chapter 6 of *the Constitution* and that lacking verification of both academic and professional qualifications, any appointment would be legally and procedurally flawed.
63. The 1st Respondent submitted that the appointment of its CEO had not crystallized in the absence of the background checks and integrity reports, which are mandatory under the 1st Respondent's manual, and without which the requirements of Chapter 6 of *the Constitution* could not be satisfied. Reliance was placed in *Malaya v Masinde Muliro University of Science and Technology* [2023] eKLR whereby the court in dismissing the Petition held that legal expectation is not wishful thinking and does not arise simply because the petitioner is convinced of an appointment when the appointing authority conducts its recruitment and also when the promise of an appointment has not been made to the Petitioner.



64. The 1st Respondent further submitted that no expectation can be deemed legitimate if its fulfilment would necessitate an unlawful act by the decision maker that is by the Cabinet Secretary appointing the Petitioner despite the requirements of Chapter six of *the Constitution* not being upheld.
65. The 1st Respondent submitted that it is evident that there exists no basis for any legitimate expectation to arise, given that the petitioner was not the most successful candidate in the interview and that the top three candidates were never cleared. Accordingly, the Petitioner's claims are without merit and ought to be dismissed.
66. The 1st Respondent submitted that there was no discrimination against the Petitioner, the recruitment having been openly advertised, interviews carried out for all shortlisted candidates, integrity vetting equally requested for each of the three, and the top three names even forwarded to the Cabinet Secretary. Reliance was placed in the Supreme Court's definition of discrimination in *Law Society of Kenya -vs- Attorney General & COTU*; Petition No. 4 of 2019 where the court held that discrimination is: "A distinction whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group but not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to members of society."
67. The 1st Respondent submitted that the Petitioner has not adduced any evidence to support the allegations of discrimination other than stating that he was not appointed due to either political considerations or nepotism. Neither has he established any credible basis for the alleged discrimination, whether direct or indirect, nor shown any differential treatment in comparison to other candidates before filing this petition.
68. It is the 1st Respondent's submission that the recruitment process was cancelled to all Applicants and not the Petitioner alone. Most notably, the evidence on record shows that the Petitioner was not the best candidate during the interview and as such the allegations of discrimination and/or unfavourable treatment are baseless, unfounded and untenable.
69. The 1st Respondent submitted that the Petitioner has not substantiated his allegations of nepotism. It cited *Ernest Moturi Ogwora —vs- National Cereals & Produce Board & Another* [2021]eKLR, wherein the court held that allegations of nepotism and/or ethnic preference must not merely be asserted but must be established through proof.
70. On the fourth issue, the 1st Respondent submitted that the interviews for the short-listed candidates, the Petitioner included, were conducted in strict accordance with its manual, and that the Petitioner did not emerge as the best candidate in his category as he was second after Dr. Harun Karanja who scored 80.4 points. Thereafter, it was obliged to undertake due diligence as required by its governing law and in compliance with chapter 6 of *the Constitution*, and the appointment could not proceed as the candidates had not been duly cleared.
71. The 1st Respondent submitted that the Petitioner's prayers for a declaration that it should have regard to competence, suitability and merit are not only moot but also devoid of merit, the evidence clearly showing that such principles were faithfully adhered to in the recruitment process. Consequently, the orders sought are incapable of being granted.
72. The 1st Respondent submitted that other than grounding the petition on unsubstantiated and speculative allegations, the Petition has not demonstrated before this court by way of evidence any special circumstance that would warrant the issuance of a mandatory order for his appointment.



73. The 1st Respondent submitted that the petition does not meet the threshold of a constitutional petition and warrants striking out in limine. The Petitioner has failed to clearly articulate the basis of his complaint as his pleadings do not disclose adequate particulars as relates the alleged cause of action or claim necessary to enable this Court to legally adjudicate the petition or grant the reliefs sought as provided in *Anarita Karimi Njeru —vs- Republic* [1979]eKLR.
74. The 1st Respondent submitted that the violations alleged by the Petitioner are simply allegations based on unverified information as it never publicized or informed any of the shortlisted candidates of the interview results and that this petition was instituted based on hunches, feelings and speculations.
75. It is the 1st Respondent’s submission that the Petitioner procured confidential information relating to its recruitment process unlawfully, through collusion, given that the 1st Respondent neither published the interview results nor communicated the same to the other candidates.
76. It was submitted that at no point during or after the recruitment process did the Petitioner request from the 1st Respondent any details on the interview scores or progress. Consequently, any information he purported to have, including the fraudulent claim of recommendation, could only have been acquired through collusive means.
77. The 1st Respondent submitted that the Petitioner does not merit the orders sought or any further discretionary orders of this Court, having approached it dishonestly, in bad faith, and in a manner that amounts to an abuse of the court process.
78. On the final issue, the 1st Respondent submitted that it has incurred substantial expenses in defending this frivolous petition, and that the interlocutory application filed contemporaneously with the petition; wherein the petitioner was denied interim reliefs, was also canvassed through written submissions.
79. The 1st Respondent submitted that the Petitioner ought to pay it costs. It cited *Nicholas Kiptoo Arap Korir Salat —vs- Independent Electoral and Boundaries Commission & Others* [2013]eKLR whereby the court held that: “Costs normally follow the event, and there is no reason why this should not be the case here. I order that the petitioner pays the costs of the petition. Such costs shall be taxed by the Deputy Registrar, if they will not have been agreed upon.”
80. I have examined all the averments and submissions of the parties herein. The applicant has submitted that the 2nd respondent failed to appoint him due to political consideration, nepotism and other discriminatory reasons. The petitioner has however not pointed out how he came to this knowledge nor demonstrated who was then appointed due to nepotism or political consideration .
81. The petitioner further averred that he was the top candidate in the interview. He has however not exhibited such evidence showing he was the top candidate and the vetting results that would have led to his appointment. His averments remain speculative.
82. The principle laid out in the *Anarita Kirimi* case is that a petition must be pleaded with a reasonable degree of precision.
83. In this petition, the petitioner however only states what he speculates about. No evidence has been submitted to show he was best candidate and was recommended for appointment. It is true as respondents submit the top 3 candidates names were submitted and the petitioner was 2nd best but other mechanisms were still in place and there was no finality in appointment made or arrived at. What the petitioner thus seeks to rely on to prove his averments lacks precision and evidential proof.



84. The constitutional breaches made against the petitioner if any have not been proved and neither has the petitioner pointed them out. He in fact pleads he was reliably informed of his being cleared yet the informer has not sworn any affidavit to attest to this and neither has evidence been provided that in fact the petitioner was the only candidate cleared for appointment.
85. Without any other evidence before this court this court finds that the petition falls below the standard of proof for a constitutional petition and must therefore fail on that account.
86. I dismiss the petition accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF NOVEMBER 2025.

HELLEN WASILWA

JUDGE

