

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

PETITION NO. E187 OF 2025

**IN THE MATTER OF ENFORCEMENT OF THE
CONSTITUTION OF KENYA 2010;**

AND

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 27,
41, 47, 232 AND 258 OF THE CONSTITUTION OF KENYA**

2010;

AND

**IN THE MATTER OF IN THE MATTER OF APPOINTMENT
TO THE POSITION OF ASSISTANT CHIEF, GETWAB SUB-
LOCATION, HABASWEIN SUB-COUNTY, WAJIR COUNTY;**

AND

**IN THE MATTER OF THE FAIR ADMINISTRATIVE
ACTION ACT, NO. 4 OF 2015**

BETWEEN

MAHDI ABDI MOHAMED..... PETITIONER

- VERSUS -

MINISTRY OF INTERIOR AND

COORDINATION OF NATIONAL

GOVERNMENT..... 1ST RESPONDENT

COUNTY COMMISSIONER,

WAJIR COUNTY..... 2ND RESPONDENT

DEPUTY COUNTY COMMISSIONER,

HABASWEIN SUB-COUNTY..... 3RD RESPONDENT

THE HON. ATTORNEY GENERAL..... 4TH RESPONDENT

PUBLIC SERVICE COMMISSION..... 5TH RESPONDENT

- AND -

YUSUF SUGAL OMAR..... INTERESTED PARTY

*(Before Hon. Justice Byram Ongaya on Thursday 20th November,
2025)*

JUDGMENT

1. The petitioner filed the petition and supporting affidavit dated 23.09.2025 through Abdirazak & Company Advocates and prayed for:

- a) A declaration that the appointment of Mr. Yusuf Sugul Omar to the position of Assistant Chief, Getwab Sub-location, Habaswein Sub-County, Wajir County is unlawful, unconstitutional, null and void *ab initio*.
- b) A declaration that the acts of the 1st to 5th respondents in forwarding, approving, and/or appointing an unqualified person to the post were in contravention of the Constitution and the Fair Administrative Action Act.
- c) An order of *mandamus* compelling the 5th respondent to immediately appoint the petitioner, Mr. Mahdi Abdi Mohamed, as the Assistant Chief, Getwab Sub-location, Habaswein Sub-County, Wajir County, being the only qualified candidate as per the interviews conducted in November 2023.
- d) A declaration that the petitioner's rights under Articles 27, 41, 47, and 232 of the Constitution have been violated by the actions of the respondents.
- e) An order compelling the respondents to implement the directives contained in the Judgment of this Honourable

Court and in line with the letters and communications issued by the 5th respondent (PSC).

f) Cost of this petition be awarded to the petitioner.

2. The petitioner's case was as follows:

a. The petitioner is a resident of Gabwab, which is located between Diif to the south and Dajabula to the north, under Dajabula Division in Habaswein Sub-County, Wajir County.

b. The 1st respondent, through the 3rd respondent, advertised for the post of Assistant Chief Grade II in Habaswein Sub-County, Wajir County, on 11.08.2023, with interviews scheduled for September 2023. Since none of the applicants met the required criteria, the government re-advertised the position on 11.10.2023.

c. The petitioner applied for the said position pursuant to the advertisement issued by the respondents. He was shortlisted and interviewed in November 2023 and emerged as the only qualified candidate, having met the academic and age requirements.

- d. However, the Deputy County Commissioner of Habaswein and the Wajir County Commissioner were reportedly compromised. They forwarded the name of an unqualified applicant, who was only 29 years old at the time of the interview. The unqualified applicant's name was only sent to Nairobi six months later, after he had turned 30 years old.
- e. Despite the nullification of the earlier flawed recruitment process, the 5th respondent Commission, contrary to its own communication and guidance, ratified or failed to prevent the irregular appointment of one Mr. Yusuf Sugal Omar (hereinafter "the interested party") to the position of Assistant Chief, Getwab Sub-location.
- f. The interested party did not meet the advertised minimum requirements of being at least 30 years of age and holding a minimum KCSE grade of C- at the time of the said interviews. Therefore, his appointment was contrary to the law and procedure, and amounts to abuse of office, unfair administrative action and an infringement of the petitioner's

legitimate expectation of appointment as the only qualified candidate.

g. The petitioner was and remains the only qualified candidate pursuant to the interviews conducted in November 2023, and as confirmed by the documentary correspondence from the 5th respondent.

h. The actions of the respondents, and particularly the 5th respondent, in sanctioning or failing to prevent the appointment of an unqualified candidate directly violated provisions of the Constitution of Kenya, and this Honourable Court should intervene as prayed in the petition.

3. The petitioner particularised the violation of the Constitution of Kenya as follows:

(i) The respondents disregarded national values of good governance, integrity, transparency, accountability, and sustainable development under Article 10 by appointing an unqualified candidate, and undermining public trust in constitutionalism and the rule of law.

- (ii) The fully qualified petitioner was discriminated against in favour of an unqualified candidate, and the recruitment process unfairly denied him equal treatment before the law and in access to public service in violation of Article 27.
- (iii) The petitioner had a legitimate expectation of fair treatment in the recruitment process. By irregularly appointing an unqualified candidate, the respondents violated the petitioner's right to fair labour practices, including equal opportunity in public employment under Article 41.
- (iv) The recruitment process was not expeditious, lawful, reasonable, or procedurally fair. The appointment was arbitrary and irrational, lacking justification or lawful basis, thus infringing the petitioner's constitutional right to fair administrative action under Article 47.
- (v) Public office is a public trust that must be exercised in a manner consistent with the purposes and objects of the Constitution. Appointing an unqualified person undermines the principles of leadership, integrity, competence, and merit in violation of Article 73.

(vi) The respondents failed to uphold meritocracy, accountability, equity, transparency, and fair competition in public appointments. The impugned appointment is contrary to the principles that must guide recruitment in the public service under Article 232. In violation of Article 232(1) (i), the petitioner was unfairly excluded despite meeting all requirements.

(vii) By ignoring statutory requirements, constitutional provisions and prior judicial pronouncements, the respondents undermined the rule of law and the binding nature of court decisions under Article 2(1) and (4).

4. The 1st to 4th respondents entered appearance but did not file any response to the petition.

5. The 5th respondent filed its replying affidavit, sworn on 08.10.2025 by John Kimani Njorio, the Director, Board Management Services of the Commissions. It was stated and urged as follows:

a) The 5th respondent delegated its functions to the authorized officer at the Ministry of Interior and Co-ordination of

- National Government, to exercise its mandate to appoint chiefs and assistant chiefs.
- b) Following the Judgment in *Nairobi ELRC Petition No. E157 of 2024*, delivered on 27.11.2024, the Commission wrote to the PS, State Department for Internal Security & National Administration at the Ministry of Interior & National Administration, requesting all documents relating to the recruitment process, to enable it to comply with the directions of the Honourable Court. The Ministry responded to the PSC's letter forwarding the information as requested, through a letter dated 19.02.2025, received by the Commission on 26.02.2025. More information was later sent through email.
- c) The Commission, in its 2846th meeting held on 28.05.2025, considered the matter and noted that nine candidates applied for the position of Assistant Chief, Getwab Sub-location and seven were shortlisted. Four of the seven candidates attended the interviews conducted on 22.11.2023, with the interested party scoring 91% and the petitioner scoring 75%. The interviewing panel then recommended the interested party and

the petitioner on merit as first and second, respectively. On 19.06.2024, a list of recommended candidates was forwarded to the PS for appointment to various positions, including that of Assistant Chief, Getwab Sub-location. On 19.08.2024, the PS wrote to the Regional Commissioner directing that the post of Assistant Chief, Getwab Sub-location, be re-advertised and that issues of clan dynamics be considered in the recruitment and selection process.

- d) Consequently, the Commissioner resolved that there was no legal basis for the authorized officer to decline the appointment of the successful candidate and to direct the re-advertisement of the position. Secondly, Mr. Yusuf Sugul Omar was to be appointed to the position of Assistant Chief, Getwab Sub-location, having been found merited for appointment to the position. Lastly, the authorized officer was to issue the officer the requisite appointment letter immediately and by 13.06.2025. That decision of the Commission was communicated to the PS through a letter dated 04.06.2025.

- e) The Commission complied with the whole of the Court's Judgment in line with the Constitution and the law. It appointed the interested party to the subject position, as he was the best-suited and qualified candidate, having emerged first in the interview and was recommended for appointment.
6. The interested party's replying affidavit was sworn on 15.10.2025 and filed by Adoli & Company Advocates. The interested party refuted that the petitioner hailed from Habaswein Sub-County of Wajir County. He noted that the petitioner's identity card, as captured in the petitioner's supporting affidavit, shows that the petitioner was born in 1993, but does not include the date and month. Therefore, it cannot be presumed that the petitioner was above 30 years at the time of advertisement for the subject matter. That consequently, it is in bad faith for the petitioner to cast aspersions on legal organs of the government and their lawful processes without any tangible evidence whatsoever. He asserted that the petitioner had deliberately, wilfully and calculatingly failed to provide the qualification of each shortlisted applicant for this Court's reasonable comparison.

7. Further, the interested party filed a notice of preliminary objection dated 15.10.2025 on the following grounds:

(i) That this Honourable Court lacks the jurisdiction to hear and determine this case by virtue of Section 7 of the Civil Procedure Act (Cap 21) Laws of Kenya as it is an abuse of the court process.

(ii) That the subject matter of the dispute disclosed in the petitioner's application and petition, all dated 23.09.2025, revolves around appointment to the position of Assistant Chief Grade II in Habaswein Sub-County, Wajir County, Getwab Sub-location. The same subject matter was in dispute in **Mahdi Abdi Mohamed vs. Cabinet Secretary, Interior and Coordination of National Government and State Law Office, ELRC Petition No. E157 of 2024,** where Judgement was delivered by Justice Byram Ongaya at Nairobi on 27.11.2024.

(iii) That the Nairobi ELRC Judgment delivered by Justice Byram Ongaya at Nairobi on 27.11.2024 on the subject matter of appointment to the position of Assistant Chief

Grade II in Habaswein Sub-County, Wajir County, Getwab Sub-location is final and a bar to further suit in accordance with Section 8 of the Civil Procedure Act (Cap 21) Laws of Kenya.

(iv) That this Honourable Court should forthwith down its tools as far as this case is concerned.

8. In response to the 5th respondent's replying affidavit, the petitioner filed a supplementary affidavit, sworn on 24.10.2025, averring that the interested party is further not suited to be appointed because he and the area chief are first cousins. The recruitment process, having been conducted under the delegated authority of the 5th respondent, does not absolve it from its constitutional responsibility to ensure that the delegated powers were exercised lawfully, fairly and in conformity with the Constitution. The 5th respondent's admission that it merely relied on documents forwarded by the 1st to 3rd respondents, without verifying eligibility criteria, demonstrates abdication of its constitutional duty. The qualification criteria were mandatory, non-negotiable and pre-qualification standards, not matters for

post-interview discretion. The Honourable Court, in *Nairobi ELRC Petition No. E157 of 2024* directed the PSC to audit and determine the recruitment process and, if the petitioner was found to be the only qualified candidate, to appoint him accordingly. The Commission's subsequent decision on 28.05.2025 to appoint the interested party, without evaluating the qualifications afresh as directed by the Court, constitutes administrative impropriety. The preliminary objection is unmerited as the 5th respondent and the interested party were never parties to *Nairobi ELRC Petition No. E157 of 2024*.

9. The petitioner and the interested party filed their respective written submissions, while the 5th respondent relied on its replying affidavit before the Court.
10. The Court has considered the material on record and the parties' respective positions and returns that the petition is liable for dismissal upon the following grounds:
 - a) It appears to the Court that the dispute herein was heard and determined in the earlier case **Mahdi Abdi Mohamed vs. Cabinet Secretary, Interior and Coordination of**

National Government and State Law Office, ELRC

Petition No. E157 of 2024, As submitted for the interested

party, the instant petition does not raise a new cause of action. Instead it appears to raise issues of satisfaction of the decree flowing from the judgment in the earlier decided petition. The petitioner's express lamentation is that the Commission's subsequent decision on 28.05.2025 to appoint the interested party, without evaluating the qualifications afresh as directed by the Court, constitutes administrative impropriety. By that pleaded and urged case, the Court finds that the petitioner's main grievance is whether satisfaction of the orders in the judgment in the earlier decided petition is in accordance with the terms of the decree therein. The Court finds that the petitioner being dissatisfied with the manner of satisfaction of that decree ought to have filed an appropriate application in the earlier decided case as is trite and statutory law to proceed.

- b) The petitioner urges and submits that the 5th respondent has failed to comply with the constitution. However, per

paragraph 10 of the replying affidavit by John Kimani Njorio, it is the petitioner's Advocates' letter to the Commission dated 04.12.2024 about the judgment in the earlier decided petition that triggered the Commission's action in the matter. Order 1 in the judgment had expressly directed the Commission to intervene. If the petitioner was dissatisfied with the manner of the Commission's intervention in that respect, then he ought to have come back in the earlier petition for appropriate orders on satisfaction of the decree therein. Accordingly, the preliminary objection for the interested party is upheld that the petition is *res judicata* in terms of section 7 of the Civil Procedure Act because it is an abuse of Court process. The instant petition and the previously decided petition are about the same issue and cause of action being the impugned appointment of the Assistant Chief for Habaswein Sub-Location and between parties claiming in substantially same interest or title.

- c) In any event, the petitioner has not rebutted the Commission's position that age requirements had been found discriminatory and had been unfairly imposed in the otherwise impugned recruitment process. The petitioner appears not to establish any material new cause of action different from the one in the earlier decided petition.
- d) The Court has considered the history of the case and each party to bear own costs. While making that finding, it also appears to the Court that the issues remain live on whether the orders in the earlier petition have been satisfied in accordance with the judgment and only that the instant petition is found *res judicata* with the consequence that the Court will not delve into the merits of the arguments advanced particularly for the petitioner.

In conclusion the petition is hereby dismissed with orders each party to bear own costs of the petition.

**Signed, dated and delivered by video-link and in court at Nairobi
this Thursday 20th November, 2025.**

**BYRAM ONGAYA
PRINCIPAL JUDGE**