

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT BUNGOMA
PETITION NO. E003 OF 2025

**IN THE MATTER OF: Articles 22, 23, 27, 38, 41, 47, 73 and 232 of
the Constitution of Kenya, 2010**

AND

IN THE MATTER OF: The Fair Administrative Action Act, 2015

AND

**IN THE MATTER OF: The Public Service (Values and Principles)
Act, 2015**

AND

**IN THE MATTER OF: The denial of shortlisting for the position of
member, Bungoma County Public Service Board, on account of past
political participation**

BETWEEN

RODGERS SIBOE MUYALA..... PETITIONER

VERSUS

BUNGOMA COUNTY GOVERNMENT.....1ST RESPONDENT

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

BUNGOMA COUNTY ATTORNEY.....3RD RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION & PLEADINGS

1. The petitioner commenced these proceedings by way of a petition dated 3rd November 2025 through M/s Muyala Law LLP Advocate seeking for the following reliefs –
 - 1) *A declaration that the failure and/or refusal by the respondents to shortlist the petitioners, for the position of member, Bungoma County Public Service Board on grounds of past political participation is unconstitutional, discriminatory and null and void.*
 - 2) *A declaration that the petitioner rights under Article 27, 38, 41, 47 and 232 of the constitution have been violated.*
 - 3) *An order of certiorari quashing the respondent decision not to shortlist the petitioner.*
 - 4) *An order of Mandamus compelling the respondent to shortlist and consider the petitioner of said position on merit.*
 - 5) *A declaration that participation in political life is a protected right under Article 38 and that any administrative or employment action punishing or excluding a person on basis is unconditional.*
 - 6) *General damages for the violation of the petitioner constitutional rights.*
 - 7) *Costs of this petition and interest thereon.*

8) Any other relief this Honourable court may deem just and fit to grant in the circumstances.

2. Alongside the petition the petitioner filed an application of even date under certificate of urgency seeking for the following orders –

- 1. THAT this Honourable court be pleased to certify this application as urgent and dispense with service in the first instance.**
- 2. THAT pending the hearing and determination of this petition, this Honourable court be pleased to issue and order restraining the respondent(s) from proceeding with the recruitment or appointment process for the position of V/NO.2/2025 MEMBER, COUNTY PUBLIC SERVICE BOARD, or filing the said position.**
- 3. THAT this Honourable court be pleased to issue an order compelling the respondent(s) to include or consider the petitioner for shortlisting and/or interview for the said position.**
- 4. THAT this Honourable court be pleased to issue an order of certiorari to quash the respondent's decision disqualifying the petitioner on account of having contested for parliamentary seat in the year 2022.**
- 5. THAT the costs of this application be provided for.**
- 6. THAT such other or further orders be made as may be just**

and expedient in the circumstances.

3. The application is expressed to be brought under the provisions of *Articles 22, 23, 27, 38, 41, 47, 73 & 232 of the Constitution* and *Rules 19 & 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (the Mutunga Rules)*. The application is supported with an affidavit sworn by the petitioner on even date with several annexures thereto.
4. On 5th November 2025 when the matter came up in court for the first time in regard to the application, the court certified the application urgent and directed that the application be served upon the respondents for the inter-partes hearing on 10th November 2025. On this last date the court directed the respondents to respond to the application and that the same be canvassed by way of written submissions. The matter was reserved for mention on 12th November 2025 to confirm compliance and for taking a date for a ruling in regard to the urgent application.
5. The urgency of the application is that the interviews that the petitioner is urging the court to halt are slated for Thursday, 13th November 2025 from 0900hrs (9am).
6. In response to the application, the 1st and 3rd respondents through the County Attorneys, Mr. Waswa and Ms. Walaka, filed a joint replying affidavit sworn on 10th November 2025 by Elizabeth Wanyonyi, the chairperson of the interviewing panel, with several

annexures thereto. The application is opposed from various fronts and perspectives.

7. The petitioner filed a supplementary affidavit sworn by himself on 11th November 2025 responding to the replying affidavit alluded to above.
8. Counsel for the petitioner Mr. Muyala, led by Mr. Ng'etich, filed written submissions dated 11th November 2025 while Mr. Waswa and Ms. Walaka for the 1st and 2nd respondents filed written submissions of even date.
9. There was no response received from the 2nd respondent and there is no evidence that the Attorney General was served.

II. SUBMISSIONS

10. The court has taken time to go through the petition, the application, the supporting affidavit, the replying affidavit, the supplementary affidavit, and the meticulous submissions by counsel for both sides. However, as I write this ruling at 2200hrs for delivery of the same tomorrow at 0830hrs, I find myself with no time to produce a detailed analysis of the same here. Suffice to state that this petition and the application raise fundamental constitutional and statutory issues that deserve serious consideration.
11. In summary, the petitioner applied for a vacancy to join the Bungoma County Public Service Board as a member thereof following a declaration and an advertisement inviting suitably

qualified persons to apply for the available four vacancies. Both sides agree that the application by the petitioner for the said position was received, alongside those from many other applicants. However, the petitioner was not shortlisted for interviews that will be carried out tomorrow, 13th November 2025, starting at 0900hrs.

12. According to the petitioner, the reason for his not being shortlisted is that he contested the Kanduyi Parliamentary seat in the General Elections of August 2022. The 1st and 3rd respondents confirm and admit that this is the fundamental reason why the petitioner was not shortlisted for an interview.
13. According to the respondents, the petitioner is barred from recruitment and appointment into the said vacancy by virtue of ***Section 58 of the County Governments Act***. The petitioner on his part argues that the above law is unconstitutional for among other reasons being discriminatory.
14. The respondents also raised an objection to the jurisdiction of this court to hear and determine the application and the petition. It is also the respondents' position that the petitioner is guilty of violation of the doctrine of exhaustion.
15. As stated above, the court lacks the time to author a detailed analysis on all the issues raised due to the evident urgency in determining whether the petitioner should be granted the interim orders sought. However, the court shall determine the application in

a summarized way as hereunder.

III. ISSUES FOR DETERMINATION

16. The court has gone through the petition, the supporting affidavit and the annexures thereto, the application, the supporting affidavit and the annexures thereto, the replying affidavit and the annexures thereto, the supplementary affidavit, and the written submissions by counsel for both sides.
17. In my considered view, the materials above raise many issues for consideration and determination by the court. There is the fundamental issue of whether this court has the jurisdiction to hear and determine the petition; the issue of whether the petitioner has exhausted the primary process and procedure before approaching the court; and more fundamentally, whether the court should allow the application and issue the interim orders sought pending the hearing and determination of the petition. It is this last issue that the court has to resolve at this stage of the proceedings.
18. Therefore, the issue for consideration at this stage of the proceedings is - ***Whether the petitioner is deserving of the interim orders sought in the application.***

IV. DETERMINATION

19. As stated above, the respondents are opposed to the petition and the application on the fundamental basis of purported lack of

jurisdiction of the court over the subject matter and the alleged violation of the ***doctrine of exhaustion*** by the petitioner rendering the petition premature and incompetent.

20. While the above are serious and fundamental issues deserving of detailed attention and ventilation, there is one germane issue that is not contested by the parties or at least the court finds and holds that the same is not contested. And that issue is that, the petitioner is statutorily barred from holding the impugned vacancy by virtue of ***Section 58 of the County Governments Act*** which provides as follows –

A person shall be qualified to be appointed as a member under subsection (1) if that person—

(a) satisfies the provisions of Chapter Six of the Constitution;

(b) is not a state or public officer;

(ba) has not, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party

(bb) is, or as at any time been, a candidate for election as a member of Parliament or of a county assembly;

(bc) is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a

candidate for election as a member of Parliament or of a county assembly;

21. It is admitted that the petitioner contested the Kanduyi Parliamentary seat in the General Election of August 2022. His response to this fact is that the above law is discriminatory and unconstitutional.
22. However, the petitioner has not availed a court decision or any other material confirming that indeed the above law has been declared unconstitutional. As it stands, therefore, the above law is in force and operational unless and until the same is declared unconstitutional or amended or repealed.
23. On the foregoing basis alone, the court finds and holds that the petitioner has not established a ***prima facie*** case for the issuance of the interim orders sought pending the hearing and determination of the petition.
24. It is in the public interest that public funds be utilized and applied in the most prudent way and manner. It shall be imprudent, insensitive, and wasteful for this court to halt the interviewing process slated for this morning pending the hearing and determination of the fundamental issue raised by the petitioner on whether ***Section 58 of the County Governments Act*** is unconstitutional.
25. The balance of convenience is in favour of denial of the interim orders at this juncture, may it be in form of conservatory orders as a

public law remedy, or an injunction as a private law remedy.

26. Further, the court finds and holds that whatever the petitioner is complaining about may be compensated by way of an award of damages if he ultimately proves his case.
27. For all the foregoing reasons, the court finds and holds that the application by the petitioner has no merits and the same is hereby dismissed.
28. The court has said enough in demonstrating that the petitioner has not established a *prima facie* case deserving of the interim/conservatory orders sought.

V. ORDERS

29. Flowing from the foregoing, the court makes the following orders –
 - a) *The notice of motion by the petitioner dated 3rd November 2025 is devoid of merits and the same is hereby dismissed.*
 - b) *Costs of the application shall be in the petition.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
BUNGOMA THIS 13TH DAY OF NOVEMBER, 2025.**

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DAVID NDERITU
JUDGE