



**Ndirangu & another v Cabinet Secretary, Ministry of Education & another;
Sophy & 4 others (Interested Parties) (Judicial Review E004 of 2025)
[2025] KEHC 16906 (KLR) (Judicial Review) (20 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
JUDICIAL REVIEW
JUDICIAL REVIEW E004 OF 2025
KW KIARIE, J
NOVEMBER 20, 2025**

BETWEEN

EMMANUEL MWANGI NDIRANGU 1ST APPLICANT

PAUL MUGWE KOMU 2ND APPLICANT

AND

CABINET SECRETARY, MINISTRY OF EDUCATION 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

KIRKWONY SOPHY INTERESTED PARTY

FATUMA ABDI INTERESTED PARTY

JOB WAFULA CHELONGO INTERESTED PARTY

JULIUS G. OBARE MOKOGI (CPA) INTERESTED PARTY

KARIUKI PETER MARU INTERESTED PARTY

JUDGMENT

1. The two applicants moved the court through an originating motion dated September 4, 2025. The application is based on section 36 (1) of the *Universities Act*, section 3A of the *Civil Procedure Act*, sections 8 and 9 of the *Law Reform Act*, Order 53 Rule 1(1) & (2) of the Civil Procedure Rules, sections 7 (2) (a) (ii) (iv) (b) (c) (f) (i) (m) (n) and (o), 8,9, 10, 11, and 21 of the Fair Administrative Action Act, Rules 4, 6, 9, 11, and 12 of the Fair Administrative Action Rules, Articles 3 (1), 10, 47 (1), 73, 232 and 258 (1), (2) (c), of *the Constitution* of Kenya. He is seeking the following orders:



- a. This honourable court does issue an order of certiorari by way of calling for the documents into this court and quashing Kenya Gazette Notice No. 10110 dated 25th July 2025 and published on 25th July 2025 by the 1st respondent appointing the members of the council of the University of Nyandarua University College.
 - b. This honourable court do issue an order for prohibition by way of judicial review prohibiting the implementation of Kenya Gazette Notice 10110 dated 25th July 2025 and published on 25th July 2025 by the 1st respondent appointing the members of the council of the University.
 - c. This honourable court do issue any other justiciable remedy as the court may deem fit to grant.
2. The application is premised on the following grounds:
- a. On 25th July 2025, the 1st respondent, via Kenya Gazette Notice No. 10110, appointed the following individuals as members of the Council of Nyandarua University College. Kirkwony Sophy Fatuma Abdi Job Wafula Chelongo Julius G Obare Mokogi (CPA) Kariuki Peter Maru
 - b. The 1st respondent failed to publicly advertise the vacancies for the council of Nyandarua University College, contravening the requirement for transparency and competitive recruitment under section 36(1)(d) of the Universities Act, thus limiting the opportunity to appoint the most qualified candidates.
 - c. The 1st respondent failed to conduct interviews for the Nyandarua University College Council positions, contravening the requirement for a transparent and competitive process under section 36(1)(d) of the Universities Act, thus preventing verification of the appointees' integrity and professional competence by stakeholders and the public.
 - d. That by failing to advertise the vacancies for the Nyandarua University College Council, the 1st respondent violated section 36(1)(d) of the Universities Act, which mandates an open and competitive recruitment process, thereby undermining the transparency required by law.
 - e. The direct appointment of the Council members without advertisement or interviews fails to constitute the open and competitive process required under section 36(1)(d) of the Universities Act, rendering the appointment non-compliant with the law.
 - f. The opaque appointment process for the Nyandarua University College Council violates Articles 10, 73 and 232 of the Constitution of Kenya, 2010 by lacking transparency and public participation, risking the appointment of incompetent individuals to a critical role in the education sector and denying Kenyans the opportunity to provide feedback.
 - g. That by failing to advertise the vacancies, the 1st respondent denied the public the opportunity to apply for the Nyandarua University College Council positions, limiting the pool of qualified candidates and undermining the public institution's ability to benefit from a competitive selection process.
 - h. The 1st respondent's failure to conduct an interview for shortlisting and disclose the appointees' identities for public scrutiny before their gazettelement, as required for a transparent process, prevented Kenyan's from assessing their suitability. Consequently, the appointment process was politically motivated rather than merit-based, undermining competence. and integrity.
 - i. The 1st respondent's failure to conduct interviews or shortlisting and disclose the appointee's identities for public scrutiny prior to their gazettelement, as required for a transparent process,



prevented Kenyans from assessing their suitability; consequently, the appointment process was politically motivated rather than merit-based, undermining competence and integrity.

- j. The appointments failed to meet the legal threshold for transparency and competitiveness under section 36(1)(d) of the *Universities Act*, rendering them void ab initio, and this application for judicial review is meritorious and warrants approval with costs awarded to the applicants.
3. The respondents opposed the motion and filed the following grounds:
- a. The appointments were made pursuant to the powers vested in the Cabinet Secretary under Section 36(1)(d) of the *Universities Act*, 2012 and in line with the Government's obligation to ensure effective governance of public universities.
 - b. That contrary to the applicant's averments, the Ministry has in place a structured process of identifying competent individuals for Council membership, which includes maintaining a roster/database of qualified applicants who have previously expressed interest in serving on University Councils.
 - c. Contrary to the applicants' allegations, in February 2025, the ministry issued a declaration of vacancies for the positions of the Chairperson and members of the Council of Public Universities and Constituent Colleges in the government newspaper.
 - d. That in March 2025, the Ministry conducted a transparent, open and competitive recruitment exercise for positions of Chairpersons and Members of university Councils, receiving over 299 applications which were duly shortlisted.
 - e. The impugned appointments were drawn from this shortlisted pool. They were neither arbitrary nor politically motivated, but rather based on merit, regional balance, and professional diversity, in compliance with Articles 10,73, and 232 of *the Constitution*.
 - f. The applicants' contention that no public participation was undertaken is therefore misleading, as the advertisement constituted an open opportunity for public involvement and scrutiny. Each of the appointees underwent due diligence checks, including verification of academic and professional qualifications, integrity vetting, and compliance with Chapter Six of *the Constitution*, before their names were forwarded for appointment.
 - g. The process therefore adhered to constitutional and statutory standards of transparency, merit and accountability.
 - h. The applicants have not demonstrated with precision the nature of "irreparable harm" that would befall the University of Nyandarua, considering that any actions of the Council are subject to statutory and policy safeguards.
 - i. On the contrary, it is in the public interest that the Council be properly constituted to discharge its mandate of policy direction, governance, and oversight of the university.
 - j. The applicants' interpretation of Section 36(1)(d) of the *Universities Act* is misconceived. The provisions empower the Cabinet Secretary to appoint members of university councils guided by the law and subject to constitutional values.
 - k. The application herein is without merit, premised on misapprehension of facts and law, and is designed to delay and frustrate the effective functioning of the university of Nyandarua University College.



4. Section 36(1)(d) of the [Universities Act](#), 2012 provides as follows:

The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—

- d. five members appointed by the Cabinet Secretary through an open process in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary; and

5. The applicants have stated that the 1st respondent did not advertise the vacancies for the Nyandarua University College Council and did not conduct interviews publicly. The appointments mentioned did not meet the required standard of an open and competitive process under section 36(1)(d) of the Act.

6. It was argued that the vacancies were advertised in the government newspaper known as MyGov. (A copy of the advertisement) was attached.

7. The principles that mandate public bodies to advertise vacancies are based on Kenya's constitutional values and administrative law. These core principles include fairness, transparency, and equal opportunity in hiring. Public organizations are required to conduct open, transparent, competitive, and merit-based recruitment processes.

8. Article 10 of [the Constitution](#) of Kenya provides

1. The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

- (a) applies or interprets this Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

(2) The national values and principles of governance include

- a. patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- b. human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- c. good governance, integrity, transparency and accountability; and
- d. sustainable development.

9. The manner in which an advertisement is made must therefore embody the spirit of transparency, providing the public with timely and accurate information to promote fair competition in appointments and promotions.

10. When the respondent resorted to advertising in MyGov, which they said was a government newspaper, several questions popped up. Does the newspaper have a wide circulation in the country? Is it a daily, weekly or a periodic newspaper? These questions went unanswered.

11. Advertising is not intended to fulfil the statutory obligation, but to ensure that the information being advertised reaches the intended audience. What the 1st respondent did in this case is akin to hiding the



white ball in a game of pool. In *Okiya Omtatah Okoiti & another vs Public Service Commission & 73 others; Law Society of Kenya & another (Interested parties)* [2021] eKLR, the court stated inter alia:

For instance, the need for advertisement of positions in the public service enhances transparency, the rule of law and procedural integrity. Further, placing an advertisement on the names of all the applicants and those shortlisted to be interviewed and calling for any relevant information on those due for interviews, are great steps towards attaining a full realization of the national values and principles of governance in Article 10 of *the Constitution*, more so on transparency and integrity of the processes.

12. Selecting appointments from a pool of shortlisted candidates short-circuited the need for advertisement. There should be public interviews. This explains why the first respondent chose to advertise the vacancies in an obscure newspaper. It was not meant to attract a large number of applicants.
13. The upshot of the foregoing analysis of the evidence, I grant the following orders:
 - a. The first respondent is prohibited from implementing the Notice in the Kenya Gazette Notice 10110 dated 25th July 2025 and published on 25th July 2025, which appointed members of Nyandarua University College Council.
 - b. The first respondent shall advertise and fill the vacancies on the Nyandarua University College Council in strict accordance with the law.
 - c. Each party to meet its costs.

DELIVERED AND SIGNED AT NYANDARUA, THIS 20TH DAY OF NOVEMBER 2025

KIARIE WAWERU KIARIE

JUDGE.

