

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT KERICHO

ELRC PETITION NO. E014 OF 2025
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

RAMSON KIPTONUI

KIRUI.....PETITIONER/APPLICANT

AND

SIRKELLY CHERUIYOT..... 1ST

RESPONDENT

VICKY BETTY CHEPKORIR..... 2ND

RESPONDENT

ARNOLD KIPLANGAT..... 3RD

RESPONDENT

EDGAR MUTAI..... 4TH

RESPONDENT

RUTH CHELULE..... 5TH

RESPONDENT

OSCAR CHERUIYOT..... 6TH

RESPONDENT

KIPLANGAT KURGAT DAVID..... 7TH

RESPONDENT

THE COUNTY GOVERNMENT

OF KERICHO..... 8TH

RESPONDENT

RULING

Introduction

1. The Petitioner/Applicant filed a Notice of Motion dated 8th July 2025 under Certificate of Urgency seeking the following prayers that:

1. Spent

2. This Honourable Court be pleased to issue a temporary injunction restraining the 1st Respondent from presiding over board meetings at Kericho Water and Sanitation Company Ltd and receiving honoraria and other benefits, including use of company facilities, pending the inter parties hearing of this Application

3. This Honourable Court be pleased to issue a temporary injunction restraining the 1st Respondent from presiding over board meetings at Kericho Water and Sanitation Company Ltd and receiving honoraria and other benefits, including use of company facilities, pending the hearing and determination of this Application.

4. This Honourable Court be pleased to issue a temporary injunction restraining the 1st Respondent from presiding over board meetings at Kericho Water and Sanitation

- Company Ltd and receiving honoraria and other benefits, including use of company facilities, pending the hearing and determination of this petition***
- 5. The OCS Kericho do assist in the enforcement of this court's orders.***
- 6. This court be pleased to issue any other necessary orders it deems fit to issue***
- 7. The costs of this application be provided for.***

Petitioner/Applicant's supporting affidavit

2. The application is supported by the affidavit of Ramson Kiptonui, the Petitioner/Applicant, a customer/stakeholder of the Kericho Water and Sanitation Company Ltd, holder of account No. 01051684301.
3. The Petitioner/Applicant avers that he is challenging the recruitment of the 1st to 7th Respondents as board members of a water company owned by the 8th Respondent, arguing that the process violated constitutional principles of good governance, public participation, and the corporate governance standards for the water sector, 2024.

4. The Petitioner/Applicant avers that the selection committee was unlawfully constituted, dominated by employees of the 8th Respondent, and failed to ensure fair regional representation and compliance with the two-thirds gender rule.
5. The Petitioner/Applicant avers that serious irregularities are highlighted, including the 1st Respondent's failure to provide mandatory Chapter Six integrity clearances and discrepancies in his identity documents, raising concerns about his integrity as board chair.
6. Additionally, the Petitioner/Applicant avers that the 2nd Respondent's appointment contravened a 2019 directive barring public servants from serving on parastatal boards while in full-time employment.
7. The Petitioner/Applicant therefore seeks a declaration that the appointments are unlawful, null and void, recovery of funds received by the 1st Respondent, and an order directing the 8th Respondent to convene a proper stakeholder meeting to restart the recruitment process in compliance with constitutional and governance requirements.

8. At the time of writing this ruling, the 1st to 7th Respondents were represented by the firm of Brian Otieno & Co. Advocates, who filed their notice of appointment dated 28th July 2025 but did not file any response, while the 8th Respondent did not file any response or notice of appointment.

Analysis and determination

9. The court has considered the application before it. Is there sufficient evidence adduced to support the application?
10. In ***Travel House Limited & another V Chase Bank [2024] KECA 602 (KLR)***, the Court of Appeal cited the case of ***Giella V Cassman Brown Co. Ltd [1973] EA 358***, which gives the principles for injunctions as follows:

“The long- standing principles expressed in Giella vs. Cassman Brown Co. Ltd require that an applicant should establish a prima facie case with a probability of success; that the applicant stands to suffer irreparable loss which cannot be adequately compensated by an award of damages; and that if the court is

in doubt, the application be determined on a balance of convenience.”

11. In ***Nguruman Limited V Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)***, the Court of Appeal stated as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

(a) establish his case only at a prima facie level,

(b) demonstrate irreparable injury if a temporary injunction is not granted, and

(c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.”

12. In this instant case, the Petitioner/Applicant is seeking temporary injunction restraining the 1st Respondent from presiding over board meetings at Kericho Water and Sanitation Company Ltd. This Honourable court gave directions to avail an affidavit of service to show that service was effected upon the Respondents. The 1st to 7th Respondents have already appointed an advocate to represent them, but failed to put in a

response to the application, and the 8th Respondent did not enter an appearance or file any response.

13. The Applicant for whatever reason did not file affidavit of service as a demonstration that he served the Respondents. The 1st - 7th Respondents filed Notice of appointment of advocates.

Again, for reasons known only to them, the 1st - 7th Respondents failed to file their replying affidavits. The court in the absence of an affidavit of service cannot say with certainty the service of summons on the County Government of Kericho being the 8th Respondent.

The whole application depends a lot on the 8th Respondents - as it is the employer of 1st - 7th Respondents. In the absence of its participation due to non-service of summons the court will find that is a glaring gap in the application by the Applicant.

14. The court will rely on the case of **Maina V Langat & 2 Others [2024] KECA 395 (KLR)**, where Mativo J stated as follows:

“I have had an opportunity to go through the entire application, together with the annexures thereto. It is noteworthy that

even though it has been deponed that attempts have been made to effect service personally upon the Respondents, there is no evidence to back that assertion. The applicant has failed to annex an affidavit of service sworn by the unnamed process server explaining the efforts that have been made to trace the Respondents.”

15. Further, the court finds the Principals enumerated in sound case laws on granting of injunctions starting with ***Giella -Vs- Cassman Brown (Supra)*** and ***Nauruman Ltd -VS- Jan Bonde Nielsen & 2 Others (Supra)*** have not been met in this application. The Applicant has not demonstrated a *prima facie* case on the prayers sought in the application and neither has irreparable harm been demonstrated as could be caused against the Applicants.

Finally, the Applicant did not denote a balance of convenience in his favour.

16. There is no concrete evidence presented to the court to establish the violation of Petitioner's/Applicant's

rights by the 1st Respondent in presiding over the board meetings of the 8th Respondent.

As earlier observed, there is no proof of service of the 8th Respondent and so he did not have opportunity to file his response and that makes it difficult for the court to consider the prayers sought.

17. The court finds the Petitioner/Applicant went short of establishing a *prima facie* case to support the prayers vide the Notice of Motion dated 8th July 2025. The court therefore finds the application is not deserved and so is dismissed.

18. Costs will be in the cause.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 9th Day of
December, 2025.**

**ANNA NGIBUINI MWAURE
JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE

ORIGINAL