



Osman v Ministry of Interior and National Administration & 4 others (Employment and Labour Relations Petition E217 of 2024) [2025] KEELRC 3671 (KLR) (16 December 2025) (Judgment)

Neutral citation: [2025] KEELRC 3671 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E217 OF 2024
HS WASILWA, J
DECEMBER 16, 2025

BETWEEN

ISMAIL ABDIKADIR OSMAN PETITIONER

AND

MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

THE OFFICE OF THE COUNTY COMMISSIONER, WAJIR . 3RD RESPONDENT

THE OFFICE OF THE SUB-COUNTY COMMISSIONER, WAJIR 4TH RESPONDENT

IBRAHIM ADAN ABDULLAHI 5TH RESPONDENT

JUDGMENT

1. By an Amended Petition dated 7th May 2025, the Petitioner sought for the following reliefs; -
 1. A declaration that the 1st, 2nd, 3rd and 4th Respondent's action of failing to appoint the Petitioner upon successful completion of the interview is a violation of the Petitioner's legitimate expectation and is therefore unconstitutional.
 2. A declaration that the impugned re-advertisement of the vacancies for position of Chief II in Lagbogol North Location in Hadado Sub-County of by the 1st, 2nd, 3rd and 4th Respondents was irregular, illegal and violated *the constitution* and is therefore null and void ab initio.
 3. A declaration that failing to appoint the Petitioner upon the successful outcome of the 1st interview despite their qualification and interview performance has violated their right to fair administrative action under article 47 of *the constitution*.



4. A declaration that by failing to provide the Petitioner with reasons for the re-advertisement of the position of Chief II in Lagbogol North Location in Hadado Sub-County, the 1st, 2nd, 3rd, and 4th Respondents violated the Petitioner's right to fair administrative action under Article 47 of *the Constitution*.
5. A declaration that the 1st, 2nd, 3rd and 4th Respondents violated the Petitioner's rights under Article 27(4) with respect to the right to freedom from discrimination on account of the Petitioner's ethnicity.
6. A declaration that the 3rd & 4th Respondents violated the Petitioner's rights under Article 35 of *the Constitution* by failing to provide him with the information he requested from them on the 17th of March 2025 within the statutorily prescribed time of 21 days, which was necessary for his exercise or protection of his fundamental right.
7. An order of certiorari quashing the decision of the 1st, 2nd, 3rd and 4th Respondents to appoint the 5th Respondent for the position of the position of Chief II in Lagbogol North Location in Hadado Sub-County.
8. An order of mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to proceed with the appointment of the Petitioner as Chief II in Lagbogol North Location in Hadado Sub-County as recommended on the 11th of January 2024.
9. In the Alternative to prayer 8 above:
 - i. an order of mandamus compelling the 1st, 2nd, 3rd, and 4th Respondents to undertake a fresh recruitment for the position of Chief II in Lagbogol North Location in Hadado Sub-County.
 - ii. An order of mandamus compelling the 1st, 2nd, 3rd, and 4th Respondents to comply with the constitutional requirements of Articles 27, 41, 47 and, 73 of *the Constitution* while conducting the new recruitment for the position of Chief II in Lagbogol North Location in Hadado Sub-County.
 - iii. A permanent injunction restraining the 1st, 2nd, 3rd, and 4th Respondents from removing the Petitioner from the position of Acting Chief Lagbogol North Location as appointed on 4th January 2023 by the Assistant County Commissioner, that is, Peter Sila Kyale, pending the recruitment and successful appointment of the Chief II in Lagbogol North Location in Hadado Sub-County as per prayer ix above.
10. Damages for violation for violation of the Petitioner's constitutional rights and fundamental freedoms under Article 27(4) of *the Constitution*.
11. Damages for violation for violation of the Petitioner's constitutional rights and fundamental freedoms under Article 35 of *the Constitution*.
12. Damages for violation for violation of the Petitioner's constitutional rights and fundamental freedoms under Article 47 of *the Constitution*.
13. Any other relief that this Honorable Court shall deem fit by dint of Article 23 (3) of *the Constitution* of Kenya, 2010 and are just to grant in the circumstances.
14. Costs of the Petition.



Petitioner's Case

2. The Petitioner avers he has been an Assistant Chief within Lagbogol North Location - Hadado Sub-County for the past 15 years.
3. On 30th December 2022, the position of the Chief in Lagbogol North Location-Hadado Sub-County fell vacant with the retiring of Mohammed Ibrahim Abdullahi.
4. He was subsequently directed to occupy the said position by the Assistant County Commissioner - Lagbogol Division, as an Acting Chief, a position he holds to date.
5. The Petitioner avers that on or about the 20th July 2023, the Ministry of Interior and National Administration, through the office of the Deputy County Commissioner, advertised the vacancy of the position of Chief II, Lagbogol North Location - Hadado Sub-County. The advertisement communication was copied to the Regional Commissioner, North Eastern Garissa, County Commissioner, Wajir, all deputy County Commissioners, Wajir, and all Assistant County Commissioners Hadado Sub-County.
6. The Petitioner avers that he applied for the position, and, undertook the interviews on 11th January 2024, and was ranked first (#1) with a score of 86.4% while the 5th Respondent and a third interviewee – Mr. ALI DAHIR ABDI were ranked second (#2) and third (#3) with a score of 62% and 54.1% respectively. The latter two interviewees come from the same community that is considered majority.
7. The Petitioner avers that he was the successful interviewee chosen to occupy the position substantively.
8. The Petitioner avers that the same position was re-advertised on 29th March 2024 without any reason being given for re-advertisement. He however, reapplied once again for the position. He was astonishingly ranked third (#3) coming after the 5th Respondent who now emerged as first (#1) and another interviewee – Mr. ALI DAHIR ABDI who emerged as second (#2), both of whom come from a majority community.
9. The Petitioner avers that on 6th December 2024, the 3rd Respondent subsequently wrote to the 4th Respondent, directing the latter to effect appointment of the 5th Respondent
10. He avers that upon investigation, the Petitioner discovered that 5th Respondent and the third interviewee come from the same Dogodiya sub-clan called Mithimal. Upon further investigation, the Petitioner also discovered that the 5th Respondent is also a brother to the retired chief Mohammed Ibrahim Abdullahi who proceeded to retirement on 30th December 2024. The Petitioner comes from the Ajuran sub-clan called Walmega – a minority community.
11. It is the Petitioner's case that the 1st to 4th Respondents failed to adhere to the provisions of paragraph viii of the Ministry of Interior circular referenced as MOINA/SEC/5/1, which directs that preference should be given to Assistant Chiefs who have satisfactory track records of performance, discipline and integrity over time; and that appointment should appreciate equity and inclusiveness, affording opportunities to marginalized communities through affirmative action.
12. The Petitioner avers that in the absence of any explanation as to the re-advertisement, the appointment of the 5th Respondent was calculated and based on grounds of nepotism and discrimination.
13. The Petitioner avers that on 17th March 2025, the Petitioner made an access to information request pursuant to Article 35 of *the Constitution*, to the 3rd and 4th Respondents asking for an official copy of the interview report/record of minutes for the interviews conducted on 11th January 2024. This however did not elicit a response.



14. The Petitioner avers that on 25th April 2025, through his advocates, informed Counsel for the 1st to the 4th Respondents of the breach by the 3rd and 4th Respondents and asked them to comply. The same was acknowledged by Counsel but no information has been furnished to the Petitioner.
15. The Petitioner avers that the 1st, 2nd, 3rd and 4th Respondents and all their resulting decisions contravened his right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; right to freedom from discrimination on any ground including ethnicity and nepotism; and the right to access to information enshrined under Articles 47, 27 (4) and (5) and 35.
16. The Petitioner avers that the failure to appoint the Petitioner following his emergence as the first ranking interviewee is a violation of his legitimate expectation and an infringement of their right to fair administrative action and therefore unconstitutional.
17. The Petitioner avers that by shortlisting and ranking the Petitioner as the best interviewee, the 1st, 2nd, 3rd, and 4th Respondents created a reasonable and legitimate expectation in his mind that the next step in the recruitment process would be his appointment to office as the Chief.
18. The Petitioner avers that by failing to inform the Petitioner of the reasons for re-advertisement, the 1st, 2nd, 3rd and 4th Respondents violated the Petitioner's right to fair administrative action.
19. It is the Petitioner's case that by shortlisting and ranking the 5th Respondent and the third interviewee who come from the same majority Dogodiya Clan and the same Mithimal Subclan, and ranking the Petitioner who comes from the minority Ajuran Clan and the Walmega subclan, the 1st to 4th Respondents violated the Petitioner's right to freedom from ethnic discrimination and nepotism.
20. The Petitioner avers that by failing to provide the Petitioner with the information requested for purposes of protecting his rights and fundamental freedoms within 21 days as prescribed under Section 9 of the [Access to Information Act](#), the Respondents violated the Petitioner's right to access information.
21. The Petitioner avers that by virtue of my years of service as an Assistant chief coupled with the Ministry of Interior circular referenced as MOINA/SEC/5/1, preference in the appointment of a Chief should be given to Assistant Chiefs who have satisfactory track records of performance, discipline and integrity over time.

1st to 4th Respondent's Case

22. In opposition, the Respondents filed a replying affidavit dated 19th February 2025 sworn by the Regional Commissioner of North Eastern in Kenya, John O. Otieno.
23. The Respondents aver that via a letter dated 15th June 2023 from the Regional Commissioner to the County Commissioner, the letter authorized the advertisement of vacant post of Chiefs and Assistant chiefs — Wajir county. Subsequently, interviews were conducted pursuant to the advertisement dated 15th June 2023 and the results were forward to the Regional Commissioner.
24. Upon the Regional Commissioner receiving the documents, in the process of preparing his letter to the Principal Secretary with recommendations for the appointments of the various vacant positions including the Chief II Lagbogol North, the Regional Commissioner noted that some of the interviewees that attended the interview process did not meet the qualification of obtaining a C (plain) in the Kenya Certificate of Secondary Education (KCSE) examination, which is one of the key requirements as per the advert.
25. The Respondents aver that the Petitioner obtained a grade of C- in his KCSE examination.



26. The Regional Commissioner Having noted this grave error and having been delegated the power to re-advertise for the position of Chief II Lagbogol North, directed the County Commissioner to re-advertise the position and conduct fresh interviews.
27. The Respondents aver that the re-advertisement of vacancy for the post of Chief II Lagbogol North, Lagbogol division was done via an advert dated 29th March 2024.
28. Following the advert, various applicants submitted their applications including the Petitioner herein. A committee then sat to shortlist the applicants for the post of Chief II Lagbogol North, Lagbogol division held at DCCs office on 23rd May 2024.
29. The Respondents aver that vide letters dated 3rd June 2024, the 1st Respondent invited the interviewees for interviews for the position of Chief II Lagbogol North, Lagbogol division.
30. The Respondents aver that following the interviews, they held a meeting and later on upon recommendations based on the outcome of the interviews, the Regional Commissioner via a letter dated 7th August 2024 wrote to the Principal Secretary recommending the appointment of various Chief and Assistant Chief.
31. The Respondents aver that upon the above recommendation being made, and upon the discretion of the Principal Secretary appointed Ibrahim Adan Khehley as the Chief for Lagbogol North, location.
32. The Respondents aver that following the appointment the Regional Commissioner authorized the County Commissioner to effect the appointment of the Chiefs and Assistant Chief.
33. It is the Respondent's case that the production and reliance of third parties/confidential documents in particular the Petitioner's documents marked IAO-3 and IAO-4 is against Articles 31, 35 and 50(4) of *the Constitution* and thus should be expunged forthwith.
34. The Respondent avers that the petition lacks merit and should be dismissed with costs.

5th Respondent's Case

35. In opposition to the Amended Petition, the 5th Respondent filed a replying affidavit dated 10th July 2025.
36. The 5th Respondent avers that he is a police constable of No. 96378 having been appointed on 12th May 2011 and on 22nd June 2022 he was promoted to the rank of corporal.
37. He avers that on he applied for the position of Chief Lagbogol North Location- Hadado Sub County and was invited for an interview on or about 11th January 2024, having been successfully shortlisted vide a letter dated 2nd January 2024 authored by the 1st and 3rd Respondents. He attended the interview which was conducted at the Deputy County Commissioner's office.
38. The 5th Respondent avers that the recruitment process was conducted in accordance with the laid down regulations as the shortlisted and invited candidates appeared before the Sub County Interviewing Panel.
39. The 5th Respondent avers that his selection was based on his performance in the interview, his qualification and overall suitability for the role as assessed by the recruitment panel. The appointment authority satisfied itself that he met all the required criteria at the time of the selection thus being recommended as the successful candidate.



40. The 5th Respondent avers that the results and ranking scores were never published, and he is astounded that the Petitioner had the power to be aware of the ranks.
41. It is the 5th Respondent's case that the Petitioner being able to access the results before the same is publicly placed before all the candidates is marred with irregularities, nepotism and partiality and was otherwise motivated by political considerations contrary to the stipulated considerations under the law and regulations.
42. The 5th Respondent avers that on 29th March 2024, the same position was re-advertised in which he proceeded to re-apply. Having been successfully shortlisted, he was invited for an interview slotted for 12th June 2024 vide a letter dated 3rd June 2024. He attended the interview and appeared before the panel.
43. The 5th Respondent avers that he later received a call from the Deputy County Commissioner requesting him to take original documents for verification as a successful candidate having looked at his credentials, abilities, experience and qualities that met the threshold of the advertised position.
44. The 5th Respondent avers that the allegation of discrimination, nepotism or any other improper recruitment process was absent as the interview was done with utmost professionalism.
45. It is the 5th Respondent's case that it was not a mandatory requirement that the successful candidate was to be from a minority community hence the Petitioner's assertion that he is from a majority community is unfounded.
46. The 5th Respondent avers that the administrative action taken by the 1st, 3rd and 4th Respondents to appoint him as candidate to the advertised position was lawful, reasonable, procedurally fair, and/or transparent or accountable. This is owing to the fact that the procedures that were put in place for the said appointment, including interview before the Sub- County Selection Panel who would then recommend a candidate for appointment, were evidently complied with.
47. The 5th Respondent avers that the recruitment and selection process was above board and due diligence was conducted while recommending his appointment as the Chief Lagbogol North Location- Hadado Sub County. The decision was guided by standards of objectivity, impartiality, integrity, merit and fair competition and the interview did not factor which clan one came from.
48. It is the 5th Respondent's case that the interview process and his qualification to take the position of Chief Lagbogol North Location- Hadado Sub County was in compliance with the provisions of article 41 of *the Constitution* as read with section 4(3) of the *Fair Administrative Action Act*.
49. The 5th Respondent avers that the Petitioner failed to meet key requirements as detailed in the advertisement and therefore was not a suitable candidate to fill the position of Chief Lagbogol North Location- Hadado Sub County.
50. The 5th Respondent avers that the Petitioner has an avenue to seek an administrative review or appeal concerning the recruitment process before resorting to Court. The principle of exhaustion of administrative remedies is pertinent in such matter and the 1st, 2nd, 3rd and 4th Respondents commend that the Petitioner ought to have exhausted those avenues before filing the current petition.

Petitioner's Submissions

51. The Petitioner submitted on four issues: whether the Respondent violated the Petitioner's right to administrative action under Article 47 of *the Constitution*; whether the Respondent's violated the Applicant's right to access to information – Article 35 of the 2010 Constitution; whether the



Respondents violated the Applicant’s right to freedom from discrimination under Article 27 of the 2010 Constitution; and whether the Petitioner is entitled to damages for violation of his fundamental rights and freedoms.

52. The Petitioner submitted that this court on numerous instances, on the 30th June, 21st July, and 24th September 2025, directed the 3rd and 4th Respondents through their counsel to supply discovery documents, which they failed to do. The consequence of this that the Court should make an adverse inference when a party failed to call evidence they have.
53. The Petitioner submitted that the Respondents failed to present the following: Interview report/ record of minutes for the interview exercise conducted on or about the 11th January 2024; Copies of the applications, academic testimonials and all materials/documents received by the selection panel from the 5th Respondent and all the other applicants for the position of Chief II in Lagbogol North Location in Hadado Sub-County) for the interview exercise conducted on or about the 11th of January 2024; The Letter of Appointment of the 5th Respondent by the Deputy County Commissioner, dated 6th May 2025.
54. It is the Petitioner’s submission that the Court should make an adverse inference as against the Respondents, and, in favour of the Petitioner, with respect to the arguments and evidence tendered concerning the requested documents. This leads to the issue of evidence presented by the Petitioner.
55. The Petitioner submitted that this court should admit into evidence the secondary evidence he submitted, with respect to the 3 pieces of evidence, and, in particular Exhibit IAO3 – a report of the interviews conducted for the position of Chief II in Lagbogol North Location in Hadado Sub-County and Exhibit IAO4 - a re-advertisement of the position of Chief II in Lagbogol North Location in Hadado Sub-County.
56. The Petitioner placed reliance in *Mbithi v Mureithi & 2 others; Nairobi City County (Interested Party) [2023] KEELC 20489 (KLR)* wherein the Court stated: “Under section 67 of the *Evidence Act*, documents must be proved by primary evidence except in cases set out in section 68 of the Act, when secondary evidence may be given. The definition of primary evidence is at section 65 of the Act. Generally speaking, primary evidence is the document itself produced for the inspection of the court.

This brings me to what is referred to as the ‘best evidence rule.’ The best evidence rule is a principle in law which holds that the original of a document is superior evidence and so long as it is within the possession of a party, or may be reached by a party, no inferior proof should be allowed. Secondary evidence should therefore not be admitted essentially without non-production of the original being first explained in a manner to bring it within one or more of the exceptions under section 68 of the *Evidence Act*. In the case of *Re the Estate of Charles Ndegwa Kiragu alias Ndegwa Kiragu – Deceased (2016) eKLR, Mativo J* (as he then was) held that the party who wishes to rely on secondary evidence has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced.”

57. The Petitioner further relied in Section 68 (1) and 69 of the *Evidence Act* which provided as follows:

“Secondary evidence may be given of the existence, condition or contents of a document in the following cases—(a)when the original is shown or appears to be in the possession or power of—(i)the person against whom the document is sought to be proved; or(ii)a person out of reach of, or not subject to, the process of the court; or(iii)any person legally bound



to produce it, and when, after the notice required by section 69 of this Act has been given, such person refuses or fails to produce it.”

Section 69 states:

“Secondary evidence of the contents of the documents referred to in section 68(1) (a) of this Act shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate, such a notice to produce it as is required by law or such notice as the court considers reasonable in the circumstances of the case.”

58. On the first issue, the Petitioner submitted that by the administrative decision made by the 1st, 2nd, 3rd and 4th Respondents to cancel the recommendation by the selection panel, without providing reasons and without informing the Petitioner of these reasons, after the Petitioner emerged as a successful candidate was a violation of Section 4(2) & (3) of the *Fair Administrative Action Act* as read with Article 47 of the 2010 Constitution on the right to fair administrative action and in particular the right to reasons.
59. The Petitioner submitted that he had a legitimate expectation that he would: at least get to hear about his results after being subjected to a rigorous interview process, whatever the results were. This is based on public practice that interviewees will get to know their fate whenever they attend interviews; and be appointed as the Chief II, having emerged as a successful candidate. It is within fairness and reasonableness to expect to be appointed if one emerges as the most qualified candidate.
60. The Petitioner cited *Simiyu v Principal Secretary, State Department for Internal Security and National Administration & 6 others; Okumu & 2 others (Interested Parties) [2025] KEELRC 719 (KLR)*, the court, at paragraph 42, found that parties who had been shortlisted, interviewed, and recommended by the interview panel had a legitimate expectation that they would be appointed and failure to do so was an infringement and violation of their legitimate expectation.
61. It is the Petitioner’s submission that by shortlisting and ranking the Petitioner as the best qualified interviewee, and recommending him, the 1st, 2nd, 3rd, and 4th Respondents created a reasonable and legitimate expectation in the mind of the Petitioner that the next step in the recruitment process would be his appointment to office as the Chief. This is in line with Article 47 of *the Constitution* and the *Fair Administrative Action Act*.
62. The Petitioner submitted that as a consequence, by failing to inform the interviewee of his results, especially given that the decision would have adversely affected him, as it denied him the position of Chief II, this violated his Article 47 right to fair administrative action.
63. The Petitioner submitted that Section 7(2) of the *Fair Administrative Action Act* provides for constitutional grounds for violation of the right to fair administrative action to include the common law grounds of ultra vires, procedural fairness, and reasonableness. This was acknowledged by the Court in *Muigana & 16 others v County Government of Nyandarua (Petition E007 of 2023) [2024] KEHC 960 (KLR) (8 February 2024) (Judgment)* at para 37.
64. The Petitioner submitted that as per the Respondent’s exhibit JO-6 titled “Recommendation for Appointment of Chiefs & Assistant Chief- Hadado Sub County, Wajir County”, a grade of a C plain and that it was only one interviewee that had a grade of a C(-) minus. Further, an examination of the Respondent’s Exhibit JO-4 “Minutes of the Hadado Sub-County Shortlisting Committee for Applicants for the Post of Chief Lagbogol North Location Held at the DCC’s Office on 23rd May 2024” shows at page 3 that these findings were made after scrutinizing the interviewees documents



- and testimonials. These two pieces of evidence prove that that allegation is at best a fabrication as it is impossible that both exhibits indicate that the Petitioner had a grade of C plain as per the requirements of the advertisement and the re-advertisement.
65. The Petitioner submitted that on the basis of Exhibit IAO8, the Ministry of Interior circular dated the 3rd May 2023, gives Assistant chiefs preference for appointment to the position, provided they have the following qualifications: satisfactory track records of performance, discipline and integrity over time. The circular only provides these as the mandatory requirements. This means that the Assistant Chiefs such as the Petitioner, are exempted from the other requirements by dint of the circular. Consequently, the decision by the Regional Commissioner finding the Petitioner unfit because of the academic qualifications, even if true, was irrational.
 66. The Petitioner submitted that the Petitioner was not provided with an opportunity to be heard before such an administrative decision was rendered. Additionally, the decision that found the Petitioner unfit was not communicated to the Petitioner. This evidences the procedural impropriety and offends the rules of natural justice.
 67. On the second issue, the Petitioner submitted that on 17th March 2025, made an access to information request to the 3rd and 4th Respondents, asking for the interview report/minutes for the interview that happened on 11th January 2024 for the position of Chief II Lagbogol North Location - Hadado Sub-County. He once again wrote to the 3rd and 4th Respondent's advocate State Counsel Winnie Aluoch on 25th April 2025, informing her of the access to information request which she acknowledged receipt.
 68. The Petitioner submitted that Article 35(1) (a) provides that every person has the right to access information that is held by the state. Article 35(1) (b) on the other hand stipulates that every person has a right to information held by an individual and required for the exercise or protection of any right or fundamental freedom.
 69. The Petitioner submitted that the court on numerous instances, on the 30th June, 21st July, and 24th September 2025, directed the 3rd and 4th Respondents through their counsel to supply said information, which they failed to do. This was in addition to the notice to produce dated the 16th June 2025, lodged by the Petitioner, against the Respondents.
 70. He further submitted that according to Section 9 of the *Access to Information Act*, "Subject to section 10, a public officer shall make a decision on an application as soon as possible, but in any event, within twenty-one days of receipt of the application". Additionally, as per Section 9(6) of the *Access to Information Act* "where the applicant does not receive a response to an application within the period stated in subsection (1), the application shall be deemed to have been rejected."
 71. It was submitted that by failing to provide the Petitioner with the information requested for purposes of protecting his rights and fundamental freedoms within the statutorily prescribed time – 21 days, the Respondents violated the Petitioner's right to access information.
 72. On the third issue, the Petitioner submitted that Article 27(1) of *the Constitution* provides that every person is equal before the law and has the right to equal protection and equal benefit of the law, equality includes full and equal enjoyment of all rights and fundamental freedoms. The 1st to 4th Respondents are enjoined in mandatory terms not to directly and indirectly discriminate against any person on any ground including on grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
 73. The Petitioner submitted that by subsequently shortlisting and ranking the 5th Respondent and the third interviewee – Ali Dahir Abdi, all who come from the same majority Dogodiya Clan and the



same Mithimal Subclan as number #1 and number #2 respectively, and ranking the Petitioner who comes from the minority Ajuran Clan and specifically the Walmega Subclan, as number #3 without providing any reason, the 1st to 4th Respondents violated the Petitioner's right to freedom from ethnic discrimination and nepotism.

74. The Petitioner submitted that in the first interview, the Petitioner was ranked first (#1) with a score of 86.4% while the 5th Respondent and a third interviewee – Mr. Ali Dahir Abdi were ranked second (#2) and third (#3) with a score of 62% and 54.1% respectively. It is therefore surprising that in the second interview, the 5th Respondent conveniently emerged first (#1) with a grade of 91% and the 3rd Interviewee – Ali Dahir Abdi, came in (#2).
75. It is the Petitioner's submission that from the re-advertisement interview minutes the Petitioner still had a grade of a C plain and that it was only one interviewee that had a grade of a C(-) minus. The same findings were made in the first interview minutes, after scrutinizing the interviewees documents and testimonials; the Petitioner had a grade of C plain. These two pieces of evidence prove that that allegation that he had a C- minus is at best a fabrication as it is impossible that both exhibits erroneously indicate that the Petitioner had a grade of C plain as per the requirements of the advertisement and the re-advertisement, even after the Regional Commissioner had allegedly called for a re-advertisement due to the Petitioner's qualifications.
76. The Petitioner submitted that by this process of elimination, the only logical explanation that remains is that he was not selected because of his ethnic origin - the minority Ajuran Clan and specifically the Walmega subclan, which is a specified ground of discrimination under Article 27(4). As per the Harksen –v- Lane NO [1998] 1 SA 30, given that the differentiation amounts to unfair discrimination on the basis of ethnicity, discrimination has been established. Further, given that the discrimination can be traced back to a specified ground of discrimination – ethnicity – unfairness can and should be presumed.
77. The Petitioner submitted that no evidence or argument has been advanced to rebut the argument that the 5th Respondent is also a brother to the retired chief Mohammed Ibrahim Abdullahi who proceeded to retirement on 30th December 2024. This by itself is a concession.
78. On the fourth issue, the Petitioner submitted that he prays for an award of damages for breach of his right to fair administrative action., access to information and freedom from discrimination provided under Aricles 47, 35 and 27 of *the Constitution*. This is premised on two factors, that the award of damages as rendered by the courts; and inflation and all factors affecting the money market. He cited Gulleid v Registrar of Persons & another (Petition E007 of 2021) [2021] KEHC 110 (KLR) (27 September 2021) (Judgment), Wamwere & 5 others v Attorney General (Petition 26, 34 & 35 of 2019 (Consolidated)) [2023] KESC 3 (KLR) (27 January 2023) (Judgment) and Munene v United States International University [2024] KEELRC 1635 (KLR).
79. The Petitioner submitted that this court should award him damages not only to vindicate him as his rights violated, but also to influence government behaviour and secure its future compliance with the Bill of Rights under Chapter Four of the 2010 Constitution. This is because despite his request for information, the government, without giving reason, failed to comply with his request which was necessary for the protection of his fundamental rights and freedoms.

1st to 4th Respondents' Submissions

80. The Respondents submitted on five issues:whether the Petitioner has established a breach of his rights under Article 47 (fair administrative action), Article 35 (access to information) or Article 27 (non-discrimination) of *the Constitution* of Kenya, 2010; whether the Petitioner's claim of "legitimate



expectation” (from ranking first in the earlier interview) is sustainable as a matter of law in the context of this recruitment process; whether the Petitioner’s allegations of ethnic discrimination and nepotism are supported by the evidence; whether the Petitioner is entitled to the reliefs claimed (declarations, certiorari, mandamus, damages); and whether the recruitment process itself was lawful and whether the appointment effected on 4 December 2024 (or 6 May 2025 as alleged by the Petitioner) renders the relief sought moot.

81. On the first issue, the Respondents submitted that the recruitment process was taken in accordance with the Scheme of Service for Chiefs and Assistant Chiefs, relevant public service guidelines, and the regional administrative hierarchy. The Petitioner was given an opportunity to apply, interview, and the process was transparent (advertisement, shortlisting, interview, recommendation, appointment).
82. The Respondents submitted that the Petitioner’s claim that he ranked first in a first interview (86.4%) but was later ranked third in a second process does not of itself amount to a violation of fair administrative action. They contend the first process was rightly cancelled (due to discovery that candidates did not meet the mandatory KCSE “C (plain)” grade), and a fresh process was lawfully invoked. The fresh process is not irregular simply because the Petitioner’s ranking changed.
83. It is the Respondents’ submission that the *Fair Administrative Action Act* and *the Constitution* do not guarantee appointment or selection; they guarantee procedural fairness and rational decision-making. In the case of Civil Appeal 463 of 2019: Tarabana Company Ltd v Sehmi & 7 Others the Court of Appeal emphasised that the doctrine of legitimate expectation (which the Petitioner invokes) is rooted in Article 47 and the FAAA, but must still meet the threshold of lawfulness and procedural fairness.
84. On legitimate expectation, the Respondents submitted that no clear representation was made to the Petitioner that he would be appointed simply by ranking first in the first interview. Further, the recruitment scheme expressly required candidate(s) to meet minimum academic qualifications (KCSE “C plain”). The Petitioner failed to satisfy this threshold (his grade was C-). Thus, any expectation he claims is not lawful or competent.
85. The Respondents further submitted that the first process was cancelled because of an irregularity (unqualified candidates) and a fresh advert was legally effected. In circumstances of cancellation and re-advertisement, the Petitioner’s expectation cannot be relied upon to claim entitlement to appointment. Thus, the Petitioner’s invocation of legitimate expectation is misplaced and should be dismissed.
86. On the third issue, the Respondents submitted that the recruitment process stipulated that all candidates must possess a KCSE mean grade of “C (plain)”, however, the Petitioner’s certificate shows “C-”, which is below the threshold. It is a lawful requirement and part of the Scheme of Service for Chiefs and Assistant Chiefs; and the Respondents were obliged to enforce it. Therefore, the Petitioner cannot claim unfairness for failing to meet a threshold set by law or policy. They cited *Tarcus v Kenya School of Law & another* (Appeal E019 of 2023) [2023] KELEAT 378 (KLR) (9 June 2023) (Judgment) wherein the court held that a decision-maker cannot be required to act against express statutory scheme or policy.
87. The Respondents submitted that the Petitioner’s complaint that the requirement is “fabricated” is unsupported by credible evidence and should fail.
88. On the fourth issue, the Respondents submitted that the Petitioner has not adduced evidence of a request in the form required by the *Access to Information Act*, 2016. They assert that they were under no duty to produce confidential internal deliberations unless ordered by the Court; and where such records are protected by law (e.g., candidate scores, minority entries) non-disclosure is permitted. To the extent the Petitioner alleges failure to comply with court orders, the Respondents will furnish



- documentary proof of compliance or justification for non-disclosure (privilege, confidentiality, data protection).
89. The Respondents submitted that the Petitioner's Exhibits (IAO-3 and IAO-5) were illegally obtained, confidential, and their production breaches the rights to privacy, access to information and fair trial provided under Articles 31, 35 and 50(4) of *the Constitution*. Therefore, the Respondents pray for their expungement in line with established authorities.
 90. On the fifth issue, the Respondents submitted that the test for unfair discrimination in Kenya requires: differential treatment, on a specified ground (ethnicity), which is arbitrary or unfair, and results in disadvantage. The Petitioner has not demonstrated credible evidence of discriminatory motive or scheme.
 91. It is the Respondents' submission that positive preferential treatment based on clan or ethnicity would contravene public service regulations and would not be lawful. Thus, the claim of discrimination is speculative and should be rejected.
 92. On the fifth issue, the Respondents submitted that Petitioner seeks orders of certiorari, mandamus, appointment and damages. However, by the Respondents' case, the position was lawfully filled vide a letter dated 4th December 2024 and the appointment implemented, such that any interim relief (conservatory order) is moot. The Petitioner's request for appointment is therefore infirm.
 93. The Respondents submitted that it is in public interest in ensuring that the office of Chief II is not left vacant or incapacitated, as recognized in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR). The Court should be reluctant to grant relief that compromises continuity of local administration.
 94. On damages, the Respondents submitted that no causal nexus has been established between lawful administrative action and the claimed loss. Secondly, general damages for unfair administrative action or discrimination are exceptional and only granted where egregious rights violations are proven. And lastly, the process was lawful and the Petitioner was unqualified; accordingly, the claims for damages are unfounded.

5th Respondent's Submissions

95. The 5th Respondent submitted on three issues: whether there was compliance with *The Constitution* and *Fair Administrative Action Act* in the recruitment process; whether the Petition meets the constitutional threshold; and whether the Petitioners are entitled to the reliefs sought.
96. On the first issue, the 5th Respondent submitted that all the shortlisted candidates including the Petitioner were subjected to the interviews by the 1st, 3rd and 4th Respondents and given a score by each panelist in accordance with a scoring criteria developed by the 1st, 3rd and 4th Respondents. That all the shortlisted candidates who appeared for the interviews on both occasions were treated fairly during the interviews and at the conclusion thereof, they were notified of the outcome.
97. The 5th Respondent submitted that there is no malice demonstrated on the part of 1st, 3rd and 4th Respondents in conducting the interviews in terms of the relevant laws and procedures. That these processes have thus been transparent, competitive and fair to all candidates involved and that the petition has not been pleaded with reasonable precision demanded in, therefore, the petition does not disclose any violation of the rights of the Petitioner protected under articles 20, 23, 27, 41, 47, 73, 258 and 259 of *the Constitution*.



98. The 5th Respondent submitted that the Supreme Court in *Communication Commission of Kenya - Vs- Royal Media Service Ltd & 5 Others* eKLR emphasized that fair administrative action demands a procedure that is fair, rational and just. The recruitment process meet this threshold.
99. The 5th Respondent submitted that the Petitioner has not provided this Court with a prima facie case as to how the interview exercise was not carried out with strict adherence to the relevant laws and no evidence has been adduced to demonstrate that the 1st, 3rd and 4th Respondents acted ultra vires their constitutional and statutory mandate. Furthermore, the Petitioner has not challenged the 5th Respondent's credentials or that he is not qualified candidate for the position of the chief.
100. The 5th Respondent submitted that the allegation that he comes from a majority group and that the previous retired chief is his brother is absurd as the said allegations have not been supported by any sufficient evidence. The retired chief was not a party nor in the panel of the persons who interviewed the candidates. That Article 27 (4) of *the Constitution* provides that the state shall not discriminate directly or indirectly against any person on any ground, including race sex, marital status, health status, ethnic or social origin, age, language or birth. He cited *Shatsala & Another V Kevin & 2 Others* (Petition 9 of 2023) [2024] KE ELRC 1022 (KLR) in where the court dismissed the Petitioner's Petition on the grounds that the 1st Respondent met the requirement to be appointed as a chief and was not influenced by the mother.
101. The 5th Respondent submitted that there was no automatic right to appointment due to a person for either making an application, belonging to a particular community. Rather, the considerations were viewed holistically and in consonance with competency in delivering services to the people of Lagbogol North Location in Hadado Sub- County. Besides the Petitioner has failed to plead specifically any member from a marginalized/ minority community who applied for the position and was denied the opportunity despite having the requisite qualifications.
102. It is the 5th Respondent's submission that the Petitioner has failed to establish that the Petition raises constitutional issues, which of their constitutional rights have been violated and how they have been violated.
103. On the second issue, the 5th Respondent submitted that the Petitioners' petition has not set out in precision how the Respondents have violated their rights under *the Constitution* nor provided any evidence to back their assertions. He cited the cases *Anarita Karimi Njeru Vs. Attorney General* (1979) KLR 154; *Trusted Society Of Human Rights Alliance V AG & 2 Others* (2012) eKLR and *Evans Ladtema Muswahili V Vihiga County Public Service Boar & 2 Others*; *Marley Ezekiel Ayiego* (2021) eKLR.
104. The 5th Respondent submitted that where a person is petitioning the court for an alleged violation of *the Constitution* he or she is required to set out with a reasonable degree of precision, the right said to have been infringed and the way it has been infringed.
105. The 5th Respondent submitted that the Petitioner neither opposes his credentials nor that he did not attain the required qualification to apply for the post. The 1st to 4th Respondents recruitment process was based on merit, fair competition and was above board. He asserts that he is qualified, a resident of Lagbogol North Location in Hadado Sub-County and met the integrity test. He therefore maintains that he was qualified to hold the said position.
106. The 5th Respondent submitted that the Petitioner allegation are in relation to the social origin and his ethnical group which was not the point of him attaining the highest score in the interview. The 5th Respondent is a Police Officer and had all the credentials for the post. Therefore, he has a right to



equal protection and equal benefit of the law a freedom from discrimination under Article 27 of *the Constitution* of Kenya. The 5th Respondent should not be discriminated based on his ethnicity or social origin since he qualified for the position.

107. It is the 5th Respondent's submission that the Petitioner has not provided sufficient proof of the alleged infringement of his constitutional right at the time of the recruitment. The allegation of the influence by the retired chief being the alleged brother of the 5th Respondent has not been proved nor has the Petitioner provided any evidence of discrimination in the process of recruitment thus his allegation that being the assistant chief and was acting as the chief is baseless to be automatically be appointed as the chief in Lagbogol North Location of Hadado Sub-County.
108. On the reliefs sought, the 5th Respondent submitted that the petitioner did not avail any evidence that the process leading to the 5th Respondent's appointment was unconstitutional or unlawful, as the process followed was set out by the then 1st, 3rd and 4th Respondent. The Petitioners' assertion that the recruitment was influenced by the former chief who is alleged to be the brother of the 5th Respondent does not hold water and thus the process was lawful and there is no proof of discrimination by the Respondents as the recruitment was not based on the social race or ethnic group of the applicant therefore the Petitioner being a person from a minority community does not hold water.
109. It is the 5th Respondent's submission that he met all the requirements for appointment as a Chief and had taken up the position. Having found that no illegality was occasioned in his appointment and that he met all the requirements for the position, the prayer for fresh recruitment cannot stand.
110. I have considered all the averments and submissions of the parties herein. From the evidence herein, the petitioner who is Assistant Chief of Lagbogol North location was directed to act as Chief of the Lagbogol North Location vide a letter of 4th January 2023.
111. It is also true that the position for Chief was advertised as per the advert of 20th July 2023. In the advert, qualification for chief included Kenya certificate of secondary education grade C plain.
112. The petitioner was among candidates shortlisted and interviewed for the position of chief. It is not clear why the petitioner was shortlisted without qualifying for the position. The respondents aver that the petition has a C- minus qualification in his KCSE examinations and was therefore not qualified hence the re advertisement. It is indeed true that the petitioner obtained a mean grade of C-Minus in his KCSE examination and it was an error for him to be shortlisted and interviewed in the first place. The petitioner himself never submitted his form 4 certificate before this court for verification.
113. The petitioner has averred that he was discriminated against but the averment is without any proof as the petitioner has not been able to establish that he met the qualifications for the job as advertised and was short changed.
114. The petitioner also averred that the re advertisement was made on error as he was not given reason for the re advertisement. This is indeed true. The respondents have herein explained in their response that the re advertisement was made due to the fact that the petitioner did not meet the qualifications for the position and which position this court has established.
115. The petitioner averred that he sought for some documents to be provided by the respondents but which the respondents did not supply in breach of Act 35 of *the Constitution*.
116. The petitioner have also averred that he sought for information from the respondents and the respondents did not provide the same. It is true that the petitioners sought to have some documents supplied to them which respondent did not. This was indeed in breach of article 35 of *the Constitution*. That said and done the lack of the said documents do not prejudice the petitioners in any way as they



sought the documents which documents were in relation to the 1st interviews. The court has referred to the reason given by the respondents on why they had to advertise for the position and also alluded to the fact that the petitioner did not meet the qualifications for appointment due to his grade C- in KCSE.

117. Considered as a whole, I find the petition lacks merit in the circumstances and the orders sought cannot be granted. I therefore proceed and dismiss this petition accordingly. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF DECEMBER 2025.

HELLEN WASILWA

JUDGE

