



Kibor v County Public Service Board Uasin Gishu County & 2 others (Petition E010 of 2025) [2025] KEELRC 3720 (KLR) (22 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3720 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E010 OF 2025
MA ONYANGO, J
DECEMBER 22, 2025**

BETWEEN

MOSES KIPTUM KIBOR PETITIONER

AND

**THE COUNTY PUBLIC SERVICE BOARD UASIN GISHU
COUNTY 1ST RESPONDENT**

THE GOVERNOR, UASIN GISHU COUNTY 2ND RESPONDENT

THE COUNTY ASSEMBLY, UASIN GISHU 3RD RESPONDENT

RULING

1. The application before this Court for determination is a Notice of Motion dated 17th September 2025, filed under a certificate of urgency in which the Petitioner seeks conservatory orders restraining the 3rd Respondent from vetting, approving, or swearing in the persons nominated or appointed as the Chairperson and members of the City of Eldoret Board pending the hearing and determination of the Petition herein.
2. The application is supported by the affidavit of the Petitioner, Moses Kiptum Kibor sworn on 17th September 2025 wherein he avers that on 15th August 2024, the President of the Republic of Kenya conferred city status upon Eldoret Municipality, and that the Charter of the City of Eldoret became operational upon its publication and gazettment on 18th June 2025 vide Legal Notice No. 112.
3. It is the Petitioner's case that under the City Charter and the Urban Areas and Cities Act No. 13 of 2011, the City Board is the principal organ mandated to regulate, oversee, and operationalize the functions of the City, and that its composition must strictly conform to the Constitution and the law.
4. The Petitioner contends that the 1st Respondent, in consultation with the 2nd Respondent, unlawfully advertised positions of Chairperson and members of the City of Eldoret Board contrary to section



- 7(2) of the *Urban Areas and Cities Act*, and conducted the recruitment process in an opaque and irregular manner. In particular, it is alleged that there was failure to publish longlists, transparent shortlists, interview schedules, and scoring criteria, thereby violating Articles 10, 27, 73, and 232 of *the Constitution*.
5. It is further alleged that the interview panel was unlawfully subdivided into smaller groups, compromising fairness, objectivity, and consistency, and that the process was marred by failure to verify academic and professional qualifications, resulting in unqualified persons being advanced for appointment in violation of Chapter Six of *the Constitution*.
 6. The Petitioner also alleges that the proposed nominees do not meet the minimum statutory qualifications under section 13 of the *Urban Areas and Cities Act*, and that the process failed the constitutional requirements of inclusivity, equity, and diversity, as all the nominees were drawn from a single ethnic community. It is further contended that the proposed composition of four men and two women fails to meet constitutional thresholds on diversity and representation of special interest groups.
 7. Additionally, the Petitioner avers that the current City Manager lacks the requisite qualifications to serve as an ex officio member of the City Board. It is also contended that ELRC Petition No. E017 of 2024, which challenges the position of the City Manager is still pending before the Court and that the Respondents have acted in disregard of existing court orders issued therein, thereby undermining the rule of law.
 8. The Petitioner submits that unless this Court intervenes and halts the impugned process, the Petition will be rendered nugatory. He urges the Court to quash the recruitment and direct that a fresh process be undertaken in strict compliance with *the Constitution*, the *Urban Areas and Cities Act*, the *County Governments Act*, and the Eldoret City Charter.

Response

9. The 1st and 2nd Respondents opposed the application through Grounds of Opposition dated 25th September 2025 contending that the application is frivolous, vexatious, misconceived, premature, and an abuse of the Court process, as the nominees have not yet been appointed.
10. The 1st Respondent further filed a Notice of Preliminary Objection dated 6th October 2025 arguing that the Petition is incompetent and that the Petitioner failed to exhaust alternative statutory remedies under the *County Governments Act* and the *Fair Administrative Action Act*. It was also contended that the Petition improperly challenges administrative actions within the lawful mandate of the Respondents and is not amenable to constitutional litigation.
11. In addition, the 1st Respondent filed a Replying Affidavit sworn by Silah K. Ronoh on 15th October 2025, deponing that the impugned process was procedurally fair, substantively justifiable and that it complied with constitutional and statutory requirements, including public participation.
12. The Respondents maintained that the recruitment process is ongoing and incomplete rendering the Petition premature. They further asserted that all actions taken were guided by transparency, merit, and adherence to the law, and that the Petitioner's constitutional rights were neither violated nor threatened.
13. The Respondents contended that the Petitioner participated in the process and cannot approbate and reprobate by challenging the same process without full disclosure. It was also asserted that the issues raised are purely administrative and fall within the discretion of the Respondents.



14. On the basis of the foregoing, the Respondents urged the Court to dismiss the application with costs, contending that the Petitioner had failed to meet the threshold for the grant of conservatory orders or to establish a prima facie case with probability of success.
15. The application and the Preliminary Objection were argued orally on 13th October 2025. Learned counsel Tarigo appeared for the Petitioner, Counsel Mwachofi held brief for Ms. Ruto for the 1st Respondent, while Ms. Mutai held brief for Ms. Sawe for the 2nd Respondent. The Court has considered the respective oral submissions.

Determination

16. Having considered the application, the Preliminary Objection, the affidavits on record, and the rival submissions by counsels, the Court is of the view that the following issues arise for determination:
 1. Whether the Preliminary Objection dated 6th October 2025 is merited
 2. Whether the Petitioner has established a prima facie case warranting the grant of conservatory orders; and
 3. What orders ought to issue.

Whether the Preliminary Objection dated 6th October 2025 is merited

17. The 1st Respondent raised a Preliminary Objection dated 6th October 2025 contending that the Petition and the Notice of Motion are incompetent for failure of the Petitioner to exhaust alternative dispute resolution mechanisms provided under the *County Governments Act* and the *Fair Administrative Action Act*.
18. A Preliminary Objection, as defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, must raise a pure point of law which, if argued on the assumption that all facts pleaded by the other side are correct, and capable of disposing of the suit. Where a court is called upon to ascertain contested facts or to exercise discretion, a preliminary objection is not appropriate.
19. The gravamen of the Petitioner's case is that the recruitment and nomination process for the Chairperson and members of the City of Eldoret Board was conducted in violation of *the Constitution* and the *Urban Areas and Cities Act*, and that the impugned process offends the national values and principles of governance enshrined in Articles 10, 27, 73, and 232 of *the Constitution*.
20. The doctrine of exhaustion is now well settled. While parties are generally required to exhaust available statutory or contractual dispute resolution mechanisms before approaching the Court, the requirement is not absolute.
21. Courts have consistently held that the doctrine does not apply where the dispute raises pure constitutional questions, where the alternative remedy is ineffective, unavailable, or inadequate, or where the impugned process is alleged to be unconstitutional ab initio.
22. In the present case, the issues raised go beyond mere procedural or administrative grievances. The Petition challenges the constitutionality and legality of the entire recruitment process, including allegations of breach of national values, lack of transparency, violation of diversity requirements, and disregard of Chapter Six of *the Constitution*. These are matters that fall squarely within the jurisdiction of this Court under Articles 22, 23, and 165 of *the Constitution*.



23. Furthermore, the question whether the recruitment process complied with constitutional and statutory requirements is a contested matter of fact and law that cannot be determined without interrogating evidence. Such an inquiry cannot properly be undertaken at the preliminary stage.
24. In the premises, the Court finds that the Preliminary Objection dated 6th October 2025 does not meet the threshold of a preliminary objection. The same is therefore without merit and is hereby dismissed.

Whether the Petitioner has satisfied the threshold for the grant of conservatory orders.

25. Conservatory orders in constitutional litigation are granted to preserve the substratum of a dispute pending its determination and are intended to safeguard the public interest, uphold constitutional values, and prevent the Court process from being rendered nugatory.
26. The principles guiding the grant of conservatory orders are now settled. An applicant must demonstrate a prima facie case with a likelihood of success, that unless the conservatory orders are granted there is a real danger that the Petition will be rendered nugatory, and that the public interest favors the grant of the orders sought.
27. The Petitioner has placed before the Court material alleging serious breaches of constitutional and statutory provisions in the recruitment and nomination of the Chairperson and members of the City of Eldoret Board. These include allegations of lack of transparency, failure to publish longlists and shortlists, absence of disclosed scoring criteria, unlawful subdivision of interview panels, failure to verify qualifications, and non-compliance with diversity and inclusivity requirements.
28. Without making definitive findings at this interlocutory stage, the Court is satisfied that the issues raised are not frivolous or speculative. They disclose arguable constitutional questions that warrant full interrogation at the hearing of the Petition. The Petitioner has therefore established a prima facie case.
29. On the question of whether the Petition would be rendered nugatory, the Court notes that the 3rd Respondent is seized of the vetting and approval process. The 3rd Respondent has a duty to vet the candidates as provided in section 8 of the [County Governments Act](#) which provides the first role of the County Assembly being to: “vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law”.
30. In vetting a nominee, the county assembly is expected to carry out investigation, evaluation, and adjudication of whether a candidate is suitable, fit, or eligible to occupy a particular position, and includes verification of credentials. This means that the process that the Petitioner wishes the court to injunct is not yet complete as the same grounds that have been raised by the petitioner can be raised in the County Assembly.
31. The County Assembly is by law vested with the power to vet nominees and stopping it from doing so would amount to judicial interference in the functions of an organ of government which under the doctrine of separation of powers this court is called upon to respect and give deference to.
32. Should the county assembly not carry out its vetting role in accordance with the law then this court would have the power to nullify the process.
33. The Respondents pointed out that the recruitment process is ongoing and that no appointments have been made. Section 9 of the [Fair Administrative Action Act](#) provides that the court ought to allow the process provided by law to be concluded before intervening. The section provides:

9. Procedure for judicial review



1. Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*.
 2. The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
 3. The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1).
 4. Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
 5. A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.
34. It is therefore the view of the court that the application is premature as the recruitment process has not been exhausted. The Petitioner did not seek exemption from the provisions of section 9(4) as provided in the Act.
35. In view that this is a public interest suit, the Court must also consider the public interest. The City Board is a critical governance organ entrusted with the oversight and operationalization of city functions. It is in the public interest that such an organ is constituted in strict compliance with *the Constitution*, the law and the principles of integrity, transparency, inclusivity and merit. In view of the fact that the City of Eldoret is in its formative stage, halting the recruitment process pending judicial scrutiny is in the view of the court not be in the public interest. Should the court find that the recruitment of the 6 members of the Board was unconstitutional, the court has powers to nullify the appointments and order fresh appointments without interfering with the operations of the establishment of the City.
36. The Court is therefore persuaded that the balance of convenience and the public interest tilts in favour of not granting the orders sought in the application pending the hearing and determination of the petition.

What orders ought to issue?

37. In view of the foregoing findings, the Court makes the following orders:
1. The Preliminary Objection dated 6th October 2025 is hereby dismissed.
 2. The application dated 17th September, 2025 is dismissed.
 3. Costs of both the Notice of Preliminary Objection and the Notice of Motion shall abide the outcome of the Petition.
38. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF DECEMBER, 2025.



M. ONYANGO
JUDGE

