



**Wanjohi v Uasin Gishu County Public Service Board & 2 others (Petition E009 of 2025) [2025] KEELRC 3749 (KLR) (22 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3749 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION E009 OF 2025  
MA ONYANGO, J  
DECEMBER 22, 2025**

**BETWEEN**

**HON KIMANI WANJOHI ..... PETITIONER**

**AND**

**THE UASIN GISHU COUNTY PUBLIC SERVICE BOARD .... 1<sup>ST</sup> RESPONDENT**

**THE UASIN GISHU COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**THE UASIN GISHU COUNTY GOVERNOR ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Notice of Motion dated 7<sup>th</sup> September 2025, filed by the Petitioner seeks the following orders:
  - i. Spent
  - ii. That pending the hearing of this Application inter partes, a conservatory order be and is hereby issued suspending and staying the processing, implementation, enforcement and/or operationalization of the 1<sup>st</sup> Respondent’s decision published on its website appointing the Interested Parties as members of the Eldoret City Board.
  - iii. That pending the hearing of this application inter partes, a conservatory order be and is hereby issued restraining the 2<sup>nd</sup> Respondent, the Uasin Gishu County Assembly, from receiving, or if already received, staying the process of vetting or in any other manner proceeding to vet and process the nomination of the Interested Parties as members of the Eldoret City Board.
  - iv. That pending the hearing and determination of this application and the entire Petition, a conservatory order be and is hereby issued suspending and staying the processing, implementation, enforcement and/or operationalization of the 1<sup>st</sup> Respondent’s decision appointing the Interested Parties as members of the Eldoret City Board.



- v. That pending the hearing and determination of this Application and the entire Petition, a conservatory order be and is hereby issued restraining the 2<sup>nd</sup> Respondent, the Uasin Gishu County Assembly, from receiving, vetting, or in any other way processing the nomination of the Interested Parties as members of the Eldoret City Board.
  - vi. That this Honourable Court be pleased to grant any other orders it deems just and fit in the circumstances.
2. The application is brought pursuant to Article 23(3) of *the Constitution* of Kenya, Section 12(3) of the *Employment and Labour Relations Court Act*, and Rule 23 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules). It is supported by the affidavit of Kimani Wanjohi, the Petitioner herein, sworn on 7<sup>th</sup> September 2025.
  3. The grounds upon which the application is premised are that the 1<sup>st</sup> Respondent appointed the Interested Parties as members of the Eldoret City Board without compliance with the constitutional and statutory requirements of inclusiveness, non-discrimination, protection of marginalized groups, and intergenerational justice. The Petitioner contends that the impugned appointments do not reflect the ethnic and cultural diversity of Uasin Gishu County, and in particular Eldoret City, contrary to Articles 10, 73, 174 and 232 of *the Constitution*, Sections 68A and 97 of the *County Governments Act*, and Sections 7(1) and 7(2) of the *National Cohesion and Integration Act*.
  4. It is further contended that the appointments entrench discriminatory and exclusionary practices that undermine the participation of the youth, persons with disabilities, minorities and marginalized groups in public service, contrary to Articles 27, 54, 55, 56 and 232 of *the Constitution*. The Petitioner avers that the exclusion of the youth from such a strategic body offends the principle of intergenerational equity, that the Eldoret City Board, being tasked with overseeing the affairs of Eldoret City, requires representation from all sectors of the population.
  5. The Petitioner states the Kenya has obligations under the United Nations Sustainable Development Goals, particularly SDG No. 10 on reducing inequalities and promoting inclusive and equitable representation in decision-making, which obligations are entrenched in Article 10(2)(d) of *the Constitution*.
  6. It is asserted that unless this Court intervenes, the Interested Parties will assume public office in a manner that undermines constitutional values, entrenches exclusion, and causes irreparable harm to public confidence and good governance.
  7. The Petitioner urges the Court to grant the conservatory orders sought to preserve the substratum of the Petition.
  8. The application is opposed. The 1<sup>st</sup> Respondent filed Grounds of Opposition dated 25<sup>th</sup> September 2025, contending that the application is frivolous, vexatious, scandalous, misconceived, and an abuse of the court process.
  9. It is asserted that the application is premature as the proposed nominees are yet to be vetted by the County Assembly, and that the Petitioner, being a Member of the County Assembly, ought to raise his concerns during the vetting process.
  10. The 1<sup>st</sup> Respondent further avers that the composition of the proposed nominees could only be determined by the County Public Service Board upon consideration of the applicants who responded to the advertisement, and that the Petitioner has failed to attach the list of all applicants to substantiate his allegations.



11. The 1<sup>st</sup> Respondent argues that granting the orders sought would cripple the operations of Eldoret City whose affairs depend on the existence of the City Board.
12. In a rejoinder, the Petitioner filed a supplementary affidavit sworn on 11<sup>th</sup> October 2025, maintaining that the Grounds of Opposition are misconceived and devoid of merit. The Petitioner asserts that by virtue of Articles 22 and 258 of *the Constitution*, any person has the right to institute proceedings alleging violation or threatened violation of *the Constitution*, and that it is immaterial that he is a Member of the County Assembly or that the vetting process has not yet commenced.
13. The Petitioner further avers that the application and Petition seek to protect, rather than undermine, the principles of devolution by ensuring constitutional compliance. He states that despite requesting information from the 1<sup>st</sup> Respondent vide a letter dated 29<sup>th</sup> September 2025 regarding the applicants, shortlisted candidates, and nominees, the 1<sup>st</sup> Respondent has declined to provide the same, warranting an adverse inference by the Court.
14. The 1<sup>st</sup> Respondent also filed a Replying Affidavit sworn on 25<sup>th</sup> September 2025 by Philip Meli, its County Secretary, reiterating that the instant application is premature, speculative, and unsupported by evidence. It is deposed that the Petitioner ought to await the vetting process, that the Court lacks jurisdiction, and that halting the process would disrupt the operations of Eldoret City.
15. The 1<sup>st</sup> Respondent also raised a Preliminary Objection dated 16<sup>th</sup> October 2025 on the grounds that the dispute raises pure constitutional issues falling within the jurisdiction of the High Court; that the application is premature as the vetting process is yet to be undertaken; and that the Application is defective, bad in law, and an abuse of the court process.
16. The 3<sup>rd</sup> Respondent similarly filed Grounds of Opposition dated 21<sup>st</sup> October 2025, contending that the application and Petition are premature, that no prima facie case or irreparable harm has been demonstrated, and that the alleged constitutional violations are speculative and unsupported. The 3<sup>rd</sup> Respondent further asserted that the Court lacks jurisdiction as no employer–employee relationship has been established.
17. In response, the Petitioner filed a further supplementary affidavit dated 24<sup>th</sup> October 2025 reiterating that the appointments violate Articles 10, 27, 54, 55, 56, 73, 174 and 232 of *the Constitution* and that unless conservatory orders issue, the assumption of office by the Interested Parties will perpetuate exclusion and marginalization.
18. The 3<sup>rd</sup> Respondent also filed a Replying Affidavit sworn on 27<sup>th</sup> September 2025 by Philip Meli, reiterating that the nomination process was conducted in strict compliance with the *Urban Areas and Cities Act*, 2011 (as amended), and that the nominations were inclusive, merit-based, and reflective of gender equity, youth participation, persons with disabilities, and marginalized groups. It was deposed that the Petition is speculative, premature, and unsupported by evidence, and that any intervention by the Court at this stage would undermine the separation of powers and devolved governance structures.
19. The 3<sup>rd</sup> Respondent argued that no irreparable harm has been demonstrated and that the application, particularly having been filed during court vacation, amounts to an abuse of the judicial process. It was therefore prayed that the Petition and application be dismissed with costs.
20. Both the application and the Preliminary Objection were canvassed by way of oral submissions on 28<sup>th</sup> October 2025. Learned counsel Mr. Makau appeared for the Petitioner, Ms. Mutai for the 1<sup>st</sup> Respondent, and Ms. Kosgei for the 3<sup>rd</sup> Respondent.



## Determination

21. I have considered the Notice of Motion, the affidavits filed by the parties, the Grounds of Opposition, and the Preliminary Objection on record. The issues for determination are:
  - i. Whether the Preliminary Objection dated 16<sup>th</sup> October 2025 is merited;
  - ii. Whether the Petitioner has established a prima facie case warranting the issuance of conservatory orders;
  - iii. What orders should issue?

## Whether the Preliminary Objection dated 16<sup>th</sup> October 2025 is merited

22. The 1<sup>st</sup> Respondent raised a Preliminary Objection contending that the dispute raises pure constitutional issues falling within the jurisdiction of the High Court, that the application is premature as the vetting process is yet to be undertaken, and that the Application is defective and an abuse of the court process.
23. A preliminary objection must raise a pure point of law which, if upheld, would dispose of the matter without the need for further evidence, as stated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.
24. The Petition before Court challenges the constitutionality and legality of appointments to the Eldoret City Board, a statutory public body, and implicates questions relating to public service appointments, governance structures under devolution, and compliance with constitutional values in public employment.
25. This Court is clothed with jurisdiction under Article 162(2)(a) of *the Constitution* and section 12 of the *Employment and Labour Relations Court Act* to hear and determine disputes relating to employment and labour relations, including disputes concerning appointments to public office. The fact that constitutional issues arise in the dispute does not, of itself, divest this Court of jurisdiction.
26. On the argument that the matter is premature, the Court notes that constitutional litigation may be commenced where there is a threatened violation of rights or of *the Constitution*. The Court is not persuaded that a party must await the completion of an impugned process before approaching the Court, particularly where it is alleged that the process itself is constitutionally infirm.
27. The issues raised by the Respondents require interrogation of facts and exercise of judicial discretion. They do not qualify as pure points of law capable of disposing of the matter at a preliminary stage.
28. In the premises, the Court finds that the Preliminary Objection dated 16<sup>th</sup> October 2025 is not merited.

## Whether the Petitioner has established a prima facie case warranting the issuance of conservatory orders

29. Conservatory orders are a public law remedy intended to preserve the subject matter of a constitutional dispute pending its determination. The guiding principles for their grant are now settled. An applicant must demonstrate a prima facie case with a likelihood of success, show that unless the orders are granted the Petition will be rendered nugatory, and establish that the public interest favours the grant of the orders.
30. The Petitioner alleges that the composition of the Eldoret City Board, as proposed, fails to meet constitutional and statutory thresholds on inclusivity, specifically, representation of youth, persons



with disabilities, minorities and marginalized groups, ethnic diversity, and intergenerational equity. He further contends that the appointments offend Articles 10, 27, 54, 55, 56, 73, 174 and 232 of the Constitution.

31. Without making definitive findings at this interlocutory stage, the Court notes that the issues raised are weighty, arguable, and deserving of full judicial interrogation.
32. The Petitioner has however not supported the averments with supporting evidence considering the documents before the court. It would therefore be necessary for the court to receive and interrogate further evidence to ascertain the averments in the Petition. The Petitioner has therefore not established a prima facie case.
33. On whether the Petition would be rendered nugatory, the Court notes that should the nominees be vetted, approved, and assume office, the substratum of the Petition would not be substantially altered as this court still retains the power to nullify the appointments should it find that the same unconstitutional.
34. The Respondents argued that halting the process would cripple the operations of Eldoret City. The Court is alive to the need for effective governance but is also mindful that constitutional compliance in the constitution of public bodies is mandatory.
35. The public interest in this matter lies in ensuring that public offices, particularly those entrusted with governance of a city, are constituted in a manner that reflects constitutional values of inclusivity, equality, diversity, and good governance.
36. In the court's considered view granting the orders sought pending determination of the Petition would not be serve the public interest as the documents on record do not disclose proof of violation of the constitution or relevant statutes.
37. For the forgoing reasons both the Notice of Motion dated 7<sup>th</sup> September 2025 and the Preliminary Objection dated 16<sup>th</sup> October 2025 are hereby dismissed.
38. The Petition shall be heard and determined on a priority basis.
39. Costs of the Notice of Motion shall abide the outcome of the Petition.
40. It is so ordered.

**DATED, DELIVERED AND SIGNED VIRTUALLY THIS 22<sup>ND</sup> DAY OF DECEMBER, 2025.**

**M. ONYANGO**

**JUDGE**

