

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC PETITION NO. E198 OF 2025**  
*(Before Hon. Lady Justice Hellen Wasilwa, J)*

**JOHN MAINA.....PETITIONER** **KAMAU**

**VS**

**KENYA REVENUE AUTHORITY.....**  
**RESPONDENT**

**JUDGMENT**

**Petitioner’s Case**

- 1 By a Petition dated 3<sup>rd</sup> October 2025, the Petitioner sought for the following orders:
  - a. *A declaration be and is hereby issued that failure by the Respondent to adhere to their own recruitment manual in the recruitment process for the positions of Investigations and Enforcement Manager and Case Quality Management Manager violates Articles 10,41, 73 and 232 of the Constitution on fair labor practices, Principles of Good Governance and Public Service.*
  - b. *A Declaration be and is hereby issued that the action by the Respondents of LOWERING the minimum requirements for the recruitment of the Investigation and Enforcement Manager from 7 years as provided in the Job Description manual to 5 years without any*

*prior communication and or consultations violates Article 10, 41,47, 73 and 232 of the constitution and the Doctrine of legitimate expectation.*

- c. A Declaration be and is hereby issued that the deviation from the established procedures, particularly in lowering the minimum years of experience for the position of the Investigation and Enforcement Manager favoring otherwise unqualified candidate, is a blatant violation of the constitution and the statutory norms governing public appointments specifically Article 41,73 and 232 of the Constitution and Section 59(d) of the Public Service Commission Act.*
- d. A Declaration be and is hereby issued that the action of the Respondent of advertising for the Position of Case Quality Management Manager which position is not provided for in the Respondents Recruitment manual and not allowing for transparent participation in setting out minim requirements for such a position violates Article 10, 41,47,73 and 232 of the Constitution.*
- e. A judicial review Order of Certiorari be and is hereby issued to bring to this Honorable Court and to quash the Respondent's Advertisement dated 8<sup>th</sup> September 2025 for the recruitment of for the positions Investigations and Enforcement Manager and Case Quality Management Manager.*
- f. The judicial review order of mandamus be and is hereby issued compelling the Respondent to forthwith undertake a fresh advertisement, shortlisting, and recruitment process for the positions of Investigations*

*and Enforcement Manager and Case Quality Management Manager in strict adherence to the law and the Job description manual.*

*g. A Declaration be and is hereby issued that any recruitment, appointment, hiring and or employment for the positions of Investigations and Enforcement Manager and or Case Quality Management Manager that may have been conducted based on the impugned process is unconstitutional, illegal and unlawful ab initio.*

*h. Costs of the Petition are awarded to the Petitioners*

*i. THAT this Honorable court be pleased to issue any other order as may seem just and expedient in the interests of justice and fairness*

### **Petitioner's Case**

- 2 The Petitioner avers that on 8<sup>th</sup> September 2025, the Respondent advertised jobs for Investigations & Enforcement Manager and the Case Quality Management Manager without due process and due regard to the law and Respondent's guidelines.
- 3 The Petitioner avers that on 26<sup>th</sup> January 2021, the Respondent inaugurated its Job Description Manual which was prepared by the Job Descriptions Analysis Committee (JDAC) to guide the Respondent on the minimum recruitment requirements for various positions.
- 4 It is the Petitioner's case that the manual provides for the minimum qualifications for the Investigations &

Enforcement Manager to include a university degree in law, business administration, economics or related field from a recognized institution; and minimum of 7 years work experience in similar role with at least 3 years in management.

- 5 He avers that the Respondent advertised for the said position, however, it disregarded the provisions of its manual as it gave the following qualifications: Bachelor's degree in social sciences, Business, Law, Pure and Applied Sciences from a recognized institution; Minimum of five (5) year's relevant work experience with at least two (2) years at first level management or a comparable position.
- 6 The Petitioner avers that the Respondent violated its own job description manual by lowering the qualifications required in the Investigation and Enforcement Manager position, which is a key department for the institution in carrying out their statutory mandate. This violated Articles 10,41, 73 and 232 of the Constitution on fair labour practices.
- 7 It is the Petitioner's case that the ongoing recruitment process is flawed, unfair, and may as well have been couched to favour some pre-determined candidates who would otherwise not have qualified if the job description manual was to be adhered to.
- 8 The Petitioner further avers that the Respondent also advertised for the Case Quality Management Manager, which position is not provided for in the job description

manual and as such making the recruitment process for the same opaque and unguided.

- 9 The Petitioner asserts that the recruitment process for the two positions as it stands violates various provisions of the Constitution, fair labour practice, Public Service Commission Act, Public Service Regulations, 2020 and the doctrine of legitimate expectation.
- 10 The Petitioner avers that qualified Kenyans mostly those with better qualification are likely to be left out if the process is allowed to proceed planned and framed by the Respondent in the advertisement.
- 11 The Petitioner contends that the recruitment process unfairly disadvantaged qualified persons by inviting otherwise unqualified persons who do not meet the minimum requirements set out in the job recruitment manual. He contends that by arbitrary lowering of the minimum requirements may be a route for discriminating persons based on nepotism, tribalism and or favouritism in breach of Article 27 of the Constitution
- 12 The Petitioner avers that any recruitment process for individuals who does not meet the fundamental eligibility criteria, constitutes an abuse of power and a deviation from the principles of public trust, accountability, and service to the people in breach of Article 73 of the Constitution.

- 13 The Petitioner avers that failure to adhere to a transparent, objective, and procedurally fair recruitment process denies the applicants their right to fair administrative action. Further, the arbitrary change of minimum requirements which disregarded the already set minimum requirement in the Job recruitment manual violates the principles of fairness, is unlawful, unreasonable, and procedurally irregular.
- 14 It is the Petitioner's case that issuance of a job description manual outlining specific expectations created a legitimate expectation that the selection process would adhere to these criteria set out on the Respondents Job description manual. The failure to adhere to clear set out qualifications as set in the manual constitutes a breach of legitimate expectation, undermining public confidence in the selection process and administrative fairness.

### **Respondent's Case**

- 15 In opposition to the petition, the Respondent filed a replying affidavit dated 24<sup>th</sup> October 2025, sworn by Dr. Emmah Omwenga, who is currently serving in the rank of a Deputy Commissioner -Human Resource within the Shared Services Department of the Kenya Revenue Authority.
- 16 The Respondent avers that the job advertisement for the position of Investigations and Enforcement Manager and the Case Quality Management Manager was done in line

with the law and the Respondent's guidelines on the recruitment process.

17 The Respondent avers that clause 2.5.2 of its Recruitment and Selection Policy provides that the requisitioning department or division will be required to provide an approved departmental staff establishment and updated job description.

18 Further, Clause 2.2.1 (a) and (c) of its Recruitment and Selection Policy, provides: *“(a) HoD will make a request to DC-HR on staff requirements detailing number of vacancies, job description and specifications based on the approved organizational and departmental structure by filling the staff requisition form. The HoD will also indicate on the form if the position is to be filled through internal or external sourcing. Mass recruitments will be advertised externally.*

*(c): CM-R will review the job description and specification and other critical information regarding the role, such as location, reporting relationships and key accountabilities and submit the request form to DCHR for approval.”*

19 The Respondent avers that on 26<sup>th</sup> January 2021, the Respondent inaugurated the Job Description Manual, which was prepared by the Job Descriptions Analysis Committee (JDAC) to guide the Respondent on the minimum recruitment requirements for various positions.

20 The Respondent confirmed that its Job description manual at page 3345 of the manual provides for the minimum

qualifications for the investigations & Enforcement manager to include a university degree in law, business administration, economics or related field from a recognized institution; and minimum of 7 years work experience in similar role with at least 3 years in management.

- 21 It is the Respondent's case that the qualifications in the job description in question was updated/reviewed as per the approval dated 5<sup>th</sup> May 2025 on standardized years of experience for recruitment in line with the provisions of Clause 2.5.2 of the Respondent's Recruitment and Selection Policy and Clause 2.2.1 (a) and (c) of the Recruitment and Selection Procedure Manual.
- 22 The Respondent avers that the Petitioner's assertion that recruitment process may have been couched to favour some pre-determined candidates who would otherwise not have qualified if the job description manual was to be adhered to is based on a negative assumption that is not supported by evidence thus lacks merit.
- 23 The Respondent avers that the position of Case Quality Management Manager was created vide the Respondent's new organizational structure that was approved by Public Service Commission vide letters Ref. PSC/GEN/22/VI/(74) and Ref. PSC/GEN/22/VOL.IX (86) dated 28<sup>th</sup> May 2025.
- 24 The Respondent asserts that the recruitment process for the two (2) positions in question is aligned to the provisions of the Constitution, fair labour practice, Public

Service Commission Act, Public Service Regulations, 2020 and the doctrine of legitimate expectation.

- 25 The Respondent avers that the Investigations and Enforcement Manager and Case Quality Management Manager positions have critical roles towards safeguarding of government revenue through efficient investigations and prosecution of all cases of tax evasion as per the Acts of Parliament, which the Respondent administers. Therefore, filling the positions by the Respondent will ensure continuity and strategic leadership in resolution of tax evasion cases, which is key in safeguarding the government revenue.
- 26 The Respondent avers that it should not be restrained from exercising its mandate of filling the position of the Investigations and Enforcement Manager and Case Quality Management Manager since the Petitioner has not provided evidence to prove that failure to issue an injunction restraining the Respondent from filling the positions in question will disadvantage him or any other qualified Kenyan.
- 27 It is the Respondent's case that the petition is based on a job description for the year 2021 is overtaken by events.
- 28 The Respondent avers that staying recruitment for the positions of the Investigations and Enforcement Manager and Case Quality Management Manager to accommodate a personal claim that is not proved undermines public interest and the Authority's statutory obligation.

- 29 The Respondent contends that the recruitment process was and is procedural and lawful, hence the petition is clearly an abuse of the court process with the sole intention of unlawfully paralyzing the Respondent's recruitment process.
- 30 The Respondent avers that it reviewed/updated the years of experience required for recruitment for all of its employment grades as per the approval dated 5<sup>th</sup> May 2025. Thus, the claim by the Petitioner that it invited unqualified persons and that the same may be a route for discriminating persons based on nepotism, tribalism and or favouritism lacks merit.
- 31 The Respondent avers that through its advertisement dated 8<sup>th</sup> September 2025, it accorded all qualified applicants an equal opportunity to apply for the position of Investigations and Enforcement Manager and Case Quality Management Manager, hence the Petitioner's claim that the applicants have been denied their right to fair administrative action is unfounded. Further, the minimum requirement for the said positions were reviewed/updated as per the approval dated 5<sup>th</sup> May 2025.
- 32 The Respondent avers that it advertised the positions to all qualified candidates in line with the provisions of Section 37 of the Public Service Commission Act, hence, the Petitioner was not disadvantaged in any way to warrant filing of the petition. Additionally, the Petitioner

has not provided evidence to prove that the recruitment process by the Respondent is unlawful.

33 The Respondent avers that positions were advertised to all qualified candidates in line with Regulation 16 of the Public Service Regulations, 2020, therefore, the Petitioner is not disadvantaged in any way.

34 It was submitted that there was no violation of any statutory provisions or the Constitution and the Petitioner has not proved any of the allegations cited against the Respondent.

### **Petitioner's Submissions**

35 The Petitioner submitted on three issues: whether the Respondents violated Articles 10, 41, 73 and 232 of the Constitution on fair labour practices, principles of good governance and public service and their own recruitment manual in the recruitment process for the positions of Investigations and Enforcement Manager and Case Quality Management Manager; Whether this Court has judicial Review power of Certiorari to this bring to Honorable Court and to quash the Respondent's Advertisement dated 8<sup>th</sup> September 2025 and make an order for Mandamus compelling the Respondent to forthwith undertake a fresh advertisement, shortlisting, and recruitment process for the positions of Investigations and Enforcement Manager and Case Quality Management Manager in strict adherence to the law and the job description manual; Who bears the costs.

- 36 On the first issue, the Petitioner submitted that the Respondent's inaugurated a job description manual which was prepared by the Job Descriptions Analysis Committee (JDAC) to guide the Respondents on the minimum recruitment requirements for various positions. As per the aforesaid manual, the minimum qualifications for the Investigations & Enforcement manager to include a university degree in law, business administration, economics or related field from a recognized institution; and a minimum of 7 years work experience in similar role with at least 3 years in management.
- 37 The Petitioner further submitted that the manual makes no provision for the other advertised position of Case Quality Management manager and as such making the recruitment process for the same opaque and unguided.
- 38 The Petitioner submitted that on 8<sup>th</sup> September 2025, the Respondent made an advertisement for the position of Investigations & Enforcement Manager which lowered the minimum relevant working experience from 7 years to 5 years.
- 39 It is the Petitioner's submission that Respondent did not provide any memo or communication to the effect that its job description manual had been discarded and if so the reason behind such an abandonment. He contends that the Respondent being a public body cannot conduct affairs in secrecy and act capriciously.

- 40 The Petitioner submitted that as admitted by the Respondent the position of Investigations & Enforcement manager plays a critical role towards safeguarding of government revenue through efficient investigations and prosecution of all cases of tax evasion as per the acts of parliament which governs it. Based on the critical role played by the Investigations & Enforcement Manager in executing their mandate, lowering the minimum qualification and years of experience without notice in a competitive employment environment like Kenya, would be in violation of the law and the doctrine of legitimate expectation.
- 41 The Petitioner submitted that clause 2.5.2 of the Respondent's Recruitment and Selection Policy provides that the HOD for requisite department comes up with the number of vacancies, Job description and specifications based on the approved organizational structure, however, there is no provision for the HOD setting the minimum requirements.
- 42 It is the Petitioner's submission that even if such powers existed the same cannot be exercised whimsically hence the reason why the Respondent had to use taxpayers' resources to come up with a guiding document 'Job Description Manual' which was inaugurated in 2021. Further, the Respondent has not produced any requisite document prepared by the relevant HOD setting up the minimum requirements that are found in the impugned job advertisements.

- 43 The Petitioner submitted that the Respondents have not provided any memo, and or communication indicating that the job description manual already inaugurated is no longer applicable and if the manual is inapplicable, when it became inapplicable and why.
- 44 The Petitioner submitted that the Respondent's departure from the established and know recruitment job description manual violates Section 59(d) of the Public Service Commission Act, which requires standardized recruitment procedures in public service. The Act mandates compliance with standard personnel practices, including transparent recruitment procedures.
- 45 He further submitted that deviation from these established procedures, particularly in lowering the minimum years of experience favouring otherwise unqualified candidate, is a blatant violation of statutory norms governing public appointments. Further the deviation breached Sections 36 and 37 of the Public Service Commission Act which requires recruitment to be merit based.
- 46 The Petitioner submitted that any right-thinking Kenyan including himself would be justified to conclude that the lowering of the years of the experience was to accommodate a pre-determined candidate who would otherwise not have qualified for the position.
- 47 The Petitioner submitted that the Respondent's action of lowering the minimum requirements for the recruitment of

the Investigation and Enforcement Manager from 7 years as provided in the job description manual to 5 years without any prior communication and or consultations violates Article 10, 41, 47, 73 and 232 of the constitution and the doctrine of legitimate expectation.

- 48 The Petitioner submitted that the Respondent's decision to call for recruitment/ appointment of individuals who neither meet the basic minimum experience requirement as set by its job description manual makes the recruitment process or appointments arising therefrom unlawful and a direct affront to the principles of fairness and accountability in public service recruitment. Regulation 16 of the Public Service Regulations codifies essential, non-negotiable criteria for public appointments being merit, qualifications, experience and integrity. These minimum thresholds were established to prevent arbitrary appointments and ensure that public service positions are held by deserving candidates.
- 49 On the second issue, the Petitioner submitted that the Respondent had no intention to ensure transparency and accountability in the impugned recruitment process. As such this Court has a duty to stop the continued violation of the constitution, statutory provisions and the Respondent's guidelines on recruitment which actions further constitutes violations of constitutional rights specifically the labour rights guaranteed under Article 41 of the Constitution. The Court has powers through issuance of an Order for Mandamus to cause the

Respondent to do their duties in adherence to the law; he cited [Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others \[1997\] eKLR](#).

50 The Petitioner submitted that Article 232 of the Constitution provides for values and principles of Public service among them high standards of professional ethics, accountability, transparency and fair competition and merit as the basis of appointment and promotions ,thus, the Respondent have a constitutional and statutory duty towards not only the Petitioner but all the Citizens within the Republic of Kenya.

51 The Petitioner submitted that the Respondent is bound by the Constitution in carrying out their mandates and where they fail to do so, this Court is clothed with jurisdiction to order them to comply.

52 The Petitioner submitted that in ***Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR***, the court explained what need to be satisfied for a party to succeed in the prayer of mandamus. He asserted that the Petitioner has met the threshold that is required for the grant of the Order of Mandamus in the following terms: there is existence of a constitutional and statutory duty on the part of the respondent, which duty the respondent has failed to perform; the duty is imperative and not optional; the order is asking no more than the party against whom the application is made is legally bound to perform; the petitioner has a legal right, the performance of which must

be done by the public authority, which is the respondent; the matters raised by the Petitioner are merited; and the order of mandamus is the best remedy to cure the violations raised in the instant petition.

53 The Petitioner submitted that the Respondent has been constitutionally and statutorily been charged with the duty of ensuring collecting revenue on behalf of the Kenyan people and government. Therefore, the Respondent's failure to adhere to the law and the job description manual violates fair labour practices to which this court has powers to make the relevant orders to meet ends of justice.

54 It is the Petitioner's submission that the court can compel the Respondent to perform their duty in strict adherence to the law even though not to dictate on a certain outcome. He reiterates that in case, where there is deviation and or a change on the reference documents, in recruitment process the same should not be a secret but there should be communication over the any such changes.

### **Respondent's Submissions**

55 The Respondent submitted on five issues: whether the Petition has a factual basis; whether the Petitioner has proven the Respondent contravened any constitutional and statutory provisions; whether the Respondent contravened the doctrine of legitimate expectations;

whether the Petitioner merits the orders sought; and who should bear costs.

- 56 On the first issue, the Respondent submitted that the Public Service Commission (PSC) the primary entity charged with management of human resource in the civil service under Article 233 as read with 234 of the Constitution. In executing this function, it published the Guidelines for Development and Review of Human Resource Management Instruments for State Corporations and Public Universities, 2023 whose purpose was to provide a framework for development and review of human resource management instruments with a view to streamlining the management and oversight of human resource in state corporations. As per clauses 4.3, 4.4 and 4.5, each State Corporation, including the Respondent, is given the autonomy of developing its staff structure, career guidelines and Human Resource Management Policy and Procedure Manuals.
- 57 The Respondent submitted that clause 4.4 of PSC's guidelines provides that a state corporation has a right to develop career guidelines which consists of clear job specifications/requirements for appointments to various positions which should include: the required academic and professional qualifications and experience required at various levels.
- 58 The Respondent submitted that it developed the 'Standardized Years of Experience for Recruitment' which

revised the number of years of experience required for the positions in its organization structure. For the position of Manager IED, the requisite years of experience were revised from 7 years as earlier indicated in the 2021 JDM to 5 years. The Standardized Years of Experience for Recruitment was adopted on 5<sup>th</sup> May 2025, more than 3 months before the impugned advertisements.

- 59 The Respondent's submitted that clause 4.3 of the PSC Guidelines on Staff Establishment permits it to submit positions, designation and functions in the organization structure for approval to ensure optimal staff establishment. To this end, it produced in court letters from the PSC bearing Ref No. PSC/GEN/22/V1/(74) and PSC/GEN/22/VOLIX(86) showing that it had requested for approval of staff establishments which PSC had accepted with some realignments of the organizational structure.
- 60 The Respondent submitted that the petition is founded on a gross misapprehension of facts, the Petitioner should have ascertained whether the 2021 JDM was still applicable. The Petitioner should have written to the Respondent to enquire if it had revised the job descriptions and its organization structure with respect to both of the positions advertised and ask for the relevant documents showing the same. If the Petitioner distrusted the Respondent, he could have as well consulted the PSC to ascertain whether the revisions on job descriptions and organization structure had been approved.

- 61 The Respondent submitted that since the Petitioner failed to show that the 2021 JDM was applicable and challenge the evidence put forward by the Respondent showing the 2021 JDM is outdated, all his claims which arise therefrom must fail. He cited the Supreme Court in ***Wamwere & 5 Others v Attorney General [2023] KESC 3 (KLR)*** , the burden of proof first lies with a petitioner. It is only after a Petitioner discharges this burden with that a respondent is put to task to explain away the apparent violations alleged.
- 62 It is the Respondent's submission that this Petition was anchored on a gross mistake of fact which renders it baseless. This Court not even delve deeper to examine the alleged violations. A Petition with defective factual basis has no legs to stand on; however elegant the legal or constitutional arguments it contains, it is bound to fail.
- 63 On the second issue, the Respondent submitted that for an allegation of violation of Article 27 to succeed, a Petitioner must demonstrate that the impugned conduct draws a distinction between himself and others and that the distinction is based on unjustifiable grounds like tribe, sex or race among others.
- 64 The Respondent placed reliance in ***Mohammed Abduba Dida v Debate Media Limited & Media Council of Kenya [2017] KEHC 8963 (KLR)*** wherein the court held: *"The test for determining whether a claim based on unfair discrimination should succeed was laid down by **South***

**Africa Constitutional Court in Harksen v Lane NO and Others[18]** cited above in which the Court said:-

*“At the cost of repetition, it may be as well to tabulate the stages of enquiry which become necessary where an attack is made on a provision in reliance on article 27 the Constitution. They are:-*

*(a) Does the provision differentiate between people or categories of people? If so, does the differentiation bear a rational connection to a legitimate purpose? If it does not then there is a violation of the constitution. Even if it does bear a rational connection, it might nevertheless amount to discrimination. (b) Does the differentiation amount to unfair discrimination? This requires a two-stage analysis: - (i) Firstly, does the differentiation amount to ‘discrimination’? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner. (ii) If the differentiation amounts to ‘discrimination’, does it amount to ‘unfair discrimination’? If it has been found to have been on a specified ground, then the unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The*

*test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation. If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation..... (c)If the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitations clause (.....of the ..Constitution).*

65 It is the Respondent's submission that the Petitioner has not shown how the revised qualifications differentiate between him and other prospective applicants. The revised qualifications do not say that only those who have 5 years of experience may apply, but that any person with 5 years of experience or more may apply. The Petitioner is included in this list of prospective applicants together with all those other of 'higher qualifications' on whose behalf he purports to speak.

66 The Respondent submitted that the Petitioner has not portrayed that he or anyone else been denied equal protection or benefit of the law. It cited ***John Harun Mwau v Independent Electoral And Boundaries Commission & another [2013] KEHC 6762 (KLR)*** at paragraph 33:

*".....It must be clear that a person alleging a violation of Article 27 of the Constitution must establish that because of the distinction made*

*between the claimant and others, the claimant has been denied equal protection or benefit of the law....”*

67 The Respondent submitted that the Petitioner has failed to demonstrate how the lowering of minimum requirements had no reasonable basis given that there are updated Standards pursuant to which the advertisements were made. The Petitioner has not demonstrated why the Respondent updating the job description violated his right to fair administrative action under article 47 of the Constitution.

68 It is the Respondent’s submission that it is mandated to develop and update job descriptions from time to time as its organizational needs may dictate subject to PSC review and approval.

69 The Respondent submitted that the eligibility criteria referenced by the Petitioner were revised; they were not eternal. As long as the Petitioner has not challenged the process leading to the revised criteria, he cannot fault the Respondent for advertising based on the new eligibility criteria. He has therefore failed to show how the Respondent violated Article 73 of the Constitution on responsibilities of leadership.

70 The Respondent submitted that the advertisements conformed with the current minimum requirements as per the Standards and as such were merit based. Furthermore, the Petitioner has not showed how the advertisement impedes fair competition and how it denies certain

members Kenyan communities from participating in the process. As such, the Petitioner has not demonstrated how the Respondent violated Article 232 of the Constitution.

71 It is the Respondent's submission that while public participation is a key tenet of a democratic society, not every decision undertaken by state corporation should be subjected thereto. Deliberations on organization structure needs and staff qualifications are internal operation decisions which the Respondent should be allowed to handle without constant input from the public.

72 The Respondent submitted that while carrying out its human resource mandates it is already under the scrutiny of the PSC which has not only provided guidelines but also reviews the Respondent's decisions on organization structure and staff management to ensure that they are acceptable. As such there is no need for constant public participation in these technocratic functions. For this reason, the Petitioner has not demonstrated the alleged violations of articles 10, 41, 47, 73 and 232 based on the argument of lack of public participation.

73 The Respondent submitted that the 2021 JDM was not applicable at the time of the advertisement, the applicable Standards adopted in May 2025 revised the experience required to 5 years; the advertisement duly complied with the new positions. Therefore, it acted within its mandate to update and revise the qualifications like years of experience for all the positions in the organisation, in doing so, it did not violate any legitimate expectations.

- 74 On the third issue, the Respondent submitted that since the petition was premised on an erroneous assumption and the Petitioner has failed to prove any violation of the mentioned constitutional and statutory provisions and doctrine of legitimate expectation, none of the remedies of declaration, certiorari and mandamus ought to be granted.
- 75 On costs, the Respondent submitted that since the matter is one involving public interest issues, each party should bear its own costs.
- 76 I have examined all the averments and submissions of the parties herein. The petitioner's contention is that the advertised positions have departed from the required eligibility criteria as per the respondents HR manual.
- 77 The respondents have however demonstrated as submitted herein that the eligibility criteria had been revised under guidance from the PSC and approved and that the petitioner was acting from a point of lack of proper facts. The respondent exhibited their approved HR policies of 1/7/23 and a communication from the PSC dated 28/5/25 Ref No PSC/GEN/22/VI(74) dated 28/5/2025 approving the said HR manual management instruments including the organizational structure for KRA App1, Grading structure for KRA App 2 and Generic Qualification Matrix App3 and staff establishment App4.
- 78 The advertisements thus made were made under the revised matrix and which the petitioners seems not aware

of. There is no evidence that the advertisements were made contrary to the law and were thus legal.

79 In the circumstances, I find the petition is based on a wrong understanding of the facts. There is no demonstration that the petitioner's rights under the Constitution were infringed upon.

80 I find the petition unmerited and is dismissed accordingly. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi this 15<sup>th</sup> Day of January, 2026.**

**HELLEN WASILWA  
JUDGE**