Kiptoo v Bomet County Public Service Board & 2 others (Employment and Labour Relations Petition E015 of 2025) [2026] KEELRC 255 (KLR) (30 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 255 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO

EMPLOYMENT AND LABOUR RELATIONS PETITION E015 OF 2025

AN MWAURE, J

JANUARY 30, 2026

BETWEEN

ELVIS KIPTOO ..... PETITIONER

AND

BOMET COUNTY PUBLIC SERVICE BOARD ..... 1ST RESPONDENT

THE COUNTY GOVERNMENT OF BOMET ..... 2ND RESPONDENT

THE COUNTY ASSEMBLY OF BOMET ..... 3RD RESPONDENT

JUDGMENT

Introduction

1. The Petition instituted this suit vide Petition dated 30th July 2025, seeking the following orders that:

    a. A declaration be and is hereby issued that the recruitment and/or appointment of additional Chief Officers by the Respondent beyond the approved ceiling of 14 for the financial year 2025/2026, as recommended by the Commission on Revenue Allocation and guided by its personal advisories, is unconstitutional and unlawful for violating Article 201(d) of *the Constitution*, which requires the prudent and responsible use of public funds.

    b. A declaration be and is hereby issued that the creation and/or filing of new Chief officer offices without the requisite approval under section of the *County Governments Act* is unlawful, procedurally irregular, and in violation of Articles 232(1)(b) and 235(1) of *the Constitution*.

    c. A declaration be and is hereby issued that the advertisement and recruitment process for Municipal Managers in Bomet and Sotik Municipalities, undertaken without inclusion of the mandatory statutory qualification under section 59(1)(b) of the *County Governments Act*, is irregular, procedurally defective, and unlawful, and violates the rule of law under Article 10(2)(a) of *the Constitution*.

d. A declaration be and is hereby issued that any attempt by the Respondents to create or fill public offices within the 2nd Respondent without prior planning, institutional justification, or adherence to lawful establishment procedures amounts to a violation of Articles 201(d), 232, and 235 of *the Constitution*.

e. A declaration be and is hereby issued that the Respondents are under a constitutional duty to consider and give due regard to the recommendations of the Commission on Revenue Allocation (CRA), issued pursuant to Article 216 of *the Constitution*, including advisories on fiscal sustainability, executive structures, and personnel ceilings.

f. A declaration be and is hereby issued that the Respondents have violated *the Constitution*, including Articles 10, 73, 174, 175, 201, and 232, by engaging in an inconsistent with the principles of good governance, transparency, and accountability.

g. An order of prohibition do issue restraining the Respondents from proceeding with or finalising the recruitment of any additional Chief Officers or other executive appointees within the 2nd Respondent during the financial year 2025/2026, where such recruitment is not aligned with the personal ceilings or advisories issued by the Commission on Revenue Allocation or any other lawful body mandated to provide guidance on public service and structures and fiscal sustainability.

h. The costs of the Petition be provided for.

Petitioner's case

2. The Petitioner avers that the Respondents were unlawfully expanding the County Executive by creating and filling numerous senior positions, particularly Chief Officers, without proper legal authority, budgetary planning, or structural compliance.

3. On 4th July 2025, the Petitioner avers that the 1st Respondent advertised several new posts, including Chief Officers for Finance, Public Works and Transport, Public Service, and Municipal Managers for Bomet and Sotik, potentially raising the number of Chief Officers to 18, a figure that exceeds constitutional and functional limits under the Fourth Schedule. Moreover, these offices were established without the mandatory prior approval of the County Assembly, in violation of Section 60 of the *County Governments Act*, 2012.

4. The Petitioner avers that the newly advertised positions were either duplicated existing functions or unnecessarily fragments current portfolios, indicating the recruitment is politically motivated rather than driven by functional necessity. Notably, the Roads Department, which commands the largest share of the County's budget, has lacked a substantive Chief Officer for over three years, with the roles still in an acting capacity and no steps to fill it substantively.

5. The Petitioner avers that the newly advertised positions duplicate existing functions or fragment current portfolios, suggesting political motives rather than genuine administrative need.

6. Despite the Roads Department holding the largest share of the county budget, the Petitioner avers that it had lacked a substantive Chief Officer for over three years, with no effort to fill the role permanently.

7. The Petitioner avers that the recruitment process is criticized as unlawful and irregular for omitting mandatory statutory qualifications under Section 59(1)(b) of the *County Governments Act*, creating unnecessary roles without lawful job descriptions.

8. The Petitioner avers that the appointments are seen as politically driven, lacking transparency and fiscal prudence, with projected costs exceeding Kshs.40 million annually and breaching expenditure ceilings set by the Commission on Revenue Allocation. By surpassing the CRA's 2025/2026 limit of 14 Chief Officers per county, the Respondents risk diverting funds from essential services, amounting to systemic abuse of power and undermining constitutionalism, financial discipline, and the rule of law.

1st Respondent's replying affidavit

9. The 1st Respondent opposed the Petition vide replying affidavit sworn by the Acting Chief Executive Officer, Emma Chesang, dated 3rd September 2025.

10. The 1st Respondent argued that the Petition contains generalized and unsubstantiated allegations without clear constitutional violations, and therefore fails to meet the threshold for a constitutional petition.

11. The 1st Respondent emphasized that no new Chief Officer positions were created, as the roles already existed under acting appointments, and clarified that the Petitioner's claims are inconsistent.

12. The 1st Respondent asserts that the advertised offices are part of the legitimate county staff establishment, that interviews for municipal managers have been concluded with appointments issued, and that recommendations for Chief Officer positions have been submitted to the Governor for nomination.

13. The 1st Respondent avers by noting that the office of the Chief Officer for Finance became vacant following the death of the previous holder, necessitating its refilling.

14. The 1st Respondent asserts that the County Public Service Board does not require 3rd Respondent's approval unless establishing offices on its own motion.

15. The 1st Respondent cited section 60 of the County Governments' Act, which outlines detailed criteria for establishing or abolishing public offices, including serving public interest, avoiding duplication of roles, ensuring competitive and transparent recruitment, preventing unfair advantage or competition, prudent use of existing offices, and availability of funding. The section also requires written requests from departmental heads and mandates consideration of workload and departmental suitability before creating new offices.

16. The 1st Respondent further asserts that the County Public Service Board properly approved the establishment of the contested offices.

17. The 1st Respondent emphasizes that the Petitioner has not shown any misuse of funds and that the recruitment process from advertisement to appointment was conducted transparently in line with statutory requirements, including public advertisement in a daily newspaper.

18. The 1st Respondent maintains that it has not exceeded budgetary limits, argues that granting the petitioner's orders would harm it and jeopardize public interest, and concludes that the orders sought have already been overtaken by events.

2nd Respondent's grounds of opposition and replying affidavit

19. The 2nd Respondent opposed the Petition by filing grounds of opposition dated 18th August 2025, together with the replying affidavit dated 27th August 2025, sworn by Simon Langat, the 2nd Respondent, County Secretary.

20. In the grounds of the opposition, the 2nd Respondent filed the following grounds:

    1. The grant of order(s) sought by the Petitioner/Applicant as against the 2nd Respondent would be unnecessary since the 2nd Respondent is statutorily obligated to carry out the ongoing recruitment for purposes of delivery of services to the people resident in Bomet County.

    2. The Petitioner's aforementioned Application is incurably bad in law.

    3. The Petitioner/Applicant has not presented factual or substantial claim, or dispute that has arisen between the Petitioner, the public and the 1st Respondent, which calls for adjudication before this Honourable Court.

    4. No acts or omissions, attributed to the 2nd Respondent have been disclosed by the Petitioner/Applicant which are in violation or are likely to be in violation of any part of *the Constitution* and/or the County Government Act.

    5. The Petitioner/Applicant has not demonstrated with precision the manner in which their Constitutional rights have been infringed as illustrated in the case of Anarita Karimi Njeru V The Republic (No. 1) [1976-80] 1 KLR wherein it was held that a person seeking redress from the High Court on a matter which involves a reference to *the Constitution* should set out with reasonable degree of precision that which he complains the provision said to be infringed and the manner in which they are alleged to be infringed.

    6. The Petitioner/Applicant has not made out a prima facie case to warrant the issuance of the orders sought

    7. The Petitioner's present Application is therefore materially premature, incompetent and improperly before the court and constitutes an abuse of the court process.

21. In the replying affidavit, the 2nd Respondent avers that the Petition is vexatious, misleading, and an abuse of the court process.

22. The 2nd Respondent avers that the County Executive Committee meeting of 24th March 2021 resolved to establish the offices of Chief Officer Executive and Chief Officer Public Works, Transport, and Infrastructure, a decision formally communicated through a letter dated 26th March 2021 to the County Public Service Board.

23. The 2nd Respondent avers that the Board, by its letter dated 1st April 2021, approved the establishment of these offices, thereby grounding the process in law and budgetary authority.

24. The 2nd Respondent clarified that the Chief Officer Finance position was not new but had long existed, only becoming vacant upon the death of Erick Chepkwony.

25. The 2nd Respondent avers that recruitment requests were later made through a letter dated 1st July 2025, with concurrence granted by the County Executive Committee Member for Finance, ICT, and Economic Planning.

26. The 2nd Respondent avers that the advertisements for the positions were duly published in compliance with Section 66 of the *County Governments Act*, ensuring transparency and accountability.

27. The 2nd Respondent argued that municipal managers' appointments followed due legal process, with no evidence of ulterior motive or financial impropriety, and that the petitioner failed to plead with constitutional precision or demonstrate specific violations.

28. By anchoring its defence in documented resolutions and correspondence, the 2nd Respondent asserts that the Petition is baseless, overtaken by events, and incapable of meeting the constitutional threshold, urging dismissal with costs in the interest of justice and fairness.

3rd Respondent's replying affidavit

29. The 3rd Respondent opposed the Petition vide replying affidavit sworn by Hon. Cosmas Korir, 3rd Respondent Speaker dated 2nd October 2025.

30. The 3rd Respondent avers that under the *County Governments Act*, the establishment and abolition of public offices is the exclusive mandate of the County Public Service Board under sections 58, 59, and 60 of the *County Governments Act*, while County Assembly approval only arises under section 62(2) when the Board acts on its own motion.

31. The 3rd Respondent avers that the Chief Officer positions in dispute are not new offices requiring its approval, and that its role is limited to vetting nominees submitted by the Governor under section 45 of the *County Governments Act*.

32. The 3rd Respondent further argues that issues of qualifications and recruitment fall within the mandate of the 1st Respondent, not the Assembly, and therefore the Petitioner's claims of oversight failure are baseless.

33. In conclusion, the 3rd Respondent asserts that the Petition improperly seeks to compel it to perform duties not imposed by law, and should be dismissed as vexatious and an abuse of court process.

34. Parties disposed of the Petition by way of written submissions.

Petitioner's submissions

35. The Petitioner submitted that the constitutional and statutory framework under Article 235(1)(a) and Part VII of the *County Governments Act* distinguishes between the criteria for establishing public offices and the actual authority to do so. Specifically, section 60 of the County Government Act only sets out the benchmarks and justification for creating offices, while section 62 confers the legal power on the County Public Service Board to establish or abolish them.

36. The Petitioner contended that the 1st Respondent misinterpreted these provisions by claiming that the office of Chief Officer for Public Works, Transport, and Infrastructure Development was validly established under section 60 without County Assembly approval. In their view, section 60 provides guidance, not authority, and therefore the Respondent's position is untenable both textually and in principle.

37. The Petitioner relied on the case of Desai, Sarvia & Pallan Advocates v Tausi Assurance Company Limited [2017] KECA 456 (KLR), where the Court of Appeal cited the case of Visram & Karsan v Bhatt [1965] E.A. 789 at 794, where Newbold V.P. stated as follows:

> "While in Britain the courts will not normally have regard to marginal notes for assistance in construing the terms of a section, this is due to the historical reason that prior to 1850 marginal notes did not form part of the bill as presented to Parliament and they were only added after the legislation had been passed. It could not, therefore, at least as regards the earlier legislation, be said that the marginal note played any part in disclosing the intention of the legislature. The position in Kenya is very different. Marginal notes always form part of the bill as presented to Parliament for enactment. Indeed, there are a number of enactments,

including the Acts amending the present Constitution of Kenya, in which marginal notes have been the subject of amendment by legislation. Further, a constitutional document (the Royal Instructions) prior to independence specifically required that a marginal note should appear on each section of a bill as presented to the legislature."

The position was restated by Platt J. in Ramadhani v Republic (1969) EA 269, where he observed:

"It could be said that the various subsections of section 269 are not necessarily interrelated and that must be so. But I think the marginal notes may afford some guide..... I have on previous occasions considered the validity of using marginal notes in the interpretation of the meaning of the corresponding section of the legislation concerned. Suffice it, therefore, to say that in my opinion the modern view is that marginal notes may be used in assisting the interpretation of the relevant provision of the law."

38. The Petitioner submitted that sections 60, 61, and 62 of the *County Governments Act* form a single, integrated framework for establishing and abolishing public offices and cannot be read in isolation. The Petitioner argued that section 60 merely sets out criteria, whereas section 62 confers the actual authority, requiring County Assembly approval. Reliance was placed on Commissioner of Lands & Another v Coastal Aquaculture Limited [1997] KECA 394 (KLR) to show that marginal notes clarify the scope of provisions. In Republic V Homa Bay County Assembly ex parte Zilper Otieno Opapo & Others [2014] eKLR, Majanja J. held that section 60 does not grant absolute discretion to the County Public Service Board. Instead, section 62(2) mandates Assembly approval for any proposal to establish or abolish offices, reflecting the legislature's intent that Part VII of the Act be read holistically, harmoniously, and purposively.

39. The Petitioner argued that the 1st Respondent cannot unilaterally create or abolish offices, as section 62 of the *County Governments Act* and Article 185 of *the Constitution* require County Assembly oversight. The Petitioner contended that the 26th March 2021 letter requesting new Chief Officer positions failed to meet section 60's mandatory criteria, offering only vague justifications. Further, the splitting of existing dockets into separate offices for Finance and Public Service was done without proper evaluation, approval, or Assembly concurrence, amounting to unlawful creation of new offices. The petitioner submitted that these positions were never validly established, violating statutory and constitutional principles of transparency, accountability, and good governance, and urges the Court to declare them unlawful and void.

40. The Petitioner contended that the recruitment of Municipal Managers for Bomet and Sotik was unlawful because the advertisements omitted the mandatory requirement that candidates be Certified Public Secretaries, a qualification expressly required under section 59(2) of the *County Governments Act* since Municipal Managers automatically serve as secretaries to Municipal Boards under section 14(2)(e) of the *Urban Areas and Cities Act*. Citing principles of statutory interpretation, Njuguna v Republic [2025] KECA 850 and County Assembly of Kisumu v Kisumu County Assembly Service Board [2015] KECA 397, the Petitioner argued that statutory qualifications are threshold conditions that cannot be waived or substituted. The omission was deliberate, as other counties like Baringo expressly included the requirement, and thus the appointments were ultra vires, tainted by illegality, and violated constitutional principles of accountability, competence, and good governance under Articles 10 and 232 of *the Constitution*. The Petitioner urged the Court to declare the recruitment process invalid and of no legal effect.

41. The Petitioner submitted that the recruitment of additional Chief Officers and Municipal Managers was carried out in blatant violation of *the Constitution* and the *County Governments Act*, as

the Respondents acted without lawful authority, ignored mandatory qualifications, and bypassed County Assembly approval. These actions, they submit, undermine transparency, accountability, and prudent fiscal management under Articles 10, 201, 232, and 235 of *the Constitution*, raising serious constitutional questions that go beyond mere administrative irregularities. The hurried conclusion of the recruitment process, including interviews held on a Saturday without urgency, is portrayed as deliberate defiance of constitutional order. The Petitioner submitted that the fact that appointments have already been made does not cure their illegality, citing the cases of CORD v Republic of Kenya & Another [2015] eKLR and MUHURI v Inspector-General of Police & 2 Others [2014] eKLR, which affirmed that unconstitutional actions remain justiciable even after implementation.

42. The Petitioner urged the court to allow the Petition as prayed.

1st Respondent's written submissions

43. The 1st Respondent submitted that for a constitutional petition in Kenya to meet the required threshold, a Petitioner must plead with precision by clearly identifying the specific constitutional provisions alleged to have been violated and explaining the manner of violation. This principle, established in the case Anarita Karimi Njeru v Republic [1979] eKLR and reaffirmed in Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR, requires credible evidence and a demonstrated causal link to the respondent's actions. As further stressed in the case Trusted Society of Human Rights Alliance v Attorney General [2012] eKLR. In this case, although violations of Articles 10, 226, 232, 235, and 236 of *the Constitution* are alleged, the 1st Respondent submitted that the Petitioner failed to particularize the breaches or show how they were committed, rendering the claims vague and insufficient to invoke the court's jurisdiction.

44. The 1st Respondent submitted that the Petition should be dismissed for failing to meet the constitutional threshold, citing the case of Ngure v Tear Fund [2023] KEELRC 1324 (KLR) where the court held that statutory remedies under the *County Governments Act* and *Urban Areas and Cities Act* were sufficient, and constitutional interpretation was unnecessary. In Hassan v Simidi & another [2019] KECA 107 (KLR), which reinforced the principle that where legislation exists to give effect to constitutional rights, litigants cannot bypass it by directly invoking *the Constitution* unless they challenge the legislation itself. The court concluded that claims of unlawful interdiction and termination of employment contracts are not constitutional issues, and therefore the petition discloses no valid constitutional cause of action, amounting to an abuse of the court process.

45. In Munya V Kithinji & 2 others [2014] KESC 30 (KLR) the Supreme Court stated that conservatory orders in constitutional litigation are public-law remedies meant to ensure orderly functioning of public agencies and uphold the authority of the court. The Court outlined four cumulative requirements: establishing a prima facie case with likelihood of success, showing real danger of irreparable harm, demonstrating that public interest would be served, and proving that granting the orders would advance justice. In this case, the Petitioner failed to show any specific constitutional violation or imminent threat, relying instead on vague and unsupported allegations. Since the recruitment process was conducted lawfully under Article 235 of *the Constitution* and the *County Governments Act*, the orders sought would harm public service delivery rather than serve justice. The 1st Respondent therefore submitted that the petitioner has not met the threshold for conservatory orders and the application should be dismissed with costs.

46. The 1st Respondent submitted that it derives its authority from Article 235 and sections 57 to 59 of the *County Governments Act*. The 1st Respondent also submitted that it has exclusive authority over county staffing and administrative structures under Article 235 of *the Constitution* and the *County Governments Act*, with its independence safeguarded by Section 59A. Offices may only be created when

the criteria in Section 60 are met, and while County Assembly approval is required if the Board acts on its own motion, it is unnecessary when offices are established upon departmental request under Section 62.

47. Courts have consistently upheld this mandate in the cases of Republic v County Government of Kisumu & Another ex parte Samuel Okuro & 7 Others [2016] eKLR, where the High Court confirmed the Board's constitutional role in managing human resources; in Francis Angueyah Ominde v Wilbur Ottichilo & 2 others; and Henry Mangogo Lumbasio & 20 Others [2020] KEELRC 117, the courts emphasized its authority to set terms of service with advice from the Salaries and Remuneration Commission; and in John Major Mukenya & Another v Lusaka & 2 Others [2022] KEELRC 13373, the court clarified that the law does not limit the number of chief officers but regulates the creation of departments.

48. The 1st Respondent submitted that the expansion of departments and recruitment of officers was lawful and ratified by the County Executive Committee under Section 46, with judicial restraint emphasized in Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another [2017] eKLR, which reinforced the doctrine of separation of powers. Recruitment was conducted transparently and competitively in line with Section 66 of the *County Governments Act*, with no evidence of irregularity, consistent with the principle in Republic v County Government of Bomet & Another ex parte Bernard Kipkoech Bett [2015] eKLR where the courts held that it should only intervene where illegality or constitutional violations are shown. Collectively, these authorities affirm the legality, rationality, and procedural soundness of the Board's actions.

49. The 1st Respondent argues that the Petition has been overtaken by events since the recruitment process for Municipal Managers and Chief Officers has already been completed. Interviews were conducted competitively, successful candidates identified, and appointment letters issued, while recommendations for Chief Officers have been forwarded to the Governor for nomination and appointment. At this stage, the process has advanced beyond the Respondent's mandate, leaving no ongoing action for the Court to restrain or reverse. As such, continuing the proceedings would be futile, serving no practical or legal purpose but merely an academic exercise.

50. The 1st Respondent relied on the Black's Dictionary which defined a moot case as follows:

> "A matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from the existing facts or right."

51. The 1st Respondent stated that the petition has become moot since the recruitment process has already been concluded, leaving no live controversy for the court to adjudicate. Sidney A. Diamond's 1946 article in the University of Pennsylvania Law Review on federal jurisdiction it emphasizes that courts can only decide cases presenting actual judicial controversies. Where parties are no longer adverse, the matter is hypothetical, or no relief can be granted, the case is moot and beyond the court's jurisdiction.

52. Accordingly, the 1st Respondent submits that the petition should be dismissed with costs, as it no longer raises any subsisting legal issue.

2nd Respondent's written submissions

53. The 2nd Respondent submitted that the establishment of public offices within County Governments is grounded in Article 235(1)(a) of *the Constitution* and Part VII of the *County Governments Act*. It also submitted that Article 176(2), requires counties to decentralize their functions and services where practicable and efficient. In this case, the 2nd Respondent requested the 1st Respondent to

create two specific offices: Chief Officer Executive and Chief Officer for Public Works, Transport, and Infrastructural Development.

54. The 2nd Respondent submitted that 1st Respondent request and approved the establishment of the office of Chief Officer Executive and Chief Officer Public Works, Transport and Infrastructural Development in accordance sections 62 and 63 of the County Government Act. There are no exceptional circumstances to warrant the Petitioner's bypassing the aforesaid existing dispute resolution process.

55. The 2nd Respondent submitted that the *Urban Areas and Cities Act* of 2011 establishes the Municipal Manager's position and governs the appointment of a Municipal Manager. The Urban Areas and Cities also stipulates that; the Municipal Manager will act as the secretary to the board. The 2nd Respondent argued that the recruitment and appointment of two Municipal Managers was lawfully conducted under the *Urban Areas and Cities Act*, which is the governing legislation for municipalities. The 2nd Respondent submitted that the *Urban Areas and Cities Act* outlines the roles, duties, and qualifications of Municipal Managers, and notably does not require certification as a Public Secretary. While the *County Governments Act* empowers the County Public Service Board to appoint Municipal Managers, the *Urban Areas and Cities Act* takes precedence to avoid legal conflict. Therefore, any challenge to the Board's decision to advertise, interview, and appoint the managers must be pursued through the Public Service Commission under section 77(2)(a) of the *County Governments Act*, rather than through the court.

56. The 2nd Respondent submitted that the failure to exhaust the statutory mechanism under section 77 of the County Government Act provides for dispute resolution in all public services including county public services. These laws and regulation provide for appeals as well as preliminary proceedings, interim applications and preliminary objection and underline the supremacy of the doctrine of exhaustion. Appealable matters under this law, include recruitment, selection and qualification attached to any office; national values and principles of governance under Article 10 and principle of public service under Article 232 of *the Constitution*. Appeal or review are under sections 86 and 88 of the Public Service Commission.

57. The 2nd Respondent relied on the case of Hassan v Simidi & Another (Supra) where the Supreme Court stated as follows:

> " The Appellants in this case are seeking to invoke 'the principle of avoidance' also known as 'constitutional avoidance'. The principle of avoidance entails that a court will not determine a constitutional issue, when a matter may properly be decided on another basis." Further the Supreme Court at paragraph [258] applying the principle of constitutional avoidance observed: "From the foundation of principle well laid in the comparative practice, we hold that 1st, 2nd and 3rd Respondents' claim in the High Court regarding infringement of intellectual property rights was a plain copyright infringement claim, and it was not properly laid before that court as a constitutional issue. This was, therefore, not a proper question falling to the jurisdiction of the Appellate Court." (emphasis given)

58. In Nyaoga V Chairman Kisii County Assembly & 3 others [2023] KECA 1540 (KLR) the court held thus:

> " .....In addition, the Appellant has also not led any evidence to show the existence of exceptional circumstances to warrant the direct invocation of court's jurisdiction without exhaustion of all remedies available first. We hold the view that the Appellant ought

to convince this Court that the internal remedy would be ineffective, unavailable and inadequate."

59. The 2nd Respondent argued that the Petition, though filed as a public interest suit, fails to meet the constitutional requirement of reasonable precision. The 2nd Respondent contended that the Petitioner merely cited numerous constitutional provisions and sections of the County Government Act without demonstrating how they were violated, what injury was suffered, or how the public was affected, contrary to Rule 10(2)(c) of the 2013 Practice and Procedure Rules. Relying on the case of Anarita Karimi Njeru v Republic (supra), they assert that the petition does not clearly set out the complaint, the specific provisions infringed, and the manner of infringement.

60. Consequently, the 2nd Respondent urge the court to find the petition premature for failure to exhaust administrative remedies under Section 77 of the County Government Act, to hold that it offends the procedural rules, and to decline elevating it to a constitutional petition. The 2nd Respondent also urged the court to dismiss the Petition with costs.

3rd Respondent's written submissions

61. The 3rd Respondent submitted that the Petition is misconceived and discloses no reasonable cause of action since it played no role in the impugned recruitment exercise, which was solely undertaken by the County Public Service Board and the County Executive. The 3rd Respondent submitted that its mandate under Section 62(2) of the *County Governments Act* is conditional and only arises when a formal proposal to establish or abolish offices is submitted, which never occurred in this case. It emphasizes that liability cannot attach merely by proximity and that imposing administrative duties on it would offend the doctrine of separation of powers under Article 185 of *the Constitution*. Citing the case of Republic v Homa Bay County Assembly ex parte Zilper Otieno Opapo & Others (supra) and Republic v Speaker of County Assembly of Nyandarua & another ex parte David Mwangi Ndirangu [2014] KEHC 2350 (KLR), the 3rd Respondent underscores that its role is limited to legislative oversight and not executive recruitment.

62. Further, relying on Anarita Karimi Njeru V Republic (supra) and Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others(supra), it contended that the petition lacks the required precision and factual specificity to establish a constitutional breach. Accordingly, it prays that the petition be dismissed with costs.

Petitioner's further submissions

63. In his further submissions, the Petitioner submitted that the objection raised by the 2nd Respondent on jurisdiction under section 77 of the *County Governments Act* and section 87(2) of the *Public Service Commission Act* is misplaced, as this Petition raises substantive constitutional questions that fall within the exclusive jurisdiction of the Employment and Labour Relations Court under Articles 22, 23, 162(2)(a), and 165(5) of *the Constitution*. He contends that the Public Service Commission lacks authority to interpret *the Constitution* or determine the legality of executive and statutory actions, and that the doctrine of exhaustion is not absolute where constitutional interpretation and enforcement are required. To support this position, the Petitioner relied on Republic v National Environment Management Authority ex-parte Sound Equipment Ltd [2011] eKLR, Geoffrey Muthinja Kabiru & 2 Others V Samuel Henry Kiarie & 2 Others [2015] eKLR, Abdikadir Suleiman V County Government of Isiolo & Another [2015] eKLR, Thuranira Salesio Mutuma v County Public Service Board & 2 Others [2019] KEELRC 1550 (KLR)*, and Republic v IEBC ex-parte Coalition for Reform and Democracy (CORD) & 2 Others [2017] eKLR.

64. The Petitioner submitted that the Petition properly invokes the Court's jurisdiction, as the issues concern constitutional fidelity, fiscal responsibility, and separation of powers, which the Public Service Commission cannot effectively address.

Analysis and determination

65. The court has considered the pleadings together with the submissions by counsel. The court is to determine if the petition is merited.

66. Article 235(1) of *the Constitution* and section 57 of the County Government Act provide for the establishment of the County Public Service Board. The functions of the County Public Service Board are provided under Section 59 of the *County Governments Act*, which states as follows:

> " (a) establish and abolish offices in the county public service;
>
> (b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
>
> (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;
>
> (d) prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
>
> (e) promote in the county public service the values and principles referred to in Articles 10 and 232;
>
> (f) evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;
>
> (g) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;
>
> (h) advise the county government on implementation and development;
>
> (i) advise county government on implementation and monitoring of the national performance management system in counties;
>
> (j) make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pension and gratuities for county public service employees".

67. Section 45 of the *County Governments Act* provides as follows:

> " The governor shall—
>
> (a) nominate qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board; and
>
> (b) with the approval of the county assembly, appoint county chief officers.

> The office of a county chief officer shall be an office in the county public service.
>
> A county chief officer shall be responsible to the respective county executive committee member for the administration of a county department as provided under section 46.
>
> The county chief officer shall be the authorized officer in respect of the exercise of delegated power.
>
> The governor may re-assign a county chief officer.
>
> A county chief officer may resign from office by giving notice, in writing, to the governor."

68. Sections 60 and 62 of the *County Governments Act* empower the County Public Service Board (CPSB) to establish or abolish public offices, but only under strict conditions: the office must serve public interest, avoid duplication, be competitively filled, and have sustainable funding. Proposals must be submitted to the County Assembly for approval through the relevant executive member, with the concerned chief officer given a chance to present views. Importantly, any office created but left vacant for twelve months is automatically abolished without further action by the CPSB.

69. Section 60 of the County Government Act provides that the County Public Service Board shall establish a public office within the County on certain conditions specified therein.

70. In this instant case, the Petitioner contends that the Respondents blatantly disregarded due process in the creation and recruitment of additional Chief Officer positions and two Municipal Managers. He argues that the number of Chief Officers advertised far exceeded the ceilings recommended by the Commission on Revenue Allocation, thereby undermining principles of fiscal prudence and constitutional responsibility. To be specific, Petitioner states the chief officers are now 18 members as opposed to the 14 members recommended. Further, Section 65 of the County Government Act provide that the County Public Service Board may establish or abolish any office in the County Public Office. Moreover, the recruitment advertisements allegedly failed to incorporate mandatory statutory qualifications prescribed under Section 59 of the *County Governments Act*, raising serious questions of legality, transparency, and meritocracy.

71. Section 59 of the County Government Act give County Public Service Board the role of establishing and abolishing offices in the County Public Service. The 1st Respondent is challenged for not adhering to Section 59 of the Act in employing these staff. But no proof of evidence is tendered to prove such an allegation.

72. In response, the 1st Respondent insists that the recruitment was conducted in full compliance with the law, while the 2nd and 3rd Respondents distance themselves from the process, maintaining that their involvement was neither required nor triggered under the statutory framework. The Petitioner's position, however, underscores a fundamental breach of constitutional and statutory safeguards designed to prevent arbitrary expansion of public offices, protect public resources, and ensure adherence to established norms of fair competition and accountability.

73. Petitioner should have exhausted first the remedial mechanisms by appealing the decision under section 77 of the *County Governments Act* and if aggrieved again, the Petitioner had the option to appeal to the *Public Service Commission Act* as provided in sections 85 and 88 of the *Public Service Commission Act*. The case to support the above is Omao V County Government of Nyamira & 5 others; Oyugi

& 5 others [2024] KEELRC 1636 (KLR) where the court cited the Court of Appeal case of County Public Service Board & Ar v Hulbhai Gedi Abdille (2017) eKLR, where it was held:

> " There is no doubt that the respondent initiated the judicial review proceedings in utter disregard to the dispute resolution mechanism availed by section 77 of the Act. The section provides not only a forum through which the respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one, specifically tailored by the legislators to meet needs such as the respondent's. In our view, the most suitable and appropriate recourse for the respondent was to invoke the appellate procedure under the Act rather than resort to the judicial process in the first instance..... Her contention that she disregarded the appeal because it could not afford her an opportunity to question the procedure followed by the appellant is, in our view, without basis because section 77 has placed no fetter to the jurisdiction of the Public Service Commission."

74. For emphasise the court stated: -

> " The Petitioner should have instituted an appeal before the Public Service Board instead of making the court the first port of calling of their petition."

75. The court should also state that the Petitioner did not state with precision the infringed constitutional provisions other than set out general violations.

The case of Anarita Karimi Njeru Vs Republic (1979) eKLR states that:-

> " We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important that (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be likely to be affected, may make an application to the High Court in accordance to these rules."

76. The prayers by the Petitioner that the recruitment and appointment of the said officers by the Respondents be declared unconstitutional and unlawful among others should have been referred to the Public Service Commission in the first instance. The court is aware the officials have already been engaged and are in place and so the orders prayed are not tenable anymore.

77. The court has considered the petition, all the pleadings, authorities and submissions and finds the petition has not been proved. It is therefore dismissed as it lacks merits.

78. This is a public litigation case. Each party will bear their respective costs of the petition.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF JANUARY 2026.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions

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

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