



Kamotho v Ministry of Foreign and Diaspora Affairs & 3 others; Chweya & 3 others (Interested Parties) (Petition E148 of 2024) [2026] KEHC 1003 (KLR) (Constitutional and Human Rights) (4 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E148 OF 2024

EC MWITA, J

FEBRUARY 4, 2026

BETWEEN

KARANJA KAMOTHO PETITIONER

AND

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS 1ST RESPONDENT

HON. MUSALIA MUDAVIDI, CABINET SECRETARY, MINISTRY OF FOREIGN & DIASPORA AFFAIRS 2ND RESPONDENT

DR. KORIR SING’OEI PRINCIPAL SECRETARY, STATE DEPARTMENT OF FOREIGN AFFAIRS 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

AND

PROF. LUDEKI CHWEYA, PH. D INTERESTED PARTY

PROF. MARIA NZOMO INTERESTED PARTY

DR. PATRICK MALUKI MUTHENGI INTERESTED PARTY

DR. OWISO OWISO INTERESTED PARTY

JUDGMENT

1. In June 2023, positions for three members of the Foreign Service Academy Council were advertised pursuant to section 30(1) (d) of the *Foreign Service Act*, 2021. The 2nd, 3rd and 4th interested parties were among the persons who applied for the positions. The Selection Panel chaired by the 1st interested



- party, shortlisted 26 applicants for interview and the 2nd, 3rd and 4th interested parties were among those interviewed.
2. Following the interviews, the 2nd, 3rd and 4th interested parties expected to be informed of the outcome of the interviews but this did not happen. On 22nd November 2023, an article in the Star News Paper reported that the 2nd, 3rd and 4th interested parties had been selected but the 1st, 2nd and 3rd respondents had declined to appoint them and had instead directed a re-advertisement of the positions.
 3. The petitioner visited the 1st respondent's website and discovered that by notice issued by the 3rd respondent, the positions had indeed been re-advertised and fresh applications were to be received by 4th December 2023. No reasons were given for the re-advertisement and the outcome of the initial interviews was not disclosed.
 4. The petitioner filed a petition dated 18th March 2024 and amended on 25th March 2025, challenging the respondents' actions as unconstitutional. The petitioner asserted that since the lapse of the deadline for the re-advertisement, there was no information from the 1st respondent regarding applications received, shortlisting, interviews, selection or appointments.
 5. The petitioner contended that Kenyans had legitimate expectation that the outcome of the initial interviews would be publicly communicated and those competitively selected appointed. Contrary to this expectation, however, the 1st, 2nd and 3rd respondents proceeded with fresh recruitment and appointment process and on 9th August 2024, through Gazette Notice No. 9623 dated 8th August 2024 (Kenya Gazette Vol. CXXXVI—No. 121, 9th August 2024), the 2nd respondent appointed Beatrice Kituyi, Dr. Kenneth Wyne Mutuma and Dr. Patrick Muthengi Maluki as members of the Foreign Service Academy Council.
 6. The petitioner asserted that in doing so, the 1st, 2nd and 3rd respondents unfairly discriminated against the persons who had already been competitively shortlisted, interviewed and recruited and also occasioned unnecessary and unjustified public expenditure.
 7. The petitioner maintained that the 1st, 2nd and 3rd respondents' actions violated articles 10(1) (b), (c); 24, 27, 28, 35, 47, 201 and 232 of *the Constitution*, and sought declarations and orders to correct the impugned actions.

1st, 2nd and 3rd respondents' case

8. The 1st, 2nd and 3rd respondents opposed the petition through a replying affidavit sworn by Dr. Korir sing'oei, Principal Secretary, State Department of Foreign Affairs, the 3rd respondent. The 1st, 2nd and 3rd respondents admitted that the positions were advertised on 20th July 2023 and 27 persons were shortlisted and invited for interview, but only 24 attended the interview.
9. The interviewing committee came up with various scenarios to cater for the constitutional principles of gender and regional balance, while still considering merit. One of the scenarios recommended appointment of the 2nd, 3rd and 4th interested parties to the positions.
10. The 1st, 2nd and 3rd respondents stated that the initial report (dated 8th November 2023) was misplaced but was subsequently resubmitted on 11th April 2024. Upon considering the persons presented, the 1st respondent made a decision to re-advertise the positions to attract a wider pool of candidates.
11. Following the re-advertisement, shortlisting was done and 18 candidates were shortlisted. A new interview Committee was constituted and 16 candidates were interviewed and 9 candidates made the



minimum mark of seventy five percent. A report on the outcome of the interview process was compiled with various proposals on persons to be appointed.

12. The 1st, 2nd and 3rd respondents considered the outcome of the interview process and selected suitable persons. They stated that at the time of filing the replying affidavit, the persons selected for appointment had already been gazetted and assumed office thus, the petition had been overtaken by events and is now moot.
13. In the view of the 1st, 2nd and 3rd respondents, upon the appointments being made, this court's jurisdiction over the issue ceased to exist as there arose an employment relationship making the dispute one for the Employment and Labour Relations Court.

1st interested party's case

14. The 1st interested party did not file a response to the petition.

2nd interested party's case

15. The 2nd interested party filed replying affidavit in response to the petition. The 2nd interested party confirmed applying and attending the interview. After the interview, he was informed that the outcome of the interview would be communicated to her.
16. The 2nd interested party stated that sometime in November 2023, she read in the Star Newspaper that the 3rd and 4th interested parties and herself were successful in the interviews and had been selected for appointment to the advertised positions, but the 1st, 2nd and 3rd respondents had declined to appoint them and instead directed that the vacancies be re-advertised.
17. The 2nd interested party asserted that the 3rd respondent later re-adverted the positions and denied receiving communication on the outcome of the interview she had attended.

3rd interested party's case

18. The 3rd interested party opposed the petition through an affidavit of protest stating that did not wish to participate in the proceedings and urged the court to strike out his name from the pleadings.

4th interested party's case

19. The 4th interested party filed a replying affidavit and further affidavit in support of the petition. The 4th interested party stated that he applied for the advertised positions, was invited and attended the interview. At the conclusion of the interview, he was informed that the outcome of the interview would be communicated to him, but this was not done.
20. The 4th interested party reiterated the position regarding the reports in the Star Newspaper, the decline to appoint them and the re-advertisement of the positions. He contended that he was prejudiced because of the rigorous process he had undergone when applying and attending the interview. He denied receiving communication on the outcome of the interviews or reasons for the re-advertisement which was in violation of his legitimate expectation, fair administrative action and national values and principles of good governance guaranteed under articles 47 and 10 (2) (c) of [*the Constitution*](#).

Submissions

21. The petition was disposed of through written submissions with brief oral submissions.



Petitioner's submissions

22. The petitioner filed written submissions arguing that by ignoring the outcome of the competitive recruitment process and instead re-advertising the positions, the respondents failed to uphold national values and principles of good governance, integrity, transparency and accountability in articles 10(1) (c) of *the Constitution* and sections (3) and 11(5) of the *Foreign Service Act*. The petitioner relied on the decisions in *Consumers Federation of Kenya (COFEK) v Attorney General & 2 others* [2012] eKLR and *Community Advocacy and Awareness Trust & 8 Others v Attorney General & 6 others* [2012] KEHC 5589 (KLR).
23. The petitioner maintained that the respondents violated the principles in article 232 of *the Constitution* by ignoring the recommendations of the selection panel and making the decision to re-advertise the positions without informing the interviewed candidates on the status of the interviews. The petitioner argued that it was not until the petition was filed that reasons were given. The 1st respondent did not also tell under what provisions of the law the positions were re-advertised, making the decision arbitrary.
24. The petitioner went on to submit that the respondents violated legitimate expectation of the applicants that had been interviewed, including the 2nd, 3rd and 4th interested parties and the public as expected under sections 3(3) and 11(5) of the *Foreign Service Act* and by extension *the Constitution*. Reliance was placed on the decision in *Communications Commission of Kenya & 5 others v Royal Media Services & 5 others* [2014] eKLR.
25. It was the petitioner's position, that the respondents had kept the public informed of the actions being undertaken during the process thereby aroused public expectation that same transparency would be maintained after the interviews until appointments were made. By not adhering to the recommendations of the selection panel, the respondents violated rights of the interested parties guaranteed under articles 47 and 50 (1) of *the Constitution*.
26. Regarding the argument that the petition had been overtaken by events, the petitioner submitted that the respondents went against the public policy doctrine of *lis pendens* when they filled the positions while the matter was pending in court. The petitioner relied on the decision in *K N Aswathnarayan Setty (D) Tr. LR. & Others v State of Karnataka & Others* [2013] INSC 1069.
27. The petitioner urged the court to consider when the petition was filed, the prayers sought, whether the respondents altered the substratum of the petition and whether they were aware of the petition to determine whether the matter has been overtaken by events.

1st, 2nd and 3rd respondents' submissions

28. The 1st, 2nd and 3rd respondents submitted, relying on section 30(1) (d) of the *Foreign Service Act*, that the recruitment process was done in accordance with the law. They argued again relying on section 30 (2) of the Act, that the petitioner had not demonstrated that the people appointed did not meet qualifications and requirements of the law.
29. The 1st, 2nd and 3rd respondents submitted that the re-advertisement was justified and was intended to improve balance in representation and uphold articles 27, 201 and 232 of *the Constitution*. They relied on the decision in *Orogo v Chairman Board of Directors Kenya Revenue Authority & 2 others* [2023] KEHC 24847 (KLR).
30. The 1st, 2nd and 3rd respondents maintained that appointments having taken effect on 9th August 2024 and the Council commenced its functions, the issues raised in the petition are now moot. They argued



that setting aside the appointments would unsettle legitimate expectation of those appointed and disrupt the functioning of a public body. Reliance was placed on the decision in *Okiya Omtatah Okoiti & 2 others v Attorney General & 4 others* [2020] eKLR.

31. The 1st, 2nd and 3rd respondents denied the petitioner's claim on violation of the right to information since no request for information was made seeking any information regarding the re-advertisement or the results of the first interviews. The petitioner's right to fair administrative action was also not violated because the petitioner was not an applicant for the positions advertised or interviews conducted. The 1st, 2nd and 3rd respondents relied on section 107 of the *Evidence Act* on the burden of proof and urged the court to dismiss the petition.

4th interested party's submissions

32. The 4th interested party submitted that the 1st, 2nd and 3rd respondents' decision to disregard the report of the first interview committee and instead to re-advertise the positions violated article 47 of *the Constitution* as read with section 4 of the *Fair Administrative Action Act*. He relied on the decisions in *Judicial Service Commission v Mbalu Mutava & another* [2015] KECA 741 (KLR) and *Kenya Human Rights Commission & another v Non-Governmental Organizations Co-ordination Board & another* [2018] KEHC 8915 (KLR).
33. It was the 4th interested party's view, that the 1st, 2nd and 3rd respondents' decisions were arbitrary, opaque, unaccountable, made in bad faith and were procedurally unfair. They failed to communicate the outcome of the interview process and give reasons for any decisions taken not to implement the recommendation of the interview committee.
34. The 4th interested party submitted that candidates who had been interviewed had a legitimate expectation that the outcome of the interview process would be communicated promptly; the recommendation of the interview committee would be respected and any decision taken on that report would be promptly communicated. He relied on the decisions in *Republic v Ministry of Education & 3 others; MGJB (Suing on behalf of a minors, SKG and SKG1) (Exparte Applicant)* [2021] KEHC 7682 (KLR) and *Kenya Human Rights Commission v Non- Governmental Organisations Co-ordination Board* [2016] KEHC 5405 (KLR).
35. The 4th interested party refuted the contention that the report was misplaced and resubmitted on 11th April 2023. He argued that the first interview committee's report was presented to the 1st, 2nd and 3rd respondents on 8th November 2023 yet the positions were re-advertised on 10th November 2023. The 1st, 2nd and 3rd respondents were obligated to communicate the outcome of the interviews upon receiving the report on 8th November 2023. Failure to do so, he argued violated articles 35 and 47 of *the Constitution* and the impugned decisions are therefore unlawful.
36. According to the 4th interested party, the respondents acted in bad faith which was demonstrated by the fact that while the vacancies were advertised in July 2023, the list of applicants; those shortlisted and interview dates were publicly communicated; the outcome of the interview was kept secret and only came to light through the media on 22nd November 2023.
37. The 4th interested party submitted that the lack of transparency denied the candidates who had been interviewed the right to know the outcome of the interview process and the reasons for disregarding that outcome. It also denied the public an opportunity for public participation. These actions violated articles 10(2) (c), 35, 47 and 232(1) of *the Constitution* and sections (3), 11(5) and 30 (1)(d) of the *Foreign Service Act*.



38. The 4th interested party again argued that the respondents' decision was irrational and unreasonable. He relied on the decision in *Republic v Ministry of Education & 3 others; MGJB (Suing on behalf of a minors, SKG and SKG1) (supra)* that no reasons were given for the decision to disregard the report of the interview committee.
39. The 4th respondent maintained that the process of re-advertising the positions differed from the initial recruitment process in that the only thing published was the advertisement published on 10th November 2023 and the Gazette Notice. The 4th interested party relied on the decisions in *Consumer Federation of Kenya (COFEK) v Attorney General and 2 others (supra)* and *Kariuki v Board of the Tourism Regulatory Authority & 2 others [2023] KEHC 18453 (KLR)* and urged that the re-advertised process was not competitive or transparent and offended articles 10, 35, 47 and 232(1) of *the Constitution* and sections 3(3), 11(5) and 30(1) (d) of the *Foreign Service Act*.
40. The 4th interested party disagreed with the argument that the petition had been overtaken by events because the appointments were made with the full knowledge of the petition. The appointments were calculated at embarrassing the court and defeating the judicial process which should not be allowed.
41. The 4th interested party maintained that the respondents having ignored court proceedings and proceeded with an unlawful exercise that did not strip the court of its powers under articles 23, 165 (3) (b) and d(ii) of *the Constitution*. He argued that there is no employer-employee relationship between the petitioner and the respondents to warrant invocation of the jurisdiction of the ELRC. The 4th interested party relied on the decisions in *Public Service Commission & 4 others v Cheruiyot & 20 others [2022] KECA 15 (KLR)* and *Kariuki v Board of the Tourism Regulatory Authority & 2 others (supra)*.
42. The interested party further relied on the decision in *Okello & another v Cabinet Secretary for Industrialization, Trade and Enterprise Development & another; Ngutari & 7 others (Interested parties) [2020] KEELRC 289 (KLR)* and urged the court to allow the petition.

Determination

43. I have considered the pleadings, arguments by parties and the decisions relied on. The issue that arises for determination is whether the respondents' decision to re advertise the positions whose interviews had been conducted, violated *the Constitution* and the law. The petitioner argued in the affirmative, a position that was supported by the 4th interested party arguing that the actions violated sections 3(3), 11(5) and 30(1) (d) of the *Foreign Service Act* and several articles of *the Constitution*. The respondents took the opposite view, maintaining that the actions were lawful.
44. Section 3 of the *Foreign Service Act* establishes a foreign service of the Republic of Kenya in the ministry. Subsection (2) provides that the Foreign Service is to be headed by the Cabinet Secretary. Subsection (3) states that in the performance of its functions, the Foreign Service is to be guided by the national values and principles of governance enshrined in *the Constitution*, international law and customs of diplomatic practice.
45. Section 4 is on the composition of the Foreign Service; section 5 is on the functions of the Foreign Service, while section 6 is on the powers and functions of the Cabinet Secretary.
46. Section 28 which is relevant to this petition, establishes the Foreign Service Academy as a body corporate with perpetual succession and a common seal. It has powers to sue and be sued in its corporate name. The Academy is to be the principal institution for training and capacity building for members of the Foreign Service; it is to undertake foreign policy consultancy, research and



- analysis for the Service, Government and clients in the private and public sector; develop and conduct periodic evaluation of training programmes to ensure relevance, quality and effectiveness; undertake continuous foreign service training and other programmes to enhance skills, capacity and professionalism of officers. It is to offer induction courses to all newly employed persons to help them transition into a career in the Service; administer entry and promotional examinations within the Service; undertake training of members of the Service before deployment for a tour of duty; conduct examinations for the grant of such professional and academic awards as may be prescribed; develop and maintain a repository of research resources on foreign policy and related issues; develop linkages and collaborations with institutions of learning, professional organizations, private sector and other similar institutions across the world; control the publication and use of research findings of the Service; and perform all other acts necessary for the proper performance of its functions under the Act, Foreign Service which may lawfully be done or performed by a body corporate.
47. Section 30 provides that the Academy is to be governed by a Council comprising of-a Chairperson appointed by the Cabinet Secretary from amongst the persons appointed under paragraph (d); the Principal Secretary in the Ministry responsible for matters relating to foreign affairs or a representative designated in writing; the Principal Secretary in the National Treasury or a representative designated in writing; “three persons competitively recruited and appointed by the Cabinet Secretary, one of whom shall be a person who teaches diplomacy or international relations in a university recognized in Kenya;” the Secretary of the Public Service Commission; the Director-General of the Kenya School of Government; and the Director-General, who shall be an ex officio member.
 48. Subsection (2) provides that a person shall not be appointed to the Council under subsection (1)(d) unless such person—meets the requirements of Chapter Six of *the Constitution*; possesses a post graduate degree from a recognised university in—international relations; international law; international diplomacy; economics; social sciences; or a relevant field; and possesses experience, knowledge or expertise in matters relating to foreign and diplomatic service.
 49. Under subsection (3), the Chairperson and members of the Council appointed under subsection (1) (d), are to hold office for a term of three years from the date of appointment and are eligible for re-appointment for one further term.
 50. The petitions, the subject of this petition, related to persons appointed under subsection 30 (1)(d) that is; three persons who are to be competitively recruited. The petitioner argued that the three positions were initially advertised, applications received and interviews conducted but results of the interviews were not made public. Instead, the positions were re-advertised and fresh interviews conducted which, the petitioner argued, violated constitutional principles, the law and rights and fundamental freedoms.
 51. The respondents on their part stated that indeed the three positions were advertised and 27 persons were shortlisted and invited for interview, but only 24 attended the interview. The interviewing committee came up with various scenarios to cater for the constitutional principles of gender and regional balance, while still considering merit. One of the scenarios recommended appointment of the 2nd 3rd and 4th interested parties to the position of members of the council.
 52. According to the respondents, the initial report was misplaced and was subsequently resubmitted on 11th April 2024. The 1st respondent considered the names presented and made a decision to re-advertise the positions to attract a wider pool of candidates. 18 candidates were shortlisted and 16 were interviewed by a new committee with 9 candidates making the minimum mark of seventy five percent. A report was submitted with various proposals on persons to be appointed in compliance with the law. The 1st respondent considered the outcome of the interview process and selected the suitable persons for appointment which was done. Those appointed were gazetted and assumed office.



53. The petitioner's argument was that the process of readvertising the positions was not transparent and that those who had been interviewed earlier were entitled to know the result of the interview which was not the case and, therefore, their right guaranteed under article 47 of *the Constitution* was violated.
54. There is no dispute that the three positions were advertised; applications submitted; applicants were shortlisted and interviews conducted. There is also no denial that results of that interviews were not made public. The respondents' position was that after considering the proposals on the persons to appoint, the 1st respondent made a decision to readvertise the positions to attract a wide pool of applicants.
55. The positions, the subject of this petition, are established by statute which requires that appointment of the three members of the Council be competitively done. That means the recruitment has to meet the standards in article 232 of *the Constitution* namely; fair competition and merit as the basis of appointment and promotion; representation of Kenya's diverse communities and affording adequate and equal opportunities for appointment, training and advancement at all levels of public service, including men and women; members of all ethnic groups and persons with disabilities.
56. The appointments must also take into account the requirement in article 27 of *the Constitution* that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres and that not more than two thirds of members of elective or appointive bodies should be of the same gender.
57. The respondents stated that the reason why the positions were re-advertised was to attract a wide pool from which selection could be made. Although it would have been appropriate for the respondents to disclose reasons for not proceeding with appointments based on the initial interviews, the petitioner did not argue that the 1st respondent acted outsider the law and if so, identify the section of the law that was violated.
58. The fact that the positions were re-advertised was in itself an admission that the process of re-advertisement was public and that those who had applied still had a chance to re-apply and be considered. This is contrary to the 4th interested party's view that the re-advertisement process was not competitive or transparent. Openness or transparency is a question of fact to be deduced from the circumstances of each case. The fact that members of the public were aware of the re-advertisement and indeed applied, was confirmation that there was an element of transparency. If one individual did not see the readvertisement, that did not mean the process was not open and transparent.
59. The petitioner and 4th interested party argued that there was no good faith in the readvertisement and that lack of transparency denied the persons who had been interviewed the right to know the outcome of the interview process and the reasons for disregarding that outcome. They also argued that the re-advertisement denied the public an opportunity for public participation in violation of articles 10(2) (c), 35, 47 and 232(1) of *the Constitution* and sections (3), 11(5) and 30 (1)(d) of the *Foreign Service Act*.
60. I have considered respective parties' arguments in this regard. First regarding public participation under article 10 (2) (c), the petitioner and 4th interested party did not show how public participation was required to be done during the re-advertised process or even how it was done during the first process that the second process failed to comply with that violated article 10 of *the Constitution*. I have perused the provisions of the Act under which the process is undertaken. The section states that the positions should be competitively filled. Competition takes various forms one of which is to advertise the positions, receive applications and conduct interview from which suitable persons are selected for appointment. The petitioner did not demonstrate that the law was not followed in this respect.



61. Regarding information under article 35, it is worth noting, that article 35 is on access to information. Article 35(1) states that every citizen has the right of access to—(a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.
62. The right of access to information must be claimed and lived. That is, a person who seeks to rely on this article must make a request for information from a State agency or private entity. In the case of information from a private entity, the person must show that the information is sought for purposes of realising or enforcing a right—See *Dande & 3 others v Inspector General, National Police Service & 5 others* (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR).
63. Neither the petitioner nor 4th interested party showed that they had requested for information as required by section 8 of [Access to Information Act](#) to enable this court make a determination on the issue. It is not enough for a party to argue that the right of access to information had been violated without demonstrating how so that the court can determine the veracity of the claim.
64. On the argument that article 47 was violated, one must appreciate the import of this article. Article 47 is on the right to fair administrative action. It provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Sub article (2) states that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
65. Article 47 protects rights and fundamental freedoms. These must be rights or fundamental freedoms guaranteed in the Bill of Rights or any other law. This is because under article 19(3)(b) of [the Constitution](#), rights and fundamental freedoms in the Bill of Rights do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law. In that regard, a party claiming violation of article 47 rights must show that the right is guaranteed under the Bill of Rights or is recognised by law to enable the court assess the claim of such violation.
66. In this petition, although it would have been proper for those interviewed to know the outcome of the interviews they took part in, the petitioner and 4th interested party were unable to show the right in the Bill of Rights or any law that was violated. It is one thing to allege that a constitutional right had been violated and it is another to prove the actual violation. Violation of a right or fundamental freedom is first a question of fact and once the fact of violation is demonstrated, it then becomes a question of law to be proved to the required standard so that the court can determine the violation and redress it.
67. To amount to a violation of either the law or right and fundamental freedom, the impugned action must be a legal wrong or a legal injury caused to a person or to class of persons by reason of violation of the constitutional or legal right in contravention of a constitutional or legal provision. Where there is violation or cause to legal wrong or injury, the court has powers to grant an appropriate relief to prevent or redress the wrong or legal injury. The essence of the appropriate relief is not only to enforce [the Constitution](#), but also to ensure that rights and fundamental freedoms enshrined in the Bill of Rights are protected and enforced—(*Fose v Minister of safety and Security* (CCT 14/1996) [1997] ZACC 6.)
68. As the Supreme Court stated in *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR; [2014] KESC 53 (KLR):

[349]...Although Article 22(1) of [the Constitution](#) gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the



High Court decision in *Annarita Karimi Njeru v Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

69. The above statement of law means that a party claiming violation of rights and fundamental freedoms should demonstrate with precision, the constitutional rights violated, the provisions infringed and the manner of violation so that there is a link between the alleged violation, the rights infringed and the constitutional provisions involved in order to put the respondent on notice over the petitioner's claim in order to respond appropriately.
70. In the circumstances of this petition, the petitioner did not demonstrate that those who were interviewed had a right to be appointed which was violated. The petitioner did not also show that the respondents violated any law by re-advertising the positions and the subsequent process including interviews. Although the petitioner argued that the respondents acted while the petition was pending, there having been no order to stop the process, the less I say about that argument, the better.
71. Both sides agreed that the process was concluded and persons appointed. That means the persons appointed were already in office. They were not however made parties to this petition so that they could be heard since the appointment conferred on them a right to be heard. Any action that would affect them would be prejudicial and a violation of their legitimate expectation to be heard.
72. In the circumstances of this petition, having considered the pleadings, responses and arguments by parties as well as *the Constitution* and the law, I am unable to see any violation of either *the Constitution*, the law or rights and fundamental freedoms. Consequently, and for the above reasons, the petition fails and is dismissed.
73. This being a public interest litigation each party shall bear their own costs.

Dated and signed at NAIROBI THIS 4TH DAY OF FEBRUARY 2026

E C MWITA

JUDGE

Delivered and countersigned this 5th Day of February 2026

L N MUGAMBI

JUDGE

