

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

ELRC PETITION NO. E023 OF 2026

IN THE MATTER OF: ARTICLES 1,2,10, 27, 28, 41,43, 47,55,162(2a),232,233, & 258 OF THE CONSTITUTION OF KENYA -and- IN THE MATTER OF: SECTIONS 2, 3, 4, 7, 8 AND 9 OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

-AND-

IN THE MATTER OF: CONTRAVENTION OF THE ENGINEERING TECHNOLOGY ACT, 2016

-BETWEEN-

INSTITUTION OF ENGINEERING TECHNOLOGY OF KENYA.....PETITIONER/APPLICANT

-VERSUS-

KENYA RURAL ROADS AUTHORITY.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. The petitioner, registered professional association of engineering technologists under the Societies Act, being aggrieved by the advertisements for jobs by the respondent and alleging discrimination in the requirements for the vacancies

filed a petition dated 19<sup>th</sup> January 2026 together with the application by way of Notice of Motion dated of even date seeking for the following orders

- a. Spent
- b. THAT pending the hearing and determination of this Application, this Honourable Court be pleased to issue an interim conservatory order directing the 1st Respondent to suspend the recruitment exercise in relation to the engineering job vacancies advertised by the 1st Respondent, in particular, vacancies for “Deputy Director Roads” (ref no. KeRRA/DDR/03/2025, “Assistant Director – Roads”, Grade 4 (ref no. KeRRA/ADR/11/2025), “Principal Engineer,” Grade 5 (ref no. KeRRA/PE/22/2025) “Senior Engineer,” Grade 6 (ref no. KeRRA/SE/32/2025) and “Engineer”, Grade 7 (ref no. KeRRA/E/47/2025).
- c. THAT pending the hearing and determination of this Petition, this Honourable Court be pleased to issue a conservatory order directing the 1st Respondent to suspend the recruitment exercise in relation to the engineering job vacancies advertised by the 1st Respondent, in particular, vacancies for “Deputy Director Roads” (ref no. KeRRA/DDR/03/2025, “Assistant Director – Roads”, Grade 4 (ref no. KeRRA/ADR/11/2025), “Principal Engineer,” Grade 5 (ref no. KeRRA/PE/22/2025) “Senior Engineer,” Grade 6 (ref no. KeRRA/SE/32/2025) and “Engineer”, Grade 7 (ref no. KeRRA/E/47/2025).
- d. THAT this Court be pleased to issue such other orders as deemed fit;

e. THAT costs of this Application to be provided for.

Grounds of the application

2. On 23rd December 2025, KeRRA published an advertisement for various vacancies in the local dailies and on their website. The same advertisement was re-published on 13th January 2026. In particular, KeRRA invited prospective applicants to apply for 87 available engineering job vacancies under the title of “Deputy Director Roads” (ref no. KeRRA/DDR/03/2025, “Assistant Director – Roads”, Grade 4 (ref no. KeRRA/ADR/11/2025), “Principal Engineer,” Grade 5 (ref no. KeRRA/PE/22/2025) “Senior Engineer,” Grade 6 (ref no. KeRRA/SE/32/2025) and “Engineer”, Grade 7 (ref no. KeRRA/E/47/2025).
  
3. The Job Description annexed thereto lists tasks which are specifically and perfectly aligned with the work that is expected to be performed by holders of Bachelor of Technology Engineering degrees as provided by section 2 of the Engineering Technology Act, 2016.
  
4. However, the said advert, under the job specification section, provided that prospective applicants had to be registered by the Engineers Board of Kenya (EBK).

5. The Applicant's concern is that it unfair and discriminatory for KeRRA to insist that job applicants must be registered by the Engineers Board of Kenya ( EBK), when in fact its members who are Bachelor of Technology Engineering Graduates, and who qualify for these jobs, are accredited and registered with the Kenya Engineering Technologists Registration Board (hereinafter "KETRB") which is the statutory Board that registers and regulates the members of the Applicant.
6. Both EBK and KETRB are statutory bodies. EBK is created under CAP 530, while KETRB is established under CAP 530A.
7. For clarity, members of the Applicants used to be regulated by EBK until the year 2016 when the Engineering technologists Act 2016 was enacted thus establishing KETRB as the regulator of the members of the Applicant.
8. It is thus unfair, discriminatory, and unlawful for the 1st Respondent to insist that every applicant must be registered with EBK at the exclusion of KETRB, where members of the Applicant fall under.
9. Further, the career progression guidelines as published by the Public Service Commission provide that there shall be no separate job cadres for Bachelor of Science and Bachelor of Technology Engineers.

10. In the circumstances, via a letter dated 24th December, 2025, the Applicant wrote to KeRRA raising these concerns and giving it 7 (seven) days to recall its advertisement and issue a fresh/amended advertisement.
  
11. Further, via a demand letter dated 5th January 2026, the Applicant, through their Advocates, Wandeto Wachira Advocates, wrote a letter to KeRRA raising the concerns of the Applicant, demanding that KeRRA should address the complaints of the Applicant by introducing the alternative requirement that applicants for the vacancies herein listed have membership to KETR. k. KeRRA responded via a letter dated 5<sup>th</sup> January 2026 and another dated 12th January 2026, whereby they maintained that they had not contravened any constitutional or statutory provision and that the advertisement had fully complied with the applicable legal framework. They firmly indicated that they would proceed with the unlawful and discriminatory recruitment process against the applicants herein, and even went ahead to re-publish the same advertisement on 13th January 2026.
  
12. It is important to note that a similar discriminative recruitment process initiated by KeNHA (a sister roads board to KeRRA) was temporarily suspended by this Honourable Court in Milimani Commercial ELRCPET/E270/2025- Institution of Engineering Technology of Kenya -Versus- Kenya National Highways Authority and The Attorney General, which is a matter raising similar

issues as the application herein, and as such it will be fair, just and jurisprudential for this Court to make similar orders under this matter.

13. All factors considered, and for the foregoing reasons, it would therefore be in the interest of justice that this Court be pleased to consider this Application herein with utmost urgency and to grant the orders sought therein.
14. The application was further supported by the affidavit of Bibiye Mahmoud Juma sworn on the 19<sup>th</sup> January 2026 where he annexed the documents relied on.
15. The application was opposed by replying affidavit of Eng. Jackson Magondu sworn on the 6<sup>th</sup> February 2026. The respondent further filed a Notice of Preliminary Objection dated 6<sup>th</sup> February 2026 raising the following points-
  - A. THAT the suit herein is res judicata having been substantively determined by a superior court in Supreme Court of Kenya Decision Review Application No. 39 of 2019, Martin Wanderi & Others versus Engineers Registration Board & Others.
  - B. THAT in the circumstances, the Petitioner's suit as against the Respondents is frivolous, a monumental procedural and substantive legal nullity, fatally and

irredeemably incompetent, an abuse of the court process, an afterthought, and a proper candidate for dismissal and or striking out with costs.

16. The applicant filed a further affidavit of Bibiye Mahmoud Juma dated 13<sup>th</sup> February 2026 and opposed the preliminary objection and stated the petition was not rejudicata as follows- The 1st Respondent has raised a P.O on grounds of Res Judicata, based on the Supreme Court Ruling in the matter between Martin Wanderi & Others vs Engineers Registration Board & Others, Review Application No. 39 of 2019. The 1st Respondent has also annexed the said Ruling in its pleadings. In this regard I wish to state as follows: i. None of the Parties in this suit were parties in the Suit relied upon; ii. The matter in issue in the suit relied upon was completely different from the matter in issue in the suit herein. For clarity, the issue that was dealt with at the Supreme Court was on whether the Petitioner in that matter, who was an Engineering Technologist could be registered under Engineers Board of Kenya (EBK), while the issue present before this court is an employment discrimination issue. 4. I am informed by my advocates on record, advice that I believe is true, that section 7 of the Civil Procedure Act provides that a P.O of Res Judicata can only stand if the matter in issue was similar to the matter in issue in the present matter, and should have been litigated under the same parties. 5. I am further informed by my advocates on record that the Supreme Court, in the matter of the Independent Electoral and

Boundaries Commission vs Maina Kiai & Other (2017) eKLR, affirmed this position by finding that Res Judicata can only apply if the following five conditions are met: “(a)The suit or issue was directly and substantially in issue in the former suit. (b)That former suit was between the same parties or parties under whom they or any of them claim. (c)Those parties were litigating under the same title. (d)The issue was heard and finally determined in the former suit. (e)The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.” 6. That as such, I pray that the P.O dated 6th February 2026 be dismissed with costs.

### Decision

#### Whether the petition is resjudicata

17. Resjudicata is as stated in section 7 of the Civil Procedure Act to wit- ‘**7. Res judicata**

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

*Explanation.* (1)—The expression “former suit” means a suit which has been

decided before the suit in question whether or not it was instituted before it.

*Explanation.*(2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

*Explanation.* (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation.*(4)—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation.* (5)—Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

*Explanation.* (6)—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.” The definition was expounded in Independent Electoral and Boundaries Commission vs Maina Kiai & Other (2017) eKLR, where the court stated Res Judicata can only apply if the following five conditions are met: “(a)The suit or issue was directly and substantially in issue in the former suit. (b)That former suit was between the same parties or parties under

whom they or any of them claim. (c)Those parties were litigating under the same title. (d)The issue was heard and finally determined in the former suit. (e)The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

18. Having heard the parties and perused the decision of the Supreme court in Martin Wanderi & Others vs Engineers Registration Board & Others, Review Application No. 39 of 2019, I agreed with the applicant that , the issue that was dealt with at the Supreme Court was on whether the Petitioner in that matter, who was an Engineering Technologist could be registered under Engineers Board of Kenya (EBK), while the issue present before this court is an employment discrimination issue based on fact that the respondent placed a requirement of the applicants for the vacancies to be registered members with the EBK while the members of the applicant are registered with Kenya Engineering Technology Registration Board (KETRB). The court is now sitting to decide whether the members of the applicant, engineering technologists were discriminated against by that requirement of membership of EBK. The applicant had submitted that prior to the Supreme Court review decision some technologists had already been registered by EBK. The court has to determine whether respondent discriminated against members of the applicant in the advert. That issue has not been determined by the Supreme

Court in the review decision. The parties before the Supreme Court and this court are different. I find the petition is not resjudicata. The court holds the Notice of Preliminary Objection has no merit as the cause is not resjudicata and is disallowed.

19. The conservatory order remains in force hence need to hear the application on priority basis. The parties to file submissions concurrently in the application and exchange for highlighting on 23<sup>rd</sup> March 2026. The interim orders extended to that date. The court will determine the application on priority basis. No order of costs.

20. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS  
17<sup>TH</sup> DAY OF FEBRUARY, 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Petitioner/applicant : Wachira

Respondents: Bosire h/b Naneu