

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**

**ELRC PETITION NO. E258 OF 2025**

*(Before Hon. Lady Justice Hellen Wasilwa, J)*

**JOAN CHEPKEMOI .....**  
**PETITIONER**

**VS**

**BENEDICT KIEMA KAVUA, GENERAL MANAGER,**  
**KENYA RAILWAYS CORPORATION.....1<sup>ST</sup>**  
**RESPONDENT**

**THE BOARD OF DIRECTORS**  
**KENYA RAILWAYS CORPORATION.....2<sup>ND</sup>**  
**RESPONDENT**

**CHIEF OF STAFF &**  
**HEAD OF PUBLIC SERVICE.....3<sup>RD</sup>**  
**RESPONDENT**

**ETHICS AND ANTI-CORRUPTION**  
**COMMISSION (EACC).....4<sup>TH</sup>**  
**RESPONDENT**

**THE PRINCIPAL SECRETARY,**  
**STATE DEPARTMENT OF TRANSPORT**  
**MINISTRY FOR ROADS AND TRANSPOR.....5<sup>TH</sup>**  
**RESPONDENT**

**THE CABINET SECRETARY,**  
**MINISTRY FOR ROADS AND TRANSPORT.....6<sup>TH</sup>**  
**RESPONDENT**

**AND**

**NAIROBI WATER & SEWARAGE**

**RULING**

- 1 The Petitioner/ Applicant filed a Notice of Motion dated 10<sup>th</sup> December 2025 seeking orders that: -
  - a. *Spent*
  - b. *A temporary conservatory order suspending Benedict Kiema Kavua, the 1<sup>st</sup> Respondent, from the office and position of General Manager, Supply Chain Management at the Kenya Railways Corporation do issue pending the hearing and determination of this Application.*
  - c. *A conservatory order restraining the 1<sup>st</sup> Respondent from exercising any powers, functions, or duties of the General Manager, Supply Chain Management at Kenya Railways Corporation, do issue pending the hearing and determination of the Petition herein.*
  - d. *That the costs of this application be in the cause.*

**Petitioner/Applicant's Case**

- 2 The Applicant avers that the 1<sup>st</sup> Respondent currently serves as the General Manager, Supply Chain Management at Kenya Railways Corporation (KRC) and, since assuming office, has been at the centre of widespread allegations of tender manipulation, preferential procurement, and abuse of office.
- 3 It is the Applicant's case that the 1<sup>st</sup> Respondent's appointment to the position of General Manager, Supply

Chain Management did not follow a fair, transparent, or competitive recruitment process. The recruitment was allegedly criticised internally and publicly for being manipulated to guarantee his selection, with more qualified and experienced internal candidates intentionally sidelined.

- 4 The Applicant avers that at the time of shortlisting, the 1<sup>st</sup> Respondent allegedly lacked a mandatory professional procurement licence and is reported to have facilitated a bribe to secure the appointment. It is further alleged that the appointment formed part of a broader scheme by the Managing Director, Philip Mainga, to remove experienced officers and facilitate questionable procurement decisions.
- 5 It is the Applicant's case that Kenya Railways workers' unions and several departments lodged complaints challenging the recruitment as irregular, opaque, and contrary to the Public Procurement and Asset Disposal Act and KRC's internal human resource policies, but these complaints were allegedly ignored and yielded no remedial action.
- 6 The Applicant avers that the suspicious circumstances surrounding the appointment raise serious questions regarding the 1<sup>st</sup> Respondent's fitness to hold public office and the legitimacy of the recruitment process itself.
- 7 The Applicant avers that during his tenure, multiple internal complaints, whistle-blower accounts, and staff

reports indicate that the 1st Respondent improperly influenced the evaluation and award of several high-value tenders at KRC, including: Tender for Supply and Installation of Satellite Internet Broadband Connectivity (Tender No. KR/SCM/072/2024-2025); Tender for Provision of Data Center Relocation and Upgrade Services at Kenya Railways Headquarters (Tender No. KR/SCM/080/2024-2025); Tender for Supply and Delivery of Locomotive Lubricants (Framework Contract) (Tender No. KR/SCM/FRC/004/2024-2025); Procurement of Upgrading Trans Logic System Restoration and Repair Service for Wagon Movement (Tender No. KR/SCM/132/2024-2025); and Tender for Supply, Delivery, Installation and Configuration of VHF Radios to support Meter Gauge Railway (MGR) Train Operations (Tender No. KR/SCM/081/2024-2025).

- 8 It is the Applicant's case that the 1<sup>st</sup> Respondent has pressured procurement officers to favour specific suppliers, manipulated tender specifications to lock out competitors, interfered with evaluation committees, and relied on his close association with senior management to override internal controls.
- 9 The Applicant avers that these actions have severely undermined transparency and accountability in procurement at KRC, exposing the Corporation to risks of loss, fraud, and corruption.

- 10 It is the Applicant's case that concerns regarding the 1<sup>st</sup> Respondent's conduct is not new and trace back to his earlier service at Nairobi City Water & Sewerage Company (Nairobi Water), where his tenure was allegedly marked by procurement scandals, financial irregularities, and significant loss of public funds.
- 11 The Applicant avers that public audit commentary and investigative reporting linked procurement failures during his tenure at Nairobi Water to the purchase of faulty water meters at inflated prices, billions of shillings in unexplained or unreconciled expenditures, reported losses of approximately Kshs. 10 billion in the 2021/2022 financial year, and irregular tendering practices.
- 12 She avers that due to these issues, procurement operations under the 1<sup>st</sup> Respondent's watch were reportedly examined by the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC).
- 13 The Applicant avers that in 2024, Nairobi Water management attempted to transfer the 1st Respondent out of procurement functions to restore accountability, but instead he filed proceedings in the Employment and Labour Relations Court seeking to stop the transfer.
- 14 The Applicant avers that the court dismissed the 1<sup>st</sup> Respondent's case and upheld management's decision as

lawful, reinforcing concerns that he was resisting scrutiny and shielding procurement operations from oversight.

- 15 The Applicant avers that when his conduct at Kenya Railways and Nairobi Water is viewed cumulatively, it demonstrates a consistent pattern of abuse of office for personal or external benefit, manipulation of key tenders, interference with recruitment and procurement processes, resistance to oversight and lawful administrative action, lack of integrity in handling public funds, and erosion of institutional governance.
- 16 It is the Applicant's case that the 1<sup>st</sup> Respondent has failed to uphold the constitutional values and principles of public service under Articles 10, 73(2)(c), and 232 of the Constitution, and has violated statutory obligations under the State Corporations Act, the Public Finance Management Act, the Leadership and Integrity Act, and the Kenya Railways Corporation Act.
- 17 The Applicant avers that despite the gravity of these allegations and sustained public pressure, no action has been taken to suspend or investigate the 1st Respondent, reflecting a breakdown in accountability mechanisms and an affront to Chapter Six of the Constitution.
- 18 It is the Applicant's case that absent judicial intervention, the 1<sup>st</sup> Respondent will continue to preside over a public institution allegedly plagued by audit queries, illegal

transactions, and massive financial losses to the irreversible detriment of the Kenyan public.

- 19 The Applicant avers that it is in the public interest, and in furtherance of constitutional values of integrity, transparency, and accountability, that interim reliefs be granted and that the Petition be heard on a priority basis.

### **1<sup>st</sup> Respondent's Case**

- 20 In opposition to the application, the 1<sup>st</sup> Respondent filed a replying affidavit dated 22<sup>nd</sup> December 2025.
- 21 The 1<sup>st</sup> Respondent avers that all allegations made against him by the Petitioner are unsubstantiated, speculative, misleading, and wholly unsupported by any tangible or credible evidence.
- 22 It is the 1<sup>st</sup> Respondent's case that the Petitioner has not annexed any documentary proof whatsoever, including investigatory reports, charge sheets, disciplinary findings, correspondence, or any admissible material, to support the grave allegations levelled against him.
- 23 The 1<sup>st</sup> Respondent avers that he is a person of good standing, integrity, and repute, and that he fully complies with the principles of leadership and integrity under Chapter Six of the Constitution of Kenya. He maintains that no evidence has been presented before the Court to demonstrate otherwise.

- 24 The 1<sup>st</sup> Respondent avers that he has never at any time been arrested, interrogated, investigated, charged, or prosecuted by any criminal investigation agency within the Republic of Kenya in relation to the allegations raised by the Petitioner.
- 25 The 1<sup>st</sup> Respondent avers that he is not currently under any investigation, disciplinary proceedings, or inquiry by his employer, any professional body, or any authority mandated to investigate professional or criminal misconduct.
- 26 He further avers that even if such proceedings existed, which is expressly denied, the same could not lawfully form the basis of the Petitioner's application unless conclusively heard and procedurally determined.
- 27 It is the 1<sup>st</sup> Respondent's case that the allegations raised by the Petitioner are founded purely on conjecture, suspicion, and unproven assertions, and fall far below the constitutional and legal threshold required to sustain the reliefs sought.
- 28 The 1<sup>st</sup> Respondent avers that the application and Petition dated 10<sup>th</sup> December 2025 are strange, premature, misguided, and amount to an abuse of the court process, as they improperly seek to invoke the jurisdiction of the Court without any factual or evidentiary basis.
- 29 The 1<sup>st</sup> Respondent avers that where the Petitioner genuinely believes that criminal or professional

misconduct has occurred, which is denied, there exist clear, lawful, and established mechanisms for addressing such grievances, including recourse to criminal investigation agencies and internal disciplinary or professional regulatory processes that accord due process and fairness.

30 The 1<sup>st</sup> Respondent avers that this Court is not the proper forum to conduct speculative inquiries or to determine criminal culpability or professional misconduct in the absence of prior investigations and findings by constitutionally and statutorily mandated bodies.

31 It is the 1<sup>st</sup> Respondent's case that the Petitioner has failed to demonstrate any violation of constitutional rights attributable to him, rendering the application and the entire Petition fatally defective, misconceived, and untenable in law.

32 The 1<sup>st</sup> Respondent avers that, in the circumstances, it is in the interest of justice that the Petitioner's application and the entire Petition be dismissed with costs.

## **2<sup>nd</sup> Respondent's Case**

33 In opposition to the petition, the 2<sup>nd</sup> Respondent filed a Preliminary Objection dated 18<sup>th</sup> February 2026 on the following grounds:

- 1. The Honourable Court lacks jurisdiction to hear and determine the Petition as the dispute raised does not arise from a labour or employment relationship*

*involving the 2nd Respondent therefore, rendering the Petition incompetent and incurably defective.*

- 2. The Petition discloses no reasonable cause of action against the 2<sup>nd</sup> Respondent and improperly joins the Board of Directors, Kenya Railways Corporation, in respect of matters that fall outside its statutory mandate or have not been pleaded with the requisite specificity.*
- 3. The Petition offends the doctrine of separation of powers by seeking orders that would require this Honourable Court to assume oversight, managerial, and administrative functions constitutionally and statutorily reserved for other executive organs.*
- 4. The Petition improperly seeks to circumvent clear statutory processes governing the management and administration of the Kenya Railways Corporation and invites this Honourable Court to intervene in matters expressly reserved for statutory and administrative decision-making.*
- 5. The Petition is premature and incompetent for failure to exhaust the mandatory statutory and internal dispute resolution mechanisms provided under the Public Service Commission Act and the Kenya Railways Corporation Act.*
- 6. The Petition fails to plead with reasonable precision the specific constitutional provisions allegedly violated by the 2<sup>nd</sup> Respondent, the manner of the alleged violation, and the nexus between the alleged violated rights and the Board, rendering the Petition fatally defective.*

7. *The orders sought in the Petition are vague, and incapable of enforcement against the 2<sup>nd</sup> Respondent as they relate to decisions and actions that are not within the lawful control or mandate of the Board of Directors, Kenya Railways Corporation.*

8. *The Petition improperly invites this Honourable Court to interfere with internal management and governance decisions of the Kenya Railways Corporation, including matters relating to appointment and tenure of management staff, which are vested in the Board.*

34 It is therefore the 2<sup>nd</sup> Respondent's prayer that the the Petition be struck out with costs as it is misconstrued, procedurally defective and an abuse of the Court process.

### **Petitioner/Applicant's Submissions**

35 The Applicant submitted that the principles governing the grant of conservatory orders are now well settled in Kenya's constitutional jurisprudence. Reliance is placed on ***Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR***, as cited in ***Katiba Institute v Judicial Service Commission & 2 others; Kenya Magistrates and Judges Association & 2 others (Interested Parties) [2022] KEHC 438 (KLR)***, where it was observed: "*Conservatory orders*" bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not,

*unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”*

- 36 The Applicant further submitted that a conservatory order was defined in ***Invesco Assurance Co v MW (Minor suing thro' next friend and mother (HW) [2016] KEHC 5318 (KLR)*** as follows: “A conservatory order is a judicial remedy granted by the court by way of an undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for the preservation of the subject matter.”
- 37 It is the Applicant’s submissions that in ***Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] KEHC 2174 (KLR)*** the Court summarized the principles for grant of conservatory orders as: - “(i) The need for the applicant to demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice. (ii) The second principle is whether the grant or denial of the conservatory relief will enhance the

*constitutional values and objects of a specific right or freedom in the Bill of Rights. (iii) Thirdly, the Court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. (iv) Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.”*

- 38 It is the Applicant’s case that the Courts have emphasized that such orders are not analogous to interlocutory injunctions in private law disputes; rather, they are granted on the inherent merit of a case, bearing in mind public interest, constitutional values, and the proportionate magnitudes attributable to the relevant causes.
- 39 On prima facie case, the Applicant submitted that this was defined in ***Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)*** to mean: - “.... *In a civil application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”*
- 40 It is the Applicant’s submission that the Petition raises serious and weighty constitutional questions regarding the continued occupation of public office by the 1<sup>st</sup> Respondent as General Manager, Supply Chain Management at Kenya Railways Corporation. Additionally,

the Petition details the circumstances of the 1<sup>st</sup> Respondent's appointment, alleged irregularities in the recruitment process, and internal and public complaints concerning manipulation of procurement processes. The Applicant pleads that the appointment violated Articles 10 and 232 of the Constitution as it was not fair, competitive, or transparent, and that the 1<sup>st</sup> Respondent allegedly lacked mandatory professional procurement licensing at the time of shortlisting.

- 41 The Applicant submitted that the Petition further identifies specific high-value tenders undertaken under the 1<sup>st</sup> Respondent's watch and alleges interference with evaluation committees, manipulation of specifications, pressure on procurement officers, and overriding of internal controls.
- 42 The Applicant submitted that these allegations directly implicate Articles 10, 73(2)(c), and 232 of the Constitution. Article 73 is cited for the principle that authority assigned to a State officer is a public trust to be exercised with integrity and accountability, while Article 232 requires high standards of professional ethics, transparency, and prudent use of public resources.
- 43 The Applicant further submitted that material placed before the Court concerning the 1<sup>st</sup> Respondent's prior tenure at Nairobi City Water and Sewerage Company, though not requiring final determination at this stage,

strengthens the arguability of the Petition and underscores its public interest dimension.

- 44 On public interest, the Applicant submitted that public interest, as defined by the Black's Law Dictionary 10<sup>th</sup> Edition at page 1425 as: - *"The general welfare of a populace considered as warranting recognition and protection. Something in which the public as a whole has stake especially in something that justifies government regulation."*
- 45 It is the Applicant's submission that allegations of violation or threatened violation of the Constitution should not be taken lightly, and that the Court is enjoined to give effect to the national values and principles in Article 10, including integrity, transparency, and accountability.
- 46 The Applicant submitted that that granting temporary conservatory orders suspending the 1<sup>st</sup> Respondent would reinforce these constitutional values by preserving institutional credibility and signalling that allegations of constitutional violations in public procurement are treated with seriousness. Conversely, declining interim relief would risk normalizing impunity and eroding public confidence in public institutions.
- 47 On whether the Petition will be rendered nugatory, the Applicant submitted that in ***Judicial Service Commission v Speaker of the National Assembly &***

**another [2013] KEHC 911 (KLR)**, where the Court held that: *“Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under the Constitution, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.”*

- 48 It is submitted that procurement decisions are not abstract or easily reversible. Once tenders are evaluated, awarded, and contracts executed, public funds are committed and third-party rights crystallize. If the 1<sup>st</sup> Respondent continues to exercise procurement authority during the pendency of the Petition, the substratum of the Petition will be undermined and the constitutional issues rendered largely academic.
- 49 On whether the Petitioners will suffer prejudice, the Applicant submitted that the Black’s Law Dictionary defines ‘prejudice’ as *“Damage or Detriment to One’s Legal Rights or Claims”* It cited **Platinum Distillers Ltd v Kenya Revenue Authority [2019] KEHC 9419 (KLR)** *“...the court is not called upon to and is indeed not required to make any definitive finding neither of fact on the law as that is the province of the court that will ultimately hear the Petition.”*

- 50 It is the Applicant's submissions that prejudice in constitutional litigation is not confined to personal loss but includes detriment to constitutional order and public rights. The continued exercise of procurement authority by the 1<sup>st</sup> Respondent, in the face of the allegations pleaded, exposes the Corporation to risk of financial loss, contractual entanglements, and potential audit liabilities. The prejudice to the public, should the allegations ultimately prove meritorious, would be substantial and difficult to reverse.
- 51 Conversely, the Applicant submitted that the conservatory orders sought are not punitive and do not determine culpability. They merely suspend the exercise of the impugned authority pending determination of the Petition. The Corporation would remain operational, procurement structures remain intact; only the impugned authority is temporarily restrained. The prejudice to the Respondents is therefore minimal and administrative in nature, whereas the potential prejudice to the public interest if orders are denied is significant.
- 52 It is the Applicant's submission that public interest weighs heavily in favour of the grant of conservatory orders. The Kenya Railways Corporation is a strategic national infrastructure entity responsible for railway transport operations and significant public assets. Procurement decisions within such an institution have far-reaching financial and operational consequences. The public has a legitimate stake in ensuring that those entrusted with

procurement authority meet the highest standards of integrity.

## **1<sup>st</sup> Respondent's Submissions**

- 53 The 1<sup>st</sup> Respondent submits that conservatory orders are distinct from private law injunctions and are granted sparingly. He relied on ***Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR***, where the Supreme Court held that the Court must consider: (i) whether a prima facie case with a likelihood of success has been established; (ii) whether there is a real danger of prejudice if the orders are not granted; and (iii) the public interest.
- 54 It is the 1<sup>st</sup> Respondent's submission that the burden squarely rests on the Petitioner to justify judicial interference with a constitutional or employment office.
- 55 On prima facie case, the 1<sup>st</sup> Respondent submitted that it is settled law that a party seeking interlocutory conservatory relief must first establish a prima facie case with a likelihood of success, which the Petitioner has failed to do. The application and supporting affidavit are founded on bare allegations unsupported by any investigation report, disciplinary findings, criminal charges, or correspondence from investigative agencies.
- 56 The 1<sup>st</sup> Respondent submitted that he has never been arrested, interrogated, investigated, or charged, nor is he subject to any disciplinary process, and that in the

absence of tangible evidence, the Court is being invited to act on suspicion and conjecture, which is impermissible.

- 57 He relied on Centre for Rights Education and Awareness ***Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] KEHC 4297 (KLR)*** where the Court emphasized that a prima facie case must be founded on evidence demonstrating an actual or threatened constitutional violation, not mere allegations.
- 58 The 1<sup>st</sup> Respondent submitted that the Petitioner has failed to demonstrate any apparent violation of the Constitution attributable to him to justify conservatory relief. Mere allegations, however grave, do not amount to proof, and cannot form the basis of a prima facie case. This Court has consistently held that it cannot act on speculation or conjecture, particularly where reputational harm is alleged without evidence
- 59 On irreparable harm, the 1<sup>st</sup> Respondent submitted that the Petitioner has not demonstrated that she will suffer irreparable harm should the conservatory orders not be granted.
- 60 It is the 1<sup>st</sup> Respondent's submission that he has been in office for over one year without any complaint, adverse report, or disciplinary concern being raised, and no evidence has been tendered to show that his continued performance of duties poses any imminent threat to public interest or constitutional order. He cited ***Martin Nyaga***

***Wambora v Speaker Of The County Of Assembly Of Embu & 3 Others [2014] eKLR***, where the Court cautioned against granting conservatory orders where no real or imminent danger has been demonstrated. It was held *“To those erudite words I would only highlight the importance of demonstration of “real danger”. The danger must be imminent and evident, true and actual and not fictitious; so much so that it deserves immediate remedial attention or redress by the court. Thus, an allegedly threatened violation that is remote and unlikely will not attract the court’s attention.”*

- 61 The 1<sup>st</sup> Respondent submitted that the harm alleged by the Petitioner is theoretical and speculative, falling far below the threshold required for the issuance of conservatory orders.
- 62 On balance of convenience and public interest, the 1<sup>st</sup> Respondent submitted that the balance of convenience tilts heavily in his favour. Article 50(2)(a) of the Constitution guarantees the presumption of innocence, shielding individuals from adverse action based on unproven allegations.
- 63 It is the 1<sup>st</sup> Respondent’s submission that granting orders suspending or restraining him from office would amount to punitive action without due process, contrary to Articles 41 and 47 of the Constitution, which protect fair labour practices and fair administrative action.

- 64 The 1<sup>st</sup> Respondent further submitted that the Employment and Labour Relations Court exists to protect employees from arbitrary, unfair, and premature sanctions, not to facilitate indirect disciplinary action through constitutional litigation.
- 65 On public interest, the 1<sup>st</sup> Respondent submitted that public interest is not served by removing an employee from office in the absence of investigations or findings by mandated bodies. The proper course, where allegations exist (which are denied), is to allow lawful investigative or disciplinary mechanisms to run their course.
- 66 The 1<sup>st</sup> Respondent submitted that suspending or otherwise interfering with his employment without prior investigation or findings would occasion grave prejudice and undermine constitutional safeguards on fair labour practices, and that where doubt exists, the status quo ought to be preserved.

### **2<sup>nd</sup> Respondent's Submissions**

- 67 The 2<sup>nd</sup> Respondent submitted on four issues: whether this Honourable Court has jurisdiction to hear and determine the Petition as against the 2<sup>nd</sup> Respondent; whether the Petition offends the doctrine of separation of powers and the statutory framework governing Kenya Railways Corporation; whether the Petition is premature and incompetent for failure to exhaust statutory and internal dispute-resolution mechanisms; and whether the Petition discloses a reasonable and properly pleaded cause of action against the 2<sup>nd</sup> Respondent.

- 68 On jurisdiction, the 2<sup>nd</sup> Respondent submitted that a Preliminary Objection has been properly raised challenging this Court's jurisdiction. It cited ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696***, "*So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.*"
- 69 The 2<sup>nd</sup> Respondent submitted that this Court's jurisdiction is derived from Article 162(2)(a) of the Constitution and Section 12 of the Employment and Labour Relations Court Act, which limit its mandate to disputes relating to employment and labour relations. The present Petition does not arise from an employment relationship involving the Petitioner and 2<sup>nd</sup> Respondent. There is no contract of service, no allegation of unfair termination or breach of employment rights, and no pleaded employment grievance.
- 70 The 2<sup>nd</sup> Respondent submitted that the Petition raises public law and governance issues not employment disputes within the contemplation of Article 162(2)(a), including alleged violations of Chapter Six of the Constitution, breaches of the Leadership and Integrity Act, procurement irregularities under the Public Procurement and Asset Disposal Act, and allegations of mismanagement and abuse of office.

- 71 It was submitted that in the absence of an employer-employee nexus involving the Petitioner and the 2<sup>nd</sup> Respondent, this Court lacks subject-matter jurisdiction.
- 72 The 2<sup>nd</sup> Respondent submitted that the underlying dispute concerns public law questions of appointment, integrity and removal of public officers, and not a concrete 2<sup>nd</sup> Respondent's employer-employee dispute within Section 12, the proper forum is the High Court in its constitutional jurisdiction. The Petitioner n has not come to this court as an employee but as a citizen enforcing the rule of law to challenge appointment or removal in public entities. She ought to properly approach the High Court, not the ELRC.
- 73 It is the 2<sup>nd</sup> Respondent's submission that on the face of the pleadings, therefore, the Petition falls outside section 12 and this Court lacks jurisdiction. Without jurisdiction, this Court is bound to down its tools, and the Petition, in so far as it is directed at the 2<sup>nd</sup> Respondent, is incompetent and incurably defective. It cited ***Keter & 20 others v Finlays (Kenya) Limited & another; Federation of Kenya Women Lawyers & 3 others (Interested Parties) [2023] KEHC 22429 (KLR)***.
- 74 On the second issue, the 2<sup>nd</sup> Respondent submitted that the Kenya Railways Corporation Act establishes a clear governance and management structure, vesting policy and oversight functions in the Board, and day-to-day executive management in the Corporation's management, subject to applicable regulations.

- 75 It is the 2<sup>nd</sup> Respondent's submission that disciplinary control, suspension, and removal of officers in State corporations are governed by the Public Service Commission framework, including the PSC Discipline Manual and the Public Service Commission (State Corporations) Regulations, with oversight vested in the Public Service Commission and investigatory bodies such as the Ethics and Anti-Corruption Commission.
- 76 The 2<sup>nd</sup> Respondent submitted that the reliefs sought invite the Court to suspend the 1<sup>st</sup> Respondent, restrain him from office, declare him unfit to hold public office, and compel his removal through mandamus. These are disciplinary and appointment/removal functions reserved to statutory bodies, not the courts.
- 77 The 2<sup>nd</sup> Respondent submitted that would effectively place this Court in the Board's chair and in the position of appointing/removing authority and internal HR organ for KRC. That is contrary to the doctrine of separation of powers and the settled principle that courts do not micromanage executive and managerial decisions in public bodies; their role is limited to reviewing the legality and constitutionality of processes after proper procedures have been followed. It follows a fortiori that a specialist employment court cannot, at an interlocutory stage, be used as a vehicle to suspend and remove a specific manager of a State corporation at the instance of a third-party petitioner.

- 78 The 2<sup>nd</sup> Respondent placed reliance in ***Consumers Federation of Kenya (COFEK) v Cabinet Secretary, National Treasury & Economic Planning & 3 others; Kenya Pipeline Company Limited (KPC) & 2 others (Interested Parties) [2025] KEHC 17628 (KLR)***, the High Court reaffirmed that courts must be cautious not to usurp function reserved for constitutional and statutory bodies (e.g., Parliament’s law-making, statutory administrative decision-making) when determining constitutional petitions.
- 79 It is the 2<sup>nd</sup> Respondent’s submission that the orders sought such as compelling removal of a General Manager or directing statutory investigations, are quintessentially executive/statutory functions. Judicial intervention in these domains without clear causal constitutional violation on pleadings offends the separation of powers doctrine. Accordingly, the Petition and the application offend separation of powers and the statutory design of Cap 397 and the PSC regime, and on that ground too should not be entertained as against the 2<sup>nd</sup> Respondent.
- 80 On the third issue, the 2<sup>nd</sup> Respondent submitted that the Public Service Commission Act, PSC Discipline Manual, and PSC (State Corporations) Regulations establish comprehensive mechanisms for handling complaints, investigations, discipline, suspension, and removal of officers in State corporations.
- 81 It is the 2<sup>nd</sup> Respondent’s submission that these mechanisms provide structured avenues for internal investigations, Board action, and appeals to the Public

Service Commission, which must be exhausted before invoking constitutional litigation. Reliance was placed in ***Wamunyinyi v Cabinet Secretary, Ministry of Treasury & Economic Planning & 3 others; Manyonge & 3 others (Interested Parties) [2025] KEHC 8542 (KLR)***.

- 82 The 2<sup>nd</sup> Respondent submitted that even if jurisdiction were assumed, the Petitioner has not demonstrated exhaustion of the applicable statutory processes, rendering the Petition premature and non-justiciable at this stage.
- 83 On the third issue, the 2<sup>nd</sup> Respondent submitted that constitutional petitions must be pleaded with reasonable precision, clearly identifying the specific constitutional provisions alleged to be violated, the manner of the violation, and the nexus between the alleged violation and the particular respondent as set in Anarita Karimi Njeru/Mumo Matemu.
- 84 The 2<sup>nd</sup> Respondent submitted that the Petition is focused almost entirely on alleged misconduct by the 1<sup>st</sup> Respondent and does not identify any specific unlawful act or omission by the Board, any constitutional provision violated by the Board, or any explanation of how the Board, acting within its statutory mandate, infringed constitutional norms.
- 85 The 2<sup>nd</sup> Respondent submitted that it has merely been named, but no concrete cause of action is articulated

against it. The Petition therefore discloses no reasonable cause of action against the Board. On the face of the pleadings, there is no pleaded legal or factual nexus between the 2<sup>nd</sup> Respondent and many of the impugned acts. On these grounds, the Petition falls short of the requisite pleading standard and should be struck out as against the 2<sup>nd</sup> Respondent for want of a reasonable and properly articulated cause of action.

86 It was submitted that the reliefs sought are vague, overbroad, and unenforceable against the 2<sup>nd</sup> Respondent, as they would require the Court to replace the Board's statutory judgment with its own, contrary to settled principles that courts are slow to interfere with internal management decisions absent clear illegality.

87 The 2<sup>nd</sup> Respondent submitted that the conservatory orders sought are substantive and final in nature, disguised as interim relief, and granting them would effectively determine the Petition at an interlocutory stage and remove the 1<sup>st</sup> Respondent from office without due process.

88 It is the 2<sup>nd</sup> Respondent's submission that conservatory orders are intended to preserve the substratum of litigation, not to conclusively determine disputes, and that suspension of a senior management officer central to procurement and operations would disrupt institutional stability and undermine public interest.

- 89 I have examined all the averments and submissions of the parties herein. Following the filing of this petition, the respondents filed a preliminary objection averring that this court lacks jurisdiction to handle this petition.
- 90 I have looked at the prayers being sought in the petition which lean towards stopping the 1<sup>st</sup> respondent from performing his duties at the Kenya Railways Corporation on grounds of some impropriety.
- 91 Considering that the issue of impropriety and corruption fall squarely under the Ethics and Anti Corruption Commission and the Criminal Investigation Department, it is my finding that this court cannot delve into such matters without transforming itself into an Investigation Agency.
- 92 The jurisdiction of this court is well spelt out under section 12 of the Employment and Labour Relations Court and article 166(2) of the Constitution of Kenya 2010 and issues of corruption and impropriety are outside the scope of this court's jurisdiction. I find that the preliminary objection then has merit and that this court cannot proceed with this petition for want of jurisdiction. I proceed to dismiss this petition accordingly. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi this 10<sup>th</sup> Day of March, 2026.**

**HELLEN WASILWA  
JUDGE**

