

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

ELRC PETITION NO. E045 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

BONIFACE KARIMI NYAMU.....
PETITIONER

VS

NAIROBI CITY COUNTY GOVERNMENT.....1ST
RESPONDENT

NAIROBI COUNTY PUBLIC SERVICE BOARD....2ND
RESPONDENT

H.E. HON. JOHNSON ARTHUR SAKAJA.....3RD
RESPONDENT

THE COUNTY SECRETARY,

NAIROBI CITY COUNTY GOVERNMENT.....4TH
RESPONDENT

JUDGMENT

1 By a Petition dated 25th March 2025, the Petitioner prayed for the following orders: -

a) A declaration that the responsibility of terminating the Contract of the Petitioner rests with the 2nd Respondent and not the 3rd Respondent and therefore the letter dated 28/02/2025 is null and void.

b) A declaration that the purported termination of the Petitioner's Contract for without any reasons given is unconstitutional, illegal, null and void.

- c) An order of Certiorari do issue, to remove into this court for purposes of quashing the 3rd Respondent letter of termination issued on 28/2/2025.*
- d) An order of monetary compensation for violation of his fundamental rights and freedom particularly Articles 27,41,47,50 of the Constitution.*
- e) Damages for unlawful termination of the Petitioner from duty without any substantive reasons.*
- f) Costs of, and incidental to this Petition be awarded to the Petitioner as against the 1st Respondent.*
- g) The Honorable Court be pleased to grant such further orders as it may deem fit in the circumstances.*

Petitioner's Case

- 2 The Petitioner avers that on or about the year 2022, the 2nd Respondent advertised in the local dailies' vacancies for the offices of County Chief Officers.
- 3 He applied for the position of County Chief Officer and was subsequently shortlisted in a list posted on the 2nd Respondent's website, following which he attended an interview conducted by the 2nd Respondent during the month of December 2022 as instructed in the shortlist communication.
- 4 The Petitioner avers that after the interviews, the 2nd Respondent communicated to him that he was among the successful candidates and that his name had been

forwarded to the County Assembly of Nairobi for vetting and approval or otherwise.

- 5 It is the Petitioner's case that upon receipt of the list of successful candidates, the Clerk of the County Assembly of Nairobi issued a notice scheduling vetting and inviting members of the public to submit memoranda in favour of or against any of the candidates.
- 6 The Petitioner avers that on 22nd December 2022, he appeared before the Transport Committee of the County Assembly of Nairobi, underwent vetting, which was successful. On 23rd December 2022, the 3rd Respondent appointed him as the Chief Officer in charge of the Mobility Department.
- 7 The Petitioner avers that since some of the shortlisted candidates did not succeed after vetting, the County Secretary added responsibilities to him by appointing him as the Acting County Chief Officer in charge of Markets and Trade.
- 8 It is the Petitioner's case that discharged his duties diligently and, as a result of his hard work and determination, he was appointed to three different committees: Steering Committee of the 2nd Session of the United Nations Habitat General Assembly through a letter dated 11th April 2023; the Human Resource Advisory Committee through a letter dated 19th April 2023; and the

County Performance Contract Management Steering Committee through a letter dated 30th July 2024.

- 9 The Petitioner avers that on 4th August 2024, the 3rd Respondent reassigned him from the Department of Mobility to the Department of Business and Hustlers' Opportunities. However, after only two months in that department, the 3rd Respondent reassigned him again to the Department of Social Services.
- 10 He further avers that whereas there were over thirty Chief Officers within the County Government, he was the only Chief Officer who was transferred.
- 11 The Petitioner avers that after serving in the Department of Social Services for four months, on 7th February 2025, the 3rd Respondent instituted changes that reassigned his department to his colleague, Tony Micheal Kimani, thereby leaving him without a department to head.
- 12 The Petitioner avers that following those changes, he handed over the office, duties and official vehicle to his successor on 17th February 2025 and thereafter remained without assignment within City Hall for approximately one month.

- 13 He consequently wrote a letter dated 17th March 2025 to the County Secretary, who is in charge of Public Service, seeking directions and clarification on his status.
- 14 On 20th March 2025, the County Secretary telephoned him and directed him to collect a response on 21st March 2025.
- 15 The Petitioner avers that on 21st March 2025, he attended the County Secretary's office and was handed a brown, sealed A4 envelope marked "Confidential," which upon opening contained a letter backdated to 28th February 2025, signed by the 3rd Respondent and copied to the 4th Respondent, purporting to terminate his five-year contract.
- 16 The Petitioner states that there are no pending proceedings between the parties in any court of law concerning the subject matter herein and that the cause of action arose within City Hall, Nairobi, which is within the jurisdiction of this Court.

Respondents' Case

- 17 In opposition, the Respondents filed a replying affidavit dated 2nd February 2026, sworn by Godfrey Akumali, the 1st Respondent's Acting County Secretary and Head of Public Service.
- 18 The Respondents aver that the dispute herein relates to the removal of the Petitioner from office and matters

touching on terms and conditions of service within the County Public Service, which matters fall squarely within the appellate jurisdiction of the Public Service Commission pursuant to Section 77 of the County Governments Act, 2012 and Sections 85, 86 and 87 of the Public Service Commission Act, 2017.

- 19 They aver that at no time did the Petitioner invoke, attempt to invoke, or exhaust the internal administrative and statutory dispute resolution mechanisms available before the Public Service Commission, despite the Commission having a functional and accessible appellate mechanism for hearing and determining appeals arising from County Government public service decisions. The Petitioner was at all material times at liberty to lodge an appeal but failed, neglected and/or refused to do so.

- 20 The Respondents aver that by bypassing the said statutory mechanism and approaching this Court directly, the Petitioner acted prematurely and in violation of the doctrine of exhaustion as codified under Section 9 of the Fair Administrative Action Act, no exceptional circumstances having been pleaded or demonstrated to warrant exemption from the statutory process.

- 21 The Respondents further aver that the Petition does not meet the constitutional pleading threshold as it fails to disclose with precision and particularity the specific

constitutional provisions alleged to have been violated and the manner of such violation, contrary to the principles laid down in **Anarita Karimi Njeru v Republic** and as affirmed by the Court of Appeal in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR**.

- 22 It is the Respondents' case that under Rule 11 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, a constitutional petition must be supported by an affidavit setting out the evidentiary basis of the alleged violations.
- 23 The Respondents aver that the Petitioner filed only a verifying affidavit and did not file an affidavit in support of the Petition setting out the factual and evidentiary foundation of the alleged constitutional violations.
- 24 The Respondents aver that the documents referred to in the Petition were neither annexed to the Petition nor to the verifying affidavit, and no properly marked or commissioned exhibits were filed in accordance with the law, contrary to Rule 9 of the Oaths and Statutory Declarations Rules which requires that exhibits to affidavits be securely marked and sealed under the Commissioner's seal, and Rule 10(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms)

Practice and Procedure Rules, 2013 which requires that a Petition be signed by the Petitioner or their advocate attesting to the correctness of its averments and annexed documents.

- 25 It is the Respondents' case that in the absence of a proper supporting affidavit and duly marked annexures, the Petition is unsupported by evidence and consists of mere allegations incapable of sustaining constitutional relief.
- 26 The Respondents aver that the Petitioner has failed to satisfy the settled legal threshold for the grant of the declarations and reliefs sought, having failed to demonstrate a prima facie case of constitutional violation, irreparable harm incapable of compensation by damages, or that the reliefs sought would serve the public interest.
- 27 The Respondents aver that the Petitioner's engagement was contractual in nature and governed by a written contract personally executed between the Petitioner and the 3rd Respondent.
- 28 They aver that the termination clause of the said contract expressly provided for termination by either party upon one (1) month's written notice or payment of one (1) month's salary in lieu thereof, without the requirement to assign any reasons, and without prejudice to the right to terminate employment summarily for lawful cause.

- 29 The Respondents aver that the Petitioner did not enjoy any guarantee of a fixed or immutable five-year tenure and remained subject to termination in accordance with the terms of the contract and the applicable legal framework.
- 30 The Respondents aver that the impugned letter dated 28th February 2025 communicated the termination of the Petitioner's appointment pursuant to the said contractual provisions. The decision to terminate the Petitioner's contract was made within the lawful authority of the 3rd Respondent and was issued in consultation with the 2nd Respondent.
- 31 They aver that the termination formed part of an administrative and executive restructuring undertaken by the County Government aimed at enhancing operational efficiency, policy alignment and effective service delivery, and that the impugned communication was therefore a lawful administrative action undertaken pursuant to statutory authority, contractual terms and legitimate executive discretion.
- 32 The Respondents aver that the Petitioner did not enjoy any legitimate expectation of immunity from lawful administrative action or termination effected in accordance with the contract. Any loss or prejudice arising from termination of a contract expressly terminable upon

notice is capable of precise monetary quantification and does not amount to irreparable harm warranting constitutional intervention.

33 It is the Respondents' case that if the Court grants the Petitioner the reliefs sought, it would unjustifiably interfere with lawful executive authority, disrupt County administration and offend the constitutional doctrine of separation of powers.

34 The Respondents further aver that the Petitioner approached this Court with material non-disclosure and selective presentation of facts relating to the contractual nature of the engagement and the applicable termination provisions.

35 It is the Respondents' case that the Petition is premature, incompetent, misconceived and an abuse of the process of the Court, and the same ought to be dismissed with costs.

36 In further opposition to the Petition, the Respondents filed **Grounds of Opposition** dated 2nd February 2026 on the following grounds:

1. THAT the Petitioner has failed to exhaust the available internal administrative and statutory dispute resolution mechanisms, including those provided under the County Governments Act, 2012,

the Public Service Commission Act, 2017 and the Fair Administrative Action Act.

a) By dint of section 77(2) of the County Governments Act, 2012, the Petitioner was obligated to lodge an appeal before the Public Service Commission (PSC), which he failed to do.

*b) Sections 85–87 of the Public Service Commission Act, 2017, require exhaustion of the Public Service Commission (PSC) appeal mechanism prior to invoking the Court’s jurisdiction. The Application is therefore premature and violates the doctrine of exhaustion, as codified under section 9 of the Fair Administrative Action Act and reiterated by the Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] KESC 53 (KLR)**.*

*2. THAT the Petition fails to meet the constitutional pleading threshold as it does not disclose, with reasonable precision, the specific constitutional provisions alleged to have been violated, nor the manner in which the Respondents are said to have infringed the Petitioner’s rights, as held in **Anarita Karimi Njeru v Republic** and affirmed by the Court of Appeal in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR**.*

3. *THAT the Petition is unsupported by a proper affidavit or any evidentiary material, and therefore consists of bare allegations incapable of sustaining constitutional relief, contrary to the requirements of Rule 11 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.*
4. *THAT the Petitioner's engagement was purely contractual, subject to an express termination clause permitting termination upon notice or payment in lieu thereof, and the impugned decision was made in accordance with the contract and the law.*
5. *THAT the matters complained of constitute, at best, an ordinary employment dispute and do not disclose any distinct constitutional question warranting invocation of this Court's constitutional jurisdiction.*
6. *THAT the impugned decision was made within the lawful constitutional and statutory authority of the 3rd Respondent and in the context of lawful administrative restructuring and executive discretion.*
7. *THAT the reliefs sought would unjustifiably interfere with the lawful exercise of executive authority and offend the constitutional doctrine of separation of powers.*
8. *THAT the Petition is premature, misconceived, incompetent and an abuse of the Court process, and ought to be dismissed with costs.*

Petitioner's Submissions

- 37 The Petitioner submitted that Article 162 (2) (a) and (3) as read with Article 165(5) and (6) of the Constitution, and Section 12 of the Employment and Labour Relations Act and Section 87 of the Employment Act confer the court with original jurisdiction to hear and determine employment and labour relations disputes within the Republic of Kenya. Such jurisdiction is constitutional and statutory. This court is the original adjudication forum.
- 38 The Petitioner submitted that where any other person (3rd Respondent) and not even the employer, *suo moto* and without any written notice proceeds to purportedly terminate employment, such circumstances effectively leaves the Petitioner at liberty to urge his rights under the provisions of Article 162(2) (a) read together with Section 12 of the Employment and Labour Relations Court Act and Section 87 of the Employment Act.
- 39 The Petitioner submitted that even if the Petitioner may have wished to prefer an appeal, without the opportunity of a hearing at the shop floor in the first instance, the 3rd Respondent effectively denied the Petitioner the fair chance to argue any form of an appeal with the Public Service Commission. Reliance was placed in ***Abdikadir Suleiman v County Government of Isiolo & another [2015] eKLR.***

40 It is the Petitioner's submission that the 3rd Respondent, being the Governor of Nairobi, acted *ultra vires* his constitutional and statutory mandate by purporting to dismiss the Petitioner from the office of County Chief Officer vide the letter dated 28th February 2025. The 3rd Respondent's action was a clear overreach/ encroachment of the jurisdiction of the 2nd Respondent. Therefore, the letter was a nullity as per the law, and there was simply no decision in violation of the Petitioner's constitutional rights.

41 The Petitioner submitted that Section 45(2) of the County Governments Act, 2012 expressly provides that: *"The office of a County Chief Officer shall be an office in the County Public Service."* Additionally, Section 59(1)(c) of the County Governments Act vests in the County Public Service Board the mandate to: *"exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part."*

42 It is the Petitioner's submission that the power of a County Governor with respect to County Chief Officers' contract is provided under Section 45 of the County Government Act, that is, to nominate persons to the office of County Chief Officer and forward them to the County Assembly for approval, and upon approval, the other power is to appoint the chief officers. Thereafter, the Chief Officer is

responsible to the Governor through the line County Executive Committee Member for all his function while the County Public Service Board is the sole independent entity that exercises disciplinary control over the Chief Officer under Section 59 of the County Government Act.

43 The Petitioner submitted that the Constitution distinguishes between “State Officers” and “Public Officers” to safeguard independence of the Public Service and to prevent political interference. The 3rd Respondent, being a State Officer, cannot purport to exercise disciplinary control over officers within the County Public Service.

44 He further submitted that the impugned letter dated 28th February 2025 was authored solely by the 3rd Respondent and was not preceded by any process before the County Public Service Board. The 2nd Respondent did not initiate, conduct or conclude any disciplinary proceedings against him. Accordingly, the 3rd Respondent usurped the statutory mandate of the 2nd Respondent.

45 The Petitioner relied on the decision in ***Kisumu County Public Service Board & another v Samuel Okuro & 7 others [2018] KECA 472 (KLR)***, where the Court of Appeal held that the courts held that: *“We have come to the conclusion that the Governor initiated the removal of the respondent without following the appropriate*

machinery. The respondents being county public officers, the Governor could not terminate their services without involving the County Board and the county assembly. In sending the respondents on compulsory leave and terminating the respondents' contract, the Governor usurped the role of the County Board. This denied the respondents their rights under section 77 of the CGA that allows any county public officer that is dissatisfied with the decision of the County Board in a disciplinary process to appeal to the Public Service Commission. Further, the respondents' constitutional fundamental rights were violated."

- 46 On violation of due process and constitutional safeguards, the Petitioner submitted that the 3rd Respondent did not have the mandate to dismiss him and the procedure adopted was illegal. As such, the Petitioner was denied a hearing which is very central to the right to fair labour practices, and fair administrative action. He was further denied his right of appeal as provided under Section 77 of the County Government Act.
- 47 The Petitioner further submitted that Article 236 of the Constitution provides that: "A Public Officer shall not be dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law." Therefore, the 3rd Respondent had no legal

mandate to dismiss the Petitioner and that the due process of the law was not followed in dismissing him.

- 48 It was submitted that the purported dismissal of the Petitioner's employment vide the letter dated 28th February 2025, was in breach of the law and the constitutional principles enshrined in Articles 41 and 47(1) and (2) of the Constitution, as read together with Section 45 and 59 (1) and (c) of the County Government Act and section 45 of the Employment Act, and therefore void ab initio.
- 49 The Petitioner submitted that the court should issue an order of Certiorari to quash the termination letter dated 28th February 2025, for being in violation of Section 45 of the County Government Act and Section 45 of the Employment Act as read together with the letter and spirit of Articles 41 and 47(1) and (2) of the Constitution.
- 50 He further submitted that he is entitled to an award of general damages for violation of his rights to fair labour practices and fair administrative action under Article 41 and 47 of the Constitution; considering that he expected to work for five years before expiry of his contract. He cited the Court of Appeal in ***Oi Pejeta Ranching Limited v David Wanjau Muhoro [2017] KECA 329 (KLR)*** wherein the court awarded Kshs.7,500,000.00 as general damages for discrimination contrary to Section 5 of the Employment Act.

Respondents' Submissions

- 51 The Respondents submitted on four issues: whether this Honourable Court has jurisdiction given the Public Service Commission's (PSC's) appellate mandate and the doctrine of exhaustion; whether the Petition meets the constitutional pleading standard; whether the 3rd Respondent acted within its statutory authority; and whether the Petitioner is entitled to the reliefs claimed.
- 52 On the first issue, the Respondents submitted that the instant Petition is premature, misconceived and fatally defective for want of jurisdiction.
- 53 They submitted that the dispute arises from the termination of the Petitioner's appointment as County Chief Officer, a position within the County Public Service governed by both contractual terms and statutory frameworks.
- 54 The Respondents submitted that Section 77 of the County Governments Act, provides that the Public Service Commission (PSC) shall entertain appeals on any decision relating to the employment of a person in a County Government, including decisions on recruitment, selection, appointment, qualifications, remuneration, and terms and conditions of service.

- 55 They further submitted that Section 85 of the Public Service Commission Act which provides that the PSC shall hear and determine appeals in respect of any decision relating to the engagement of any person in a County Government, including decisions on recruitment, selection, appointment, qualifications, remuneration, and terms and conditions of service. Additionally, Section 2 of the Public Service Commission Act defines “conditions of service” to include any right or obligation relating to a public officer, including appointment and removal from office. Accordingly, the termination of the Petitioner’s appointment, even if effected by the 3rd Respondent, falls squarely within the appellate jurisdiction of the PSC.
- 56 They further submitted that Section 87(2) of the Public Service Commission Act mandates that no person shall file legal proceedings in respect of matters within the Commission’s jurisdiction unless the statutory procedure has first been exhausted.
- 57 The Respondents submitted that the Petitioner instituted these proceedings without first invoking the PSC’s jurisdiction, thereby bypassing a statutory forum and rendering the Petition premature and fatally defective. They relied on the decision of the Supreme Court in ***Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] KESC 53 (KLR)*** and ***Owners of the Motor***

Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR, where the Court stated: *“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence.”*

58 It is therefore the Respondents submission that this Court lacks jurisdiction to entertain the Petition, which violates the doctrine of exhaustion, constitutes an abuse of the constitutional process, and ought to be struck out with costs.

59 On the second issue, the Respondents submitted that it is trite law that a constitutional petition must be pleaded with precision and must establish a clear nexus between the impugned action and the alleged constitutional violation. Ordinary employment disputes cannot be elevated to constitutional petitions unless an independent constitutional right is demonstrated to have been infringed.

60 Reliance was placed in ***Anarita Karimi Njeru v Republic [1979]eKLR*** as affirmed the Court of Appeal in ***Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR*** *“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 (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

- 61 The Respondents submitted that for a Petition to meet the constitutional threshold it must: clearly state the grievances complained of; identify the specific constitutional provisions alleged to have been infringed; and demonstrate the manner of such violation.
- 62 It is the Respondents’ submission that although the Petition cites Articles 27, 41, 47 and 50 of the Constitution, it fails to demonstrate with particularity how the termination engages those provisions. The grievance arises solely from termination under express contractual and statutory authority and does not disclose any independent constitutional question. The Petition provides little or no particulars of the factual basis of the alleged violations or the link between the impugned actions and the alleged constitutional breaches, rendering it defective.
- 63 The Respondents submitted that Rule 11 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 requires that documents relied upon be annexed to a supporting affidavit. Additionally, Rule 9 of the Oaths and

Statutory Declarations Rules requires that exhibits be securely marked and sealed, and Rule 10(1) of the Mutunga Rules requires that a Petition be signed by the Petitioner or their advocate, attesting to the correctness of its averments and annexed documents

- 64 It is the Respondents' submission that the Petitioner filed only a verifying affidavit and did not file a substantive affidavit in support. The documents listed were neither annexed nor properly marked. They cited **Solomon Omwega Omache & another v Zachary O Ayieko & 2 others [2016] KEELC 827 (KLR)** , where the Court held that unmarked or unattached exhibits cannot constitute proof and must be struck out.
- 65 The Respondents submitted that Sections 107, 108, and 109 of the Evidence Act, Cap 80 reinforce that pleadings without evidence are insufficient, as held in ***Alfred Kioko Muteti v Timothy Miheso & another [2015] eKLR***: *"A party can only discharge its burden upon adducing evidence...merely making pleadings is not enough."*
- 66 It is therefore the Respondents' submission that the Petition is therefore procedurally and substantively defective, comprising unsubstantiated allegations, unsupported claims, and loose documents that cannot form part of the evidential record.

- 67 On the third issue, the Respondents submitted the 3rd Respondent acted within the lawful scope of his statutory and contractual mandate in terminating the Petitioner's contract. They argued that Section 45 of the County Governments Act, 2012 which vests in the Governor the power to nominate and appoint County Chief Officers, subject to approval by the County Assembly.
- 68 The Respondents submitted that it is a well-established principle of law that termination in accordance with a contractual clause is lawful. Reliance was placed in ***Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho-Kariuki [2017] KECA 194 (KLR)*** "*Where a contract provides for termination on notice, the parties are entitled to rely on the terms of the contract, and such termination is valid provided the contractual requirements are complied with.*"
- 69 The Respondents submitted that the Petitioner and the 3rd Respondent entered into a valid employment contract dated 23rd December 2022, which contained an express termination clause allowing either party to terminate the agreement upon one month's written notice or payment of one month's salary in lieu thereof, without assigning reasons, and without prejudice to summary termination for lawful cause. Therefore, the termination was part of an

administrative restructuring exercise, executed strictly in accordance with the contractual and statutory framework.

- 70 It is the Respondents' submission that the Petitioner has failed to establish any legal or factual basis to challenge the legality or propriety of the 3rd Respondent's action.
- 71 On reliefs sought, the Respondents submitted that constitutional and public law remedies are only available where a distinct breach of constitutional rights or public law duty has been established. They cited ***Kenya Ports Authority v Festus Kipkorir Kiprotich [2014] KEELRC 63 (KLR)*** and ***Speaker of the Senate & Another v Attorney-General & 4 Others [2013] eKLR***.
- 72 It is the Respondents' submission that the Petitioner has not established any breach of constitutional rights, irreparable harm, or violation of legitimate expectation. The reliefs sought would impermissibly interfere with lawful exercise of executive authority and administrative discretion. The Petitioner is therefore not entitled to any of the reliefs claimed.
- 73 I have examined all the averments and submissions of the parties herein. The issues for this courts determination are as follows:-

- (1) Whether the termination of the petitioner herein was fair and justly done.**
- (2) Whether the petitioner's rights under the constitution were infringed upon.**
- (3) Whether the petitioner is entitled to the remedies sought.**

ISSUE NO 1

- 74 It is evident that the petitioner was employed as a chief officer vide a letter signed by the 3rd respondent dated 23rd December 2022. Prior to the employment the petitioner responded to and was shortlisted and interviewed for this position of Chief Officer following advertisements made by the 2nd respondent. He was thereafter nominated for the position and then vetted for his position by the Nairobi County Assembly before the appointment. The petitioner served as appointed with effect from the said date and was expected to serve on a 5-year contract period ending 22/12/2027.
- 75 Vide a letter dated 28/2/2025 signed by the 3rd respondent the petitioner was terminated from his position as chief officer. The 3rd respondent cited the termination clause in his employment contract as being the one activated to terminate him. The respondents submitted that the petition is prematurely filed as the petitioner failed to file an appeal before the PSC as provided for under section 77 of the County Government Act.

- 76 In this court's ruling dated 22nd September 2025, the court dismissed the preliminary objection filed indicating that section 77 of the County Government Act provides for appeals from the decision of the County Public Service Board which was not the case in this case as the decision to terminate the petitioner was made by the Governor and not the County Public Service Board.
- 77 That said and done, the petitioner having been subjected to an interview by the County Public Service Board was an employee of the County Public Service Board.
- 78 Section 45(2) of the County Government Act states that the office of a County Chief Officer shall be an officer in the County Public Service.
- 79 By virtue of section 45(2) such an officer being an officer in the County Public Service can only be removed by the County Public Service Board following rules for such removal as per the respondents own HR manual.
- 80 There is no indication that the 3rd respondent had the capacity to terminate the 2nd respondent from his office as he did and the petitioner was never subjected to any disciplinary process before his termination. It is therefore my finding that the termination of the petitioner was done unfairly and unjustly as provided for under section 45(2) of the Employment Act 2007 which states as follows:

- (2) A termination of employment by an employer is unfair if the employer fails to prove—**
- (a) that the reason for the termination is valid;**
 - (b) that the reason for the termination is a fair reason—**
 - (i) related to the employees conduct, capacity or compatibility; or**
 - (ii) based on the operational requirements of the employer; and**
 - (c) that the employment was terminated in accordance with fair procedure**

ISSUE NO 2

81 Having found the termination of the petitioner unfair and unjustified, I find also that his right under section 41 and 47 of the Constitution was infringed upon. As submitted by the petitioner the petitioner's right under article 236 of the Constitution which states as follows was infringed upon:

236. A public officer shall not be—

- (a) victimised or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or**
- (b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.**

ISSUE NO 3

82 Having found as above, I enter judgment for the petitioner and decree as follows:

- (1) A declaration that the purported termination of the petitioner's contract without any reason and due process is unconstitutional, illegal, null and void.
- (2) Damages for breach of the petitioner's constitutional rights equivalent to kshs 3 million.
- (3) Compensation for the unfair and illegal termination of the petitioner's equivalent to 8 months salary = $8 \times 223,640 = \text{Kshs } 1,789,120/-$

TOTAL KSHS 4,789,120/- Less statutory deductions.

- (4) The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

Dated, Signed and Delivered Virtually at Nairobi this 9th Day of March, 2026.

**HELLEN WASILWA
JUDGE**