

DENIS MURIUNGI MURIIRA.....9TH
RESPONDENT

JUDITH MUTHONI MURIIRA.....10TH
RESPONDENT

CHRISTINE MAKENA.....11TH
RESPONDENT

MERU COUNTY PUBLIC SERVICE BOARD.....12TH
RESPONDENT

RULING

1. By a petition dated 20th September 2025 the petitioner sought the following reliefs:
 - i. That this Honourable court find the petition merited and allow it
 - ii. Grant/issue injunction ex-parte orders to suspend/halt the vetting/appointment process of the 6th-11th respondents by the 1st -5th respondents or their agents pending hearing and determination of the petition inter-partes.
 - iii. Declare that the publication or arriving at the list of the 6th - 11th respondents was improperly and unlawfully

conducted and the same be declared invalid, null and void ab initio.

- iv. Grant orders that the 1st-5th respondent do publish the valid merit list of nominees within 90 days, and only conduct vetting of the nominees in order of merit with 50:50 Gender, Religious and Regional balance, inclusive of Youth and PWDs, and in compliance with the law/constitution.
- v. Any other relief as the honourable court may deem just.
- vi. Cost be on the respondents.

2. The petitioner also filed a Notice of Motion dated 14th October 2025 in which it sought the following prayers:

- i. Spent
- ii. That the honourable court be pleased to grant/issue injunction/orders to suspend/halt the vetting/appointment of the 6th - 11th respondents by the 1st - 5th and 12 respondents or their agents for the positions of Chairpersons/Members of Meru County Public Service Board, and all its consequential effects including any assumption of office or discharge of any

duties pending hearing and determination of the main petition inter-parties.

iii. That the honourable court be pleased to give further directions on how to proceed with the main petition and disposition of the same.

3. In a nutshell, the petitioner's case is that it is a Civil Society Organization specializing in social-economic development, social justice, human rights democracy and good governance and that it brings the petition under Article 22 of the constitution in public interest, good faith and advocacy for the rule of law.

4. It is the Petitioner's further case that the 1st, 2nd, 3rd and 4th respondents arbitrarily and unlawfully published the names of the 5th, 7th, 8th, 9th, 10th and 11th respondents as nominees for the positions of chairperson and members of the Meru County Public Service Board. That the nomination of the said respondents was done without undertaking an open competitive and transparent recruitment process in compliance with the constitution and the law. That the 1st to 4th respondents arbitrarily, unlawfully and discriminatively

removed the names of women who had expressed interest, declaring them as unqualified and removed them from the list without providing fair administrative action, without doing any due diligence and without any basis for their disqualification. That the said action accessioned discrimination injustice, prejudice and denial of the right to participate in the recruitment/vetting process, employment/appointment and opportunity to serve in their county in the positions stated.

5. It was further averred that the 1st to 4th respondents only published the names of their own relatives for vetting, putting them on a pre-determined outcome and conveyor belt in circumvention of the law without disclosing the conflict of interest and incompetence. That the said respondents nominated the members who are from the Methodist church only, thus discriminating against other religions and denominations.
6. The respondents entered appearance. In the course of the proceedings, the petition was amended to remove the name

of the 1st respondent who had been sued in his personal capacity.

7. The respondents filed notices of Preliminary objection which were basically that:

- a. The petitioner has improperly invoked the jurisdiction of this court, having failed to comply with section 7(10) and (11) of the Public Appointments (County Assembly Approval) Act 2017.
- b. That this court lacks the jurisdiction to entertain the petition whose matters are in the exclusive jurisdiction of the Employment and Labour Relations Court (ELRC).
- c. That the petitioner is not a recognized entity in law capable of instituting legal proceedings.
- d. That the petition offends the mandatory principles set out in **Anarita Karimi Njeru vs Republic (1979) eKLR.**
- e. That the petition has been overtaken by events, since the 6th to 11th respondents have already been appointed and gazetted as members of the Meru County Service Board.

8. Parties filed submissions on the Preliminary Objection which I will not rehash but will refer to them where necessary.
9. The parameters of a Preliminary Objection were set out in the well-known case of **Mukisa Biscuits vs West End Distributors (Ltd)** where it was held as follows;

“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. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

10. In **Oraro vs Mbaja (2005) 1 KLR 141** the court described a preliminary objection as follows;

“A ‘Preliminary Objection’, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with

factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seek to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

1. Since the objections raised are over the jurisdiction of this court, then that is the appropriate point to begin with. Jurisdiction is everything and without it, a court cannot move or make any more steps in a matter.
2. The *locus classicus* on jurisdiction is the celebrated case of **Owners of the Motor Vessel “Lilian S” vs Caltex Oil (Kenya) Ltd [1989] KLR 1** where Justice Nyarangi, J.A. held as follows: -

“I think that is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

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11. The gist of the objections is that this court is not clothed with the jurisdiction to entertain this petition as the same ought to be resolved before the ELRC, which is a court of equal status.
12. The respondents cited the decision in **Law Society of Kenya and 2 Others vs Attorney General and 2 Others,**

Korir and 50 Others (Interested Parties (2022) KEELRC 13324 (KLR) where M.N. Nduma J. (as then was) held as follows;

“Indeed, unlike the appointment of Cabinet Secretaries, by the President, in terms of Article 132(2) (a), who do not apply for the positions and are not interviewed and shortlisted prior to the nomination by the president, and approval by National Assembly, the Principal Secretaries are subjected to a full-fledged recruitment process comprising of advertisement of the positions and invitation to the interested persons to apply; be shortlisted and interviews conducted by the Public Service Commission before the successful candidates’ names are submitted to the president for nomination and subsequent approval by the National Assembly.

It is my considered view that this rigorous process must meet the requirements under Articles 41(1) of the Constitution which

provides:-“Every person has the right to fair Labour Practices’’. This is in addition to other requirements under Article 10, 27 and 232 of the Constitution of Kenya set out herein before. The recruitment of Principals Secretaries is indeed, an employment and labour relations matter within the meaning of Section 12 of the Employment and Labour Relations Court Act, 2014.

The Employment and Labour Relations Court has without a doubt, jurisdiction to determine all constitutional matters arising from the recruitment of Principal Secretaries and I so hold. The Preliminary Objections in this respect are therefore without merit and are dismissed.”

13. The court was dealing with appointment of Principal Secretaries. The question of which court has jurisdiction when it comes to appointment of the Chairperson and members of the County Service Board has been a thorny

one. Thankfully, there are decisions of the superior courts to offer guidance.

14. In the case of **Governor, County Government of Kakamega and 4 Others vs Omweno and 12 Others (2025) KECA 190 (KLR)** considered the matter and held as follows:

a. We have keenly looked at the record of the superior court, the pleadings by the parties and their submissions before us. It is impossible to deny that this is not a plain vanilla employment dispute between the members of the County Service Board and the County Assembly of Kakamega. Indeed, there is a real question whether the members of the County Service Board can, *strictu sensu*, be said to be employees for purposes of the ELRC Act. What is readily obvious is that the dispute is about the appropriate constitutional and statutory procedures and thresholds for the removal of members of a County Service Board. Implicated

in that inquiry, is the question whether, for example, the Evidence Act has application to proceedings for the removal of members of the County Assembly Board or any constitutional body whose removal is regulated by article 251 of the Constitution. It seems obvious to us that what the *Constitution* and the Statute envisaged is not an employment disciplinary hearing in order to remove the Chair or a member of the County Assembly Board. By making reference to article 251 of the *Constitution*, the statute is making clear that a constitutional process is intended. Such a constitutional process is not subject to the rules of employment law and disciplinary procedures but to rules attending to constitutional processes. Any person aggrieved by such a process - whether a participant or a public spirited individual - can seek redress - not at the Employment and Labour Relations Court but at the High Court. Differently put, the law

envisages that any matters related to the appointment and removal of constitutional office holders - including holders of offices which are derivative of constitutional provisions such as County Service Board members - are to be ventilated as constitutional questions before the High Court and not as labour and employment issues before the ELRC.....

b. We are of the view that by parity of reasoning, the questions presented in the consolidated appeals before us do not fall within the meaning of disputes related to employment and labour relations and that, therefore, the ELRC did not have jurisdiction to deal with the petition before it and should have allowed the preliminary objection pursued by the respondents before it. The matter should have been appropriately before the High Court which has unlimited subject matter jurisdiction.....

c. The upshot is that the ELRC is a specialized court established under article 162(2) of the *Constitution* as a superior court with equal status to the High Court. It's mandate is to hear and determine disputes relating to "employment and labour relations." What amounts to "employment and labour relations" matters is detailed in section 12(1) of the *Employment and Labour Relations Act*, the constitutional statute enacted pursuant to article 162 of the *Constitution*.

15. It is thus clear that the Court of Appeal has ruled that the ELRC does not have jurisdiction to entertain a petition dealing with alleged constitutional violations which is not based on employee-employee relationship.
16. The issue has also been addressed by the Supreme Court in **County Assemblies Forum vs Attorney General and 3 Others; Parliamentary Service Commission (interested party) [2022] KESC 66 (KLR)** where it was held as follows:

“On the question of appropriate forum of the dispute, the trial court found that the question of enforcement of rights and fundamental freedoms even touching on the employment and labour is within the competence of the High Court pursuant to article 22. We are inclined to agree with the trial court and add that articles 23 and 165 of the Constitution fortifies this position as they are the provisions that gives the High Court jurisdiction to hear and determine applications for redress of denial, violation or infringement of rights or fundamental freedoms in the Bill of Rights.”

17. Bearing the above decisions in mind, I don't think that there is any foundation as the submissions that this court lacks the requisite jurisdiction to hear the petition.
18. The next issue for determination is whether the petitioner has the locus standi to bring this petition locus.

19. The petitioner has described itself as a Civil Society Organization. It has also described its role. The petitioner's argument is that it is duly registered and it is thus a juristic person in law.
20. The respondents' collective position is that the petitioner is not registered nor licensed to confer any legal personality to it. As such, it is argued, the petition is incurably defective.
21. The issue of registration of the applicant was raised in the replying affidavits and grounds of opposition filed in respect to the application. The petitioner was granted leave to file a further affidavit. I would have expected that this issue would have featured prominently in his supplementary affidavit. I have perused all the documents filed by the petitioner and I do not see any proof that the petitioner is duly registered as alleged.
22. I appreciate that when dealing with a Preliminary Objection matters which are factual and contested ought not to be considered. However, the question of locus standi is very important since it goes to the root of the right of a party to be in court and sue in its name.

23. In **Mumo Matemu Vs Trusted of Society of Human Rights and 5 Others (2013) eKLR**, the Supreme Court looked at the developments in public interest litigation under the Constitution and the question of locus standi. It was held as follows;

“It still remains to reiterate that the landscape of locus standi has been fundamentally transformed by the enactment of the Constitution in 2010 by the people themselves. In our view, the hitherto stringent locus standi requirements of consent of the Attorney General or demonstration of some special interest by a private citizen seeking to enforce a public right have been buried in the annals of history. Today, by dint of Articles 22 and 258 of the Constitution, any person can institute proceedings under the Bill of Rights, on behalf of another person who cannot act in their own name, or as a member of, or in the interest of a group or class of persons, or in the public interest. Pursuant to Article 22 (3) aforesaid, the

Chief Justice has made rules contained in Legal Notice No. 117 of 28th June 2013 - The Constitution of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013- which, in view of its long title, we take the liberty to baptize, the “Mutunga Rules”, to inter alia, facilitate the application of the right of standing. Like Article 48, the overriding objective of those rules is to facilitate access to justice for all persons. The rules also reiterate that any person other than a person whose right or fundamental freedom under the Constitution is allegedly denied, violated or infringed or threatened has a right of standing and can institute proceedings as envisaged under Articles 22 (2) and 258 of the Constitution.

It may therefore now be taken as well established that where a legal wrong or injury is caused or threatened to a person or to a determinate class of persons by reason of

violation of any constitutional or legal right, or any burden is imposed in contravention of any constitutional or legal provision, or without authority of law, and such person or determinate class of persons is, by reason of poverty, helplessness, disability or socio-economic disadvantage, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Articles 22 and 258 of the Constitution.”

24. In that case, the Supreme Court was dealing with duly registered organization. It found that the 1st respondent therein had the requisite locus standi to have moved the court.
25. It is thus correct to state that the Constitutional provisions of Articles 22 and 258 have eased the right of access to the Courts in matters that touch on the rights of citizens and alleged infringements thereof.

26. While individuals have the right to approach the courts in their individual capacities, the same right accrues to other legal entities such as NGOs and societies, but they have to abide by the law that regulates their registration. A non-registered organization cannot, even by the most liberal interpretation of the decision in **Mumo Matemu (supra)**, moved the court in its own name.
27. In **Kituo cha Sheria vs John Ndirangu Kariuki and Another (2013) KEHC 21(KLR)** the court dealt with such an issue. It was held as follows: -

“It is trite that artificial legal persons can bring legal proceedings. The capacity to sue and be sued in their *own* names is however limited. Incorporated companies and statutory corporations are clothed with that legal power. A relevant example here is the *Legal Advice Centre*. It is registered as a non-governmental organization. By virtue of section 12 (3) of the Non- Governmental Organizations Co-ordination

Act, the Centre has perpetual succession and power to sue and be sued in its own name. Had the Centre brought these proceedings in its own name, this debate would be unnecessary.

As a general rule, unincorporated legal persons including societies, clubs and business-names can only bring proceedings through their registered or elected officials or in their proprietor's names. See The Fort Hall Bakery Supply Co. Vs Fredrick Muigai Wangoe [1959] E.A. 474 at 475. Templeton J, relying on Banque Internationale de Commerce de Petrograd Vs Goukassaow [1923] 2 KB 682 found that the entity before the court was a mere name only and could not maintain the action. In the latter decision at page 688, Bankes L.J. delivered himself as follows:-

“the party seeking to maintain the action is in the eye of our law no party at all but a mere name only, with no legal existence”.

...

In the end, I have reached the conclusion that *Kituo Cha Sheria* is not a competent legal person as known under article 258 of the constitution, section 12 (3) of the Non-governmental Co-ordination Act or any other statute. Its capacity to bring an action in its *own* name and a petition to challenge an election does not find support in the law or precedent. In the result, there is no *petitioner* in Court or a valid petition. It follows as a corollary that the petition is incurably defective. It has no legs to stand on. It is hereby struck out and dismissed.

28. Looking at the material before me, it is evident that the petitioner has not proven that it has the capacity to bring any petition or suit in its own name. To put it bluntly, I note

that the petitioner has been very cagey over the issue. Nothing would have been easier than to bring to the attention of the court evidence of its registration, since the issue was raised right from the time the responses were filed.

29. I find that even if this is said to be a public interest litigation matter, the petitioner has the duty to demonstrate that it has the legal basis to be in court in the first place and sue in its own name.
30. The court is keen not to curtail the constitutional space provided to the citizens of this country to initiate public interest litigation, but it cannot let non-existent entities to just walk into court.
31. For the foregoing reasons, I find that Petitioner has not demonstrated that it has been registered and can file suit in its name.
32. As such, the petition is found to be incurably defective and it is struck out.
33. Having so found, I find it unnecessary to consider the other grounds raised in the objection as it will mean looking at a

petition that I have already found to be improperly before me.

34. On the issue of costs, I would have awarded them to the respondents, but there may be difficulty in tracing the petitioner. I find it proper that each party bears its own.

35. It is so ordered.

Dated signed and delivered at Meru this 12th day of March 2026.

**H.M. NYAGA
JUDGE**