



**Institution of Engineering Technology of Kenya v Kenya National Highways Authority
& another; Engineers Board of Kenya (Interested Party) (Employment and Labour
Relations Petition E270 of 2025) [2026] KEELRC 872 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 872 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E270 OF 2025**

**HS WASILWA, J
MARCH 24, 2026**

BETWEEN
INSTITUTION OF ENGINEERING TECHNOLOGY OF KENYA . PETITIONER
AND
KENYA NATIONAL HIGHWAYS AUTHORITY 1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT
AND
THE ENGINEERS BOARD OF KENYA INTERESTED PARTY

RULING

1. The Petitioner filed a Notice of Motion dated 16th December 2025 seeking orders: -
 1. Spent.
 2. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue a conservatory order directing the 1st Respondent to forthwith suspend the recruitment exercise in relation to the job vacancies advertised on 2nd December 2025 and re-advertised on 9th December 2025 under ref. no. KeNHA/Engineer (roads)/05/2025, particularly, in relation to the vacancy of 27 Engineers (Roads).
 3. That pending the hearing and determination of this Petition, this Honourable Court be pleased to issue an order directing the 1st Respondent to forthwith suspend the recruitment exercise in relation to the job vacancies advertised on 2nd December 2025 and re-advertised on 9th December 2025 under ref. no. KeNHA/Engineer (roads)/05/2025, particularly, in relation to the vacancy of 27 for Engineers (Roads).



4. That upon hearing of this Application inter-partes, and pending hearing and determination of the attendant Petition herein, KeNHA (1st Respondent) be restrained from issuing fresh advertisement for the vacancy of Engineers (Roads), in the same manner as previously issued on 02nd & 09th December, 2025, unless in compliance with the concerns set out in this Petition herein.
5. That this Court be pleased to issue such conservatory orders as deemed fit;
6. That costs of this Application be provided for.

Petitioner'/Applicant's Case

2. The Applicant avers that The Applicant's case is that the recruitment process initiated by the 1st Respondent is unlawful, discriminatory, and constitutionally infirm, thereby warranting the Court's intervention through conservatory orders.
3. The Applicant states that on 2nd December 2025, the 1st Respondent published an advertisement for various vacancies in the local dailies and on their website; inviting prospective applicants (Graduate Applicants) to apply for 27 available vacancies under the title of "Engineer roads", Grade 7 (ref. no. KeNHA/engineer (roads)/05/2025).
4. The job description outlined 14 tasks which, according to the Applicant, are directly aligned with the work that is expected to be performed by holders of Bachelor of Technology Engineering degrees as provided by section 2 of the [Engineering Technology Act](#), 2016.
5. However, the Applicant takes issue with the job specification requirement that applicants must be registered as Graduate Engineers by the Engineers Board of Kenya (EBK). It is the Applicant's position that this requirement unjustly excludes its members, who are predominantly Bachelor of Technology Engineering graduates duly registered and regulated by the Kenya Engineering Technologists Registration Board (KETRB), the statutory body established to oversee their professional practice.
6. The Applicant contends that both EBK and KETRB are legally established statutory bodies, therefore, it is unlawful, unfair, and discriminatory for the 1st Respondent to recognize registration by EBK to the exclusion of KETRB. In its view, this amounts to preferential treatment of one category of professionals over another, despite both being recognized under the law.
7. Aggrieved by the advertisement, the Applicant issued a demand letter dated 4th December 2025, calling upon the 1st Respondent to recall and amend the advertisement within seven days to address the exclusionary requirement. The 1st Respondent neither responded to nor complied with the demand, instead, it issued a revised advertisement on 9th December 2025 merely extending the application deadline from 22nd to 29th December 2025, without addressing the concerns raised.
8. The Applicant asserts that the Respondents' conduct demonstrates a deliberate disregard of stakeholder concerns within the engineering sector and poses an imminent risk of infringement of its members' rights. It maintains that unless the Court intervenes, the recruitment process will proceed in a manner that effectively excludes its members from applying, being shortlisted, and ultimately being considered for employment.
9. It is the Applicant's case that the Petition raises substantial constitutional questions, including whether the impugned advertisement violates principles of equality and non-discrimination by favouring EBK-registered individuals over those registered by KETRB. It further asserts that the matter implicates



broader constitutional principles such as the rule of law, transparency, fair administrative action, fairness in public recruitment, socio-economic rights, human dignity, and access to employment.

10. The Applicant contends that unless the recruitment process is suspended, its members will suffer irreparable harm, as the positions may be filled exclusively by EBK-registered individuals, thereby rendering any eventual success in the Petition nugatory. It argues that it may be impossible to revoke appointments/employment pursuant to the impugned recruitment should this Court grant the Petition as prayed, if KeNHA will have by then concluded its recruitment exercise.
11. Conversely, the Applicant avers that no prejudice will be suffered by either the 1st Respondent or prospective applicants if the recruitment process is temporarily halted. It notes that the process is still at the advertisement stage, no interviews have been conducted, and the extension of the application deadline demonstrates a lack of urgency. As such, any delay occasioned by the Court's intervention would be minimal and justified.
12. The Applicant further argues that the balance of convenience tilts in its favour for grant of the interim orders. It maintains that the issues raised are straightforward and capable of expeditious determination, and that the Application has been brought promptly and in good faith.
13. The Applicant thus urges the Court to find that it is in the interest of justice, fairness, and proper public service recruitment to suspend the impugned recruitment process and grant the interim orders sought pending the hearing and determination of the Petition.

1st Respondent's Case

14. In opposition to the application, the 1st Respondent filed a replying affidavit dated 23rd January 2026, sworn by Matilda Mwangi, Assistant Director Human Resource Management & Development.
15. The 1st Respondent's case is that its recruitment process was lawful, procedurally proper, and strictly compliant with binding Public Service Commission (PSC) guidelines, and that the petition is founded on a misapprehension of the law and the professional distinctions within the engineering field.
16. The 1st Respondent states that it is a State Corporation established under Section 3 of the *Kenya Roads Act* and operates under the Ministry of Roads and Transport. As such, all its recruitment, promotion, and career progression decisions are undertaken strictly in accordance with Public Service Commission (PSC) approved career guidelines, which are binding upon it.
17. It avers that the Public Service Commission pursuant to Article 234 of *the Constitution*, is vested with the mandate to establish and enforce standards for human resource management and development in the public service, and that the 1st Respondent has no discretion to act outside or contrary to such standards.
18. It is further the 1st Respondent's position that Section 2.6.1 of its Human Resource Management Policies and Procedures Manual specifies that "The grading structure, qualifications and other requirements for recruitment into the Authority are laid down in Kenha career guidelines. The career guidelines must be followed in processing appointments and promotions of employees -in their respective fields of employment."
19. The 1st Respondent avers that on 15th February 2024, the Public Service Commission issued a circular to all State Corporations, including the 1st Respondent, to guide the development and approval of human resource management instruments, and which circular further stipulated that only human resource management instruments that have been considered and approved by the Public Service Commission would be valid and have the force of law.



20. In compliance with the said circular, the 1st Respondent submitted its human resource management instruments to the Public Service Commission for approval on 10th December 2024, and following due consideration, the 1st Respondent's career guidelines were approved by the Public Service Commission in June 2025.
21. According to the 1st Respondent, the PSC-approved qualifications for the position of Engineer (Roads), Grade 7 include: a Bachelor of Science in Engineering (or equivalent), registration by the Engineers Board of Kenya (EBK) as a Graduate Engineer, and proficiency in computer applications. It maintains that its advertisement faithfully reproduced these approved requirements, including the EBK registration requirement, and was therefore lawful and not arbitrary.
22. The 1st Respondent emphasizes that the position of Engineer, Grade 7 is the entry point into the engineering cadre and is distinct from the Engineering Technologists cadre, whose entry point is at a different grade. It explains that the two cadres have separate job descriptions, roles, and responsibilities as set out in the PSC-approved career guidelines. Engineers are tasked with functions such as design, feasibility studies, quality assurance, and professional decision-making, while engineering technologists perform more applied, technical, and support roles.
23. The Respondent attributes this distinction to fundamental differences in academic training and professional competence. It states that a Bachelor of Science in Engineering involves rigorous, theory-intensive training over five years, followed by a mandatory internship, equipping graduates with the capacity to undertake complex engineering design, research, and assume legal responsibility for engineering works. In contrast, it contends that a Bachelor of Science in Engineering Technology is more practically oriented and does not provide the same depth of theoretical training required for professional engineering functions.
24. On this basis, the 1st Respondent argues that technologists are not qualified to independently perform or be held accountable for the full scope of duties assigned to Engineers. Therefore, it rejects the Petitioner's assertion that the two qualifications are equivalent as misleading and legally erroneous.
25. The 1st Respondent denies that the requirement for EBK registration is discriminatory, asserting that it is directly linked to the nature and statutory responsibilities of the Engineer (Roads) position. It maintains that the requirement was not imposed as a technicality to exclude any group, but rather reflects the professional and regulatory framework governing engineering practice.
26. It further states that persons registered with the Kenya Engineering Technologists Registration Board (KETRB) are trained for different roles aligned with their scope of practice.
27. The Respondent also refutes the claim of legitimate expectation, arguing that no such expectation can arise where an individual does not meet the prescribed qualifications under the applicable guidelines. It maintains that all its recruitment processes have consistently adhered to PSC-approved standards, and any expectation contrary to those standards is untenable.
28. Additionally, the 1st Respondent asserts that it has established a separate and elaborate career structure for engineering technologists, demonstrating that the Petitioner's members are not excluded from employment but are accommodated within a distinct cadre suited to their qualifications. It notes that vacancies within that cadre will be advertised when available.
29. The 1st Respondent warns that granting the orders sought, particularly quashing the recruitment process and compelling a fresh advertisement on altered terms, would place it in violation of PSC guidelines, which it has no authority to amend unilaterally. It explains that any revision of career guidelines is a lengthy, multi-stage process involving PSC approval, beyond its control.



30. It further contends that halting or nullifying the recruitment process would have serious operational and financial implications, including delays in project implementation, disruption of its statutory mandate, and increased costs associated with re-advertisement and repeating recruitment procedures.
31. It is the Respondent's case that the Petition does not demonstrate any violation of constitutional rights and that it is in the public interest for recruitment processes conducted in compliance with PSC-approved guidelines to be upheld. It therefore urges the Court to dismiss the petition and decline the orders sought.

Interested Party's Case

32. The Interested Party states that it is a statutory body established under Section 3 the [Engineers Act](#), 2011, mandated to regulate the engineering profession, including registration and licensing of engineers, oversight of professional conduct, and ensuring that engineering services are rendered by qualified and licensed practitioners.
33. It asserts that only persons registered by EBK are legally permitted to practice as engineers or offer professional engineering services in Kenya.
34. It is therefore the Interested Party's position that the statutory framework accordingly requires that position designated as "Engineer," whether in the public or private sector, must by law be held by persons who meet the qualifications and registration requirements prescribed under the [Engineers Act](#).
35. The Interested Party explains that a person is eligible for registration as a graduate engineer if he holds a degree from a recognized university or such other qualifications, the Board may determine and is a citizen or a permanent resident of Kenya as provided for in section 18 of the Act. Further to section 18 of the Act, an application for registration as a graduate engineer is made to the Registrar in the prescribed manner and form and shall be accompanied by the prescribed fee.
36. The Interested Party argues that the distinction between engineers and engineering technologists the distinction drawn between engineers and engineering technologists within the impugned advertisement is lawful and grounded in the [Engineers Act](#), 2011 regulating Engineers and the [Engineering Technology Act](#), 2016 regulating Technologists. Consequently, the differentiation in qualification requirements between engineers and engineering technologists is based on legitimate professional classification, competency standards, and scope of professional responsibility, and does not amount to unlawful discrimination within the meaning of Article 27 of [the Constitution](#).
37. The Interested Party asserts that the qualification requirements stipulated in the impugned advertisement are consistent with established professional standards governing the engineering profession and are intended to ensure that persons appointed to engineering positions in the public service possess the requisite academic qualifications, professional registration, and technical competence necessary for the discharge of their duties.
38. Further such qualification requirements are consistent with the statutory mandate of the Engineers Board of Kenya to regulate the engineering profession and ensure that engineering services are undertaken by duly qualified and competent persons in order to safeguard public safety and infrastructure integrity
39. The Interested Party maintains that the advertisement was issued lawfully, reasonably, and in compliance with the applicable statutory and regulatory framework governing recruitment within the public service, including compliance with the professional regulatory requirements established under the [Engineers Act](#).



40. It further contends that the qualification requirements contained in the advertisement were neither arbitrary nor unreasonable but were informed by the need to ensure that engineering functions within the public service are undertaken by persons possessing the appropriate academic qualifications and professional registration as prescribed by law.
41. It is the Interested Party's case that the requirement for specific academic qualifications and professional registration does not limit access to employment opportunities but rather establishes lawful professional standards designed to ensure competence, accountability, and the protection of public safety in the delivery of engineering services.
42. The Interested Party stated that the Career Progression Guidelines for Engineers in the Public Service, prescribes that the position of Engineer (Roads), Grade 7 must be held by a person with a Bachelor of Science in Engineering, registration by EBK as a Graduate Engineer, and demonstrated technical knowledge, professional competence, and ethical standards required for the practice of engineering in the public service, consistent with the regulatory requirements and professional standards prescribed by the EBK. It asserts that the 1st Respondent's advertisement merely reflected these binding standards.
43. Additionally, the Interested Party underscores that the *Engineering Technology Act*, 2016 establishes a separate and distinct regulatory framework for engineering technologists and technicians. Further, the professional training, competencies and scope of practice for engineering technologists differ materially from those of engineers registered under the *Engineers Act*, 2011.
44. It notes that this distinction is recognized both in Kenyan law and internationally, including under frameworks such as the Washington Accord (for engineers), the Sydney Accord (for engineering technologists), and the Dublin Accord (for engineering technicians), each reflecting different levels of professional responsibility and complexity of work.
45. The Interested Party emphasizes that regulation of engineering practice is directly linked to public safety, and that EBK registration ensures accountability, competence, and adherence to professional and ethical standards in works that affect public welfare.
46. In response to the specific reliefs sought, the Interested Party maintains that: The declarations sought are unfounded as the distinction between engineers and technologists is lawful and non-discriminatory; The requirement for EBK registration is a valid exercise of its statutory mandate and does not contravene the law; The recruitment process was merit-based and compliant with applicable guidelines; There was no illegality, irrationality, or procedural impropriety to warrant orders of certiorari, prohibition, or mandamus.
47. The Interested Party concludes that the issues before the Court concern the proper application of statutory and professional classifications rather than discrimination. It maintains that the Petition lacks any legal or factual basis, does not demonstrate any constitutional violation, and directly implicates EBK's statutory mandate. Accordingly, it urges the Court to dismiss the Petition in its entirety with costs.

Petitioner/Applicant's Submissions

48. The Applicant submitted that when dealing with an application for conservatory orders, the court in *Law Society of Kenya v Attorney General & another* [2020] KEHC 1702 (KLR) held: "13. Given the nature of applications for conservatory orders, Courts are generally called upon to exercise caution in such applications. The good reason thereof is to avoid dealing with finality, and in the interim, with issues which are the preserve of the main Petition..... 17. A Court, therefore, dealing with an application for conservatory orders must remain focused and maintain the delicate balance



by ensuring that it does not delve into issues which are in the realm of the main Petition. In this application, I will, therefore, restrain myself from dealing with issues falling within the realm of the main Petition.”

49. The Applicant submitted that it has instituted this Petition on behalf of its members who hold Bachelor of Technology degrees in Civil Engineering and are directly affected by the impugned recruitment process. The nature and purpose of conservatory orders was articulated 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.”
50. It is the Applicant’s submission that in the present case, the issue that needs to be kept in situ herein is the recruitment exercise for the engineering job vacancies. Once the recruitment exercise is allowed to proceed, then the substratum of this case will cease to exist and the Petition will be turned into an academic exercise.
51. The Applicant submitted that the remedies if granted by way of conservatory orders will not only affect the petitioner/applicant (personam), but will impact on thousands of qualified members of the Petitioner/Applicant(rem) and as such they will be remedies in the interest of the public.
52. It was submitted that the jobs advertised for are on a permanent and pensionable basis, therefore, if the recruitment process was allowed to proceed, and this Court decides the matter in favour of the Petitioner, no remedy can satisfy the loss suffered. The court cannot undo the permanent employment of those already recruited, and it would be impossible to compensate all the potential job applicants that are members of the Petitioner/Applicant.
53. It is the Applicant’s submission that balance favours the conservation of the subject matter pending the hearing of the Petition, thus, the best-case scenario in this matter would be priority hearing of the Petition following strict timelines as to be directed by this Court.
54. The Applicant submitted that it is clear that the several constitutional rights of its members are threatened and/or are being violated, thus, there is no doubt that there exists a prima facie case. It cited *Munya v Kithinji & 2 others* [2014] KESC 30 (KLR) wherein the court held: “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, 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.”
55. The Applicant submitted that the present case raises serious constitutional issues and demonstrates an apparent violation and/or threatened violation of constitutional rights of its members. In particular, Articles 10 and 27 of *the Constitution* impose national values of equality, non-discrimination, and the rule of law, and guarantee equal protection and equal benefit of the law, which have been violated by the exclusion of the Applicant’s members from the recruitment process on account of a technicality.
56. The Applicant further submitted that the 1st Respondent violated Article 232(1)(g) of *the Constitution* which requires fair competition and merit as the basis of appointments and promotions in public



service; and Article 232(1)(i) which mandates the provision of adequate and equal opportunities for appointment, training, and advancement at all levels of public service.

57. It is the Applicant's submissions that the jobs advertised are meant for its members as both Bachelor of Science (Bsc) in Civil Engineering, and Bachelor of Technology (Btech) in Civil Engineering lead to a degree in Civil Engineering; and both courses are accredited by the Commission for University Education and are offered by recognized institutions in Kenya. There is no other degree offered in Kenya that is EQUIVALENT to a Bachelor's Degree in Civil Engineering other than these two.
58. The Applicant thus submitted that if the 1st Respondent wanted to limit itself to members of EBK, then it would have been specific that they wanted graduates holding a Bachelor of Science in Civil Engineering and not a general "Bachelor's" in Civil Engineering degree or its equivalent. We say this because EBK only admits BSc Engineers and none other.
59. The Applicant submitted that the functions to be performed under the advertised positions are statutory functions falling squarely within the domain of engineering technologists as defined under Section 2 of the *Engineering Technology Act*, 2016 as the application of engineering principles focused on analysing, applying, implementing, and improving existing technologies, with emphasis on practical and operational functions.
60. The Applicant argues that the 1st Respondent itself acknowledged in its Replying Affidavit that Bachelor of Technology training is predominantly practical and implementation-oriented, whereas Bachelor of Science training is largely theoretical. This distinction was affirmed by the Supreme Court in *Wanderi & 106 others v Engineers Registration Board & 8 others; Egerton University & another (Interested Parties)* [2020] KESC 44 (KLR) where it held:

“It is obvious to us that the two professions, while related, are different. Engineering technology focuses on the applied and practical application of engineering principles whereas Engineers emphasizes the theoretical aspects of mathematical scientific and engineering principles. That partly explains why the degrees conferred on each are different so is the registration of graduates on qualification.”
61. It is the Applicant's submission that it is not in issue that Bachelor of Science engineers deal with the theoretical aspects of engineering, while the Bachelor of Technology engineers deal with practical aspects of engineering.
62. The Applicant submitted that the job descriptions for the advertised positions, comprising preparation of designs, supervision of works, quality assurance, feasibility studies, data collection, and implementation of road safety programs; are practical and not theoretical.
63. The Applicant further submitted that if it was a must that the 1st Respondent engaged in exclusion, then it is the theoretical members of EBK who should have been excluded and not the practical members of KETR.B.
64. The Applicant submitted that Clause 1.5 of the Career Progression Guidelines (CPG) for Engineering Technologists provides “...however, these career guidelines do not constitute authority for upgrading or creation of post(s). Any additional posts required in the grading structures must be included in the ministries/state departments establishment proposals for consideration and approval by the public Service Commission.” Further, the next clause, that is clause 1.6 of the CPG provides that; “Direct Appointment will normally be made in the grade of Engineer CSG 11”
65. It is the Applicant's submission that a clear reading of these two clauses indicates that a body like the 1st Respondent must employ/promote the Engineering Technology Graduates within the structures that



are already existing, and any such new structures can only be created with the approval of PSC. The recognition here is that both Bsc Engineers and Engineering Technologists are in the same job groups, while conducting their respective roles. This is the current reality and practice. This means that until the new categorisation comes into effect, the CPG is saying that the 1st Respondent must continue employing the two types of “engineers” in the same category and should they create any new category, the same must first be approved by PSC.

66. The Applicant submitted that for 8 years, between 2012 and 2020, both Bsc Engineers and Btech Engineers were members of EBK courtesy of a high court judgement that was affirmed by the Supreme Court in *Wanderi & 106 others v Engineers Registration Board & 8 others; Egerton University & another (Interested Parties)* [2020] KESC 44 (KLR). It was only after KETRB was formed through the *Engineering Technology Act* of 2016 that the Supreme Court reviewed its judgement in 2022, therefore, membership to KETRB should have been included by the 1st Respondent, as it was created to accommodate these former members of EBK.
67. It is the Applicant’s submission that the present dispute before this Court is strictly an employment matter not issues relating to course content and academic accreditation which were conclusively addressed in *Wanderi & 106 others v Engineers Registration Board* (supra). As such, there is no question as to the competency of their qualifications in the field of practice of engineering.

1st Respondent’s Submissions

68. The 1st Respondent submitted that on three issues: whether the Petitioner/Applicant has demonstrated a prima facie case with a likelihood of success; whether, if the conservatory order is not granted, the Applicant will suffer prejudice; and whether the grant of the conservatory orders sought by the applicant will harm the public interest.
69. On prima facie case, the 1st Respondent submitted that in *Kevin K Mwiti & others v Kenya School of Law & others* [2015] eKLR, Odunga J stated: “..... A prima facie case, it has been held is not a case which must succeed at the hearing of the main case. However, it is not a case which is frivolous. In other words the Petitioner has to show that he or she has a case which discloses arguable issues and in this case arguable Constitutional issues...” The Applicant herein has not established a prima facie case with a probability of success.
70. It is the 1st Respondent’s submission that all its recruitment, promotion and career progression decisions are undertaken strictly in accordance with career guidelines approved by the Public Service Commission (PSC), which has the constitutional mandate to regulate human resource management in public service. Consequently, the Respondent has no discretion to act outside or contrary to such standards.
71. The 1st Respondent submitted that guided by the career guidelines approved by the PSC, the impugned advertisement for the position of Engineer (Roads), Grade 7, required candidates to possess a Bachelor of Science or Engineering degree in Civil Engineering (or its equivalent) and to be registered by the Engineers Board of Kenya (EBK) as Graduate Engineers. Thus, the requirement for EBK registration is central to the position and is not discriminatory.
72. It is the 1st Respondent’s submission that the Applicant’s members, who hold a Bachelor of Technology (Engineering) degree, do not meet both the academic and professional qualifications for the advertised role. There exists a distinction between the two cadres of engineering which stems from the substantive differences in academic training and professional competence as expounded in *Wanderi & 106 others v Engineers Registration Board & 8 others; Egerton University & another (Interested Parties)* [2020] KESC 44 (KLR).



73. The Respondent submitted that a Bachelor of Science in Engineering entails rigorous, theory-intensive training, whereas a Bachelor of Technology degree is practically oriented and does not provide equivalent theoretical depth. By virtue of their training, scope of practice, and accreditation, engineering technologists are not qualified to independently perform, certify, or assume full professional responsibility for the duties of an Engineer (Roads).
74. The Respondent further submitted that it has an established scheme of service for Engineering Technologist, therefore, there is no discrimination, as employment opportunities are available to the Petitioner's members. Moreover, as a State Corporation, it is bound by policies and guidelines issued by the Public Service Commission. Such that all recruitment decisions by the Respondent are undertaken in accordance with the career guidelines developed by the Public Service Commission.
75. The Respondent argued that it is bound by PSC guidelines and that the impugned advertisement strictly complied with the prescribed qualifications, including EBK registration. It had no discretion to vary or depart from the PSC-approved career guidelines, and any recruitment conducted outside those guidelines would be unlawful.
76. The Respondent submitted that mere allegations of constitutional violations are insufficient to warrant conservatory orders, particularly where the Applicant's members do not meet statutory qualifications. It placed reliance in *Naftali Ruthi Kinyua v Patrick Thuita Gachure & another* [2015] eKLR :
77. On the second issue, the Respondent submitted that failing to grant the interim orders sought will neither prejudice the Petitioner nor render the petition nugatory since the graduates of the Petitioner do not meet the academic and training requirements for the advertised role. Reliance was placed on *Kenya County Government Workers Union v Nairobi City County Government & another* [2017] eKLR: "This Court would be reluctant to stop an entire recruitment process without full material disclosure. In case of any wrong doing, I believe the Applicants can be compensated in damages. This is so because the Applicants have not demonstrated the irreparable damage they stand to suffer if the application is not allowed."
78. The Respondent submitted that the Petitioner has not demonstrated any irreparable harm that would occur if the conservatory orders are not granted at this stage. The recruitment process may proceed without impeding the jurisdiction of this Court to interrogate the legality of the process. In addition, this Court retains the power to grant appropriate relief including damages. It cited *Center for Rights Education and Awareness (CREAW) & Another vs Speaker of the National Assembly & 2 Others* (2017) eKLR the Court held that: "A party who moves the court seeking conservatory orders must show to the satisfaction of the Court that his or her rights are under violation; are being violated or will be violated and that such violation or threatened violation is likely to continue unless a conservatory order is granted. This is because the purpose of granting a conservatory order is to prevent violation of rights and fundamental freedom and preserve the subject matter pending the hearing and determination of a pending case or Petition."
79. It is the 1st Respondent's submission that the Petitioner has failed to demonstrate any ongoing or threatened violation of its constitutional rights that would arise from the continuation of the recruitment process. In the absence of a demonstrated violation, there is no subject matter requiring preservation by way of conservatory orders.
80. On the final issue, the 1st Respondent submitted that granting conservatory orders at this stage would have the harmful effect of halting an ongoing lawful recruitment process in which qualified candidates have applied for, thereby undermining efficiency in public interest and frustrating the public interest at



the instance of unqualified candidates. It cited *Gatirau Peter Munya V Dickson Mwendu* (2014) eKLR, “...conservatory orders bear a more decided public connotation; for they are orders that facilitate orderly functioning within public agencies, as well as uphold the adjudicatory authority of the Court in the public interest...”

81. It was submitted that the public interest lies in allowing the Respondent to continue with the lawful recruitment exercise since the process is undertaken strictly in accordance with the career guidelines developed and approved by the Public Service Commission. Halting the 1st Respondent’s recruitment exercise on the basis of unproven allegations will harm the public interest.
82. It is the 1st Respondent’s submission that the advertisement for the position of Engineer (Roads) Grade 7 was done in accordance to the Respondent’s Human Resource Policies and Procedures Manual and the approved Career Guidelines. The Petitioner has not demonstrated any illegality in the recruitment process or any violation of constitutional rights as alleged. Therefore, the present application be dismissed with costs to the Respondent.

Interested Party’s Submissions

83. The Interested Party submitted that the law on the grant of conservatory orders is well settled in constitutional litigation. The courts have consistently held that conservatory orders are discretionary reliefs meant to preserve the subject matter of litigation pending the determination of a constitutional petition. It cited *Centre for Rights Education and Awareness (CREAW) & 7 Others v Attorney General* [2011] eKLR, which outlined the guiding principles for the grant of conservatory orders.
84. On prima facie case, the Interested Party submitted that the Applicant’s case is premised on the assertion that the requirement for registration by the EBK in the impugned advertisement excludes persons who are registered under the KETR. However, this argument fails to appreciate the existing statutory framework governing the regulation of engineering practice in Kenya and the distinct legal regimes under which the two professional categories operate.
85. The Interested Party submitted that the Engineers Board of Kenya is established under Section 3 of the *Engineers Act* and is mandated to regulate the engineering profession, including registration, licensing, and enforcement of professional standards. Under the said statutory framework, registration by EBK as a Graduate Engineer is a mandatory legal requirement within the professional regulatory structure governing engineers.
86. It is the Interested Party’s submission that the requirement contained in the advertisement that applicants be registered as Graduate Engineers by EBK is therefore not arbitrary or discriminatory. Rather, the requirement is firmly grounded in the applicable statutory framework governing the engineering profession and is consistent with the legal mandate of EBK to regulate engineering practice in Kenya.
87. The Interested Party submitted that the Applicant has not demonstrated a prima facie case based on admissible evidence which shows an infringement of a right. It cited *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR “prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”
88. On whether the Applicant will suffer prejudice, the Interested Party submitted that engineers are regulated under the *Engineers Act*, 2011 and licensed by EBK, whereas engineering technologists are regulated under the *Engineering Technology Act*, 2016 by KETR. This distinction is recognized internationally through the International Engineering Alliance, reflecting differences in



- academic training, professional competencies, and scope of practice. Engineers handle complex engineering design, planning, supervision, and risk assessment, while technologists focus on practical implementation, operational support, and technical maintenance. The statutory requirement for EBK registration is thus rationally connected to the responsibilities of the advertised position.
89. It is the Interested Party's submission that the allegation of discrimination under Article 27 of *the Constitution* is misplaced, as differentiation based on lawful and objective professional qualifications does not amount to discrimination. Reliance was placed in *John Kabui Mwai & 3 Others V Kenya National Examination Council & 2 Others* [2011] eKLR "discrimination means treating differently, without any objective and reasonable justification, persons in relevantly similar situations."
 90. The Interested Party submitted that in the present case, the requirement for registration by the Engineers Board of Kenya flows directly from the statutory regulatory framework governing the engineering profession in Kenya. The distinction between engineers and engineering technologists is expressly recognized in law and therefore cannot be construed as discriminatory.
 91. The Interested Party submitted that the Applicant has failed to demonstrate that it will suffer any prejudice if the conservatory orders sought are not granted. The Applicant has merely speculated on possible exclusion and has not demonstrated any real or imminent prejudice or violation of constitutional rights. It cited *Wilson Kaberia Nkunja -vs_ The Magistrates & Judges Vetting Board & Others* (2016) eKLR where the court held that a party must demonstrate that he has a prima facie case with a likelihood of success and that unless the conservatory orders are granted there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*.
 92. On public interest, the Interested Party submitted that the grant of the conservatory orders sought by the Applicant would suspend an ongoing recruitment process for engineers responsible for the planning, design, and management of national road infrastructure under the mandate of the Kenya National Highways Authority. This mandate directly affects public safety and national development, and any interruption to recruitment would delay critical infrastructure functions, undermine statutory regulatory standards, and disrupt public service delivery.
 93. It is the Interested Party's submission that allowing the recruitment process to proceed ensures continuity in critical national infrastructure operations, maintains compliance with statutory standards, and safeguards the broader public interest. The potential inconvenience to the Applicant's members does not outweigh the harm that would be caused to public service delivery and national development if the orders were granted.
 94. The Interested Party submitted that the Applicant's application effectively seeks final or substantive relief at an interlocutory stage by attempting to halt the ongoing recruitment exercise in its entirety. Courts have repeatedly cautioned against granting orders that would pre-empt the final determination of the substantive issues in constitutional litigation.
 95. I have examined all averments and submissions of the parties herein. At this stage, the only requirement that must be established before court is the requirement for the applicant to establish the existence of a prima facie case.
 96. As submitted by the applicant they are qualified engineers who should not be left out in the job market by virtue of an advertisement which they aver has discriminated against them. There is indeed room for the applicants and the respondents to explain themselves given that the distinction between the two engineering groups need to be appreciated in order to avoid any miscarriage of justice.
 97. In the courts view, the applicants have a prima facie case which raises triable issues. In order to avoid any miscarriage of justice, I will allow the application and grant orders staying the impugned advertisement



of 2/12/25 ref no KENHA/Engineer(ROADS) /05/2025 pending the hearing and determination of this petition. Costs of this application shall be in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF MARCH, 2026.

HELLEN WASILWA

JUDGE

