

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CONSTITUTIONAL PETITION NO. E007 OF 2025

RODGERS SAMANYA.....PETITIONER

VERSUS

COUNTY GOVERNMENT OF BUSIA &

5 OTHERS.....RESPONDENTS

AND

CONTROLLER OF BUDGET.....INTERESTED PARTY

RULING

1. These proceedings were initiated herein by way of the petition, dated 10th December 2025. The same seeks declarations around creation, restructuring and renaming of Executive offices at the County; *certiorari* orders to quash Executive decisions relating to the creation and operationalisation of the contemplated offices; orders of prohibition to restrain recruitment into the new positions and authorisation of expenditure to operationalise those new offices, among others.
2. Upon the petition being served, on the respondents and the interested party, responses were filed, inclusive of a notice of preliminary objection, dated 20th February 2026.
3. When the matter came up on 23rd February 2026, for directions on the disposal of the petition, the parties urged that the preliminary objection be argued first, as it raises an issue of jurisdiction, whose determination could dispose of the matter, at the High Court, with finality. Upon those representations being made, I directed that the said preliminary objection be disposed of first, and gave directions for filing of written submissions on it.
4. There has been compliance, with the filing of written submissions, on the preliminary objection. I have read through the said written

submissions, and I have taken note of and considered the arguments advanced.

5. The preliminary objection raises 2 issues.
6. The first is that the petition turns on matters relating to employment and labour relations, and, by dint of Articles 162(2) and 165(5) of the Constitution, and section 12 of the Employment and Labour Relations Act, Cap 8E, Laws of Kenya, the High Court would have no jurisdiction to entertain the dispute.
7. The second issue is that the Constitution, at Article 234(2)(i), and legislation, specifically the Public Service Commission Act, Cap 185, Laws of Kenya, and the County Governments Act, Cap 265, Laws of Kenya, confer the Public Service Commission with mandate over matters relating to employment in the public sector, inclusive of jurisdiction to determine any disputes over recruitment, appointment, remuneration, discipline, retirement and other terms of service of County Government employees. Consequently, it is argued, issues over such ought not be placed before the courts, ahead of exhaustion of the internal dispute resolution mechanisms, set up under the Public Service Commission.
8. The only matter, for me to determine, under the preliminary objection, is whether the issues raised in the petition herein fall within the realm of employment and labour relations, and, therefore, outside of the jurisdiction vested in the High Court by the Constitution.
9. The substratum of the petition is on restructuring and creation of offices and positions by the County Executive, and the concern is on whether there is a budget for that exercise, and the resultant offices. The argument raised is around whether there is a constitutional and legal foundation for that restructuring and creation of offices, and expenditure of public funds on the same, outside of approved budget. The core of the petition is not about employment and labour relations. The principal prayers relate to the restructuring and

creation of offices, and expenditure of public funds thereon. There is, of course, a prayer, on recruitment and appointment to fill up the new offices, but it is secondary to the core issues.

10. In view of the above, I am not persuaded that the petition is on terrain that is outside of the jurisdiction of the High Court, to warrant the downing of tools. I find and hold that the preliminary objection lacks in merit. It is not for upholding, and I hereby dismiss it. Costs shall abide the determination of the petition. To move the matter forward, there shall be a mention, before the Judge, on 30th April 2026, for further directions, on disposal of the petition.

11. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT
MILIMANI, NAIROBI, ON THIS 10TH DAY OF APRIL 2026.**

**W. MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Rodgers Samanya, the petitioner, in person.

Advocates

Mr. Omboko and Mr. Odhiambo, instructed by the County Attorney and Kienga & Odhiambo, respectively, Advocates for the respondents.