

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E256 OF 2026

RICHARD ZENDA KIRUI BONGEI PETITIONER

VERSUS

MINISTRY OF LANDS, PUBLIC WORKS,

HOUSING AND URBAN DEVELOPMENT.....1ST RESPONDENT

STATE DEPARTMENTS FOR HOUSING AND URBAN

DEVELOPMENT.....2ND RESPONDENT

PRINCIPAL SECRETARY, STATE DEPARTMENT FOR HOUSING AND

URBAN DEVELOPMENT.....3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....4TH RESPONDENT

ETHICS AND ANTI-CORRUPTION COMMISSION.....5TH RESPONDENT

RULING

1. On 22/4/2026 this court received certificate of urgency, Notice of Motion and the petition dated 21/4/2026. The prayers in the petition are as follows-;
 - a. A declaration that the decision/action by the 1st and 3rd respondents relieving the petitioner of duties of duties as Chief Engineer and/or excluding him from performance of duties (annexture “RZK – 3”) is

unconstitutional, unlawful, null and void for violation of Articles 4,47 and 50(1) of the Constitution and Section 4 of the Fair Administrative Action Act.

- b. A declaration that the 1st to 3rd respondents' failure to issue prior notice, particulars, hearing and written reasons violates Article 47 and Section 4, Fair Administrative Action Act (Cap 7L)
- c. A declaration that the release/transmission/processing of the petitioner's person employment file and records without lawful basis and safeguards violates Article 31 and Section 30, Data Protection Act (Cap 411C)
- d. An order of certiorari quashing the decision/communication relieving the petitioner from duties (annexture "RZK-3") and any consequential internal directives implementing it.
- e. A mandatory order compelling the 1st and 3rd respondents to restore the petitioner to full performance of duties as Chief Engineer including access to office, systems responsibilities and benefits, pending lawful process.
- f. A conservatory order restraining the 1st to 3rd respondents from suspension, interdiction, termination, demotion, employment,

salary/allowance reduction, harassment or intimidation of the petitioner pending hearing and determination of this petition.

- g. A conservatory order restraining the 5th respondent from proceeding with, continuing, or taking any adverse set under Ref. EACC.7/10/1 VOL. XXVII (179) in a manner prejudicial to the petitioner without first furnishing the petitioner with particulars and affording an opportunity to respond, pending hearing and determination.
 - h. An order restraining the 1st to 3rd respondents from releasing/transmitting /availing the petitioner's personal employment file/records to the 5th respondent or any third party pending hearing and determination , save with leave of court and in compliance with the Data Protection Act.
2. The prayers in the notice of motion seeking conservatory orders are as follows-;
- a. That this application be certified urgent and heard *exparte* in the first instance.
 - b. That pending inter partes hearing of this application, a conservatory order do issue staying/suspending implementation of the decision/communication relieving the petitioner of duties and

restoring the *status quo ante*, namely full access and performance of the petitioner's function.

- c. That pending and determination of the petition, a conservatory Order do issue restraining the 1st to 3rd respondents, their officers, agents or assigns from taking any adverse administrative employment action against the petitioner including suspension, interdiction, termination, demotion, redeployment, salary/allowance reduction, harassment or intimidation.
- d. That pending hearing and determination of the petition a conservatory order do issue restraining the 5th respondent from proceeding with or taking any adverse step under Ref. EACC/7/10/1 Vol.XXVII (179) in a manner prejudicial to the petitioner without first furnishing particulars and affording the petitioner an opportunity to respond.
- e. That pending hearing and determination of the petition, the 1st to 3rd respondents be restrained from releasing, transmitting, availing or otherwise disclosing the petitioner's personal employment file/records to the 5th respondent or any other person/body, save with leave of court and in compliance with the data Protection Act.
- f. That costs be in the cause.

3. The Court called upon the petitioner/ applicant's counsel to appear virtually and submit on the jurisdictional issues identified by the court upon perusal of the petition.
4. Mr. Oyaro Advocate for the petitioners appeared virtually and addressed the Court on the jurisdictional issue raised by the Court.
5. I have given consideration to his submissions.
6. In the affidavits sworn by the petitioner/applicant, it is disclosed that there are proceedings pending before Eldoret Employment and Labour Relations Court (ELRC) over the same subject matter, although EACC who have now been enjoined into these proceedings, because they sought to investigate the petitioner's academic qualifications by asking his employer to submit the petitioner's personal file, which demand, the petitioner claims is in breach of his rights to privacy as his documents are confidential.
7. The prayers sought in this petition are all employer/employee dispute related and the fact that EACC has intervened to obtain the petitioner's employment file for investigation purposes does not change the nature of the reliefs sought.
8. This court is expressly barred by Article 165(5) (b) of the Constitution, from hearing and determining disputes which fall within the jurisdiction of the ELRC and as this court only derives jurisdiction from the Constitution and

statutes, it cannot arrogate itself of jurisdiction that it does not have (see **Macharia & another v Kenya Commercial Bank Ltd & 2 others (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012) (Ruling).**

9. The fact that EACC has intervened, which the petitioner claims, was in violation of ELRC consent orders of 17/2/2026 does not change the cause of action and redirect it to the High court. The petitioner is expected to approach the same court that issued the consent orders allowing him back into the office, to indicate how EACC was frustrating the implementation of those orders, not to file a fresh petition in a different court.
10. ELRC is a court of equal status with the High Court. It exercises jurisdiction to grant all the reliefs sought within the Employment and Labour Relations framework as stipulated in Section 12 of the Employment and Labour Relations Court Act.
11. To shift from ELRC to the High Court is to ask this court to assume jurisdiction which the Constitution has expressly removed from this court.
12. It is also a forum shopping venture which is unacceptable and borders an abuse of court process, in view of the admission by Mr. Oyaro counsel for the petitioner/ applicant that they filed a similar application challenging the intervention by EACC before ELRC Eldoret after EACC wrote a letter dated

30/3/2026 seeking to take possession of the original personal file of the petitioner from the employer, but were not granted the conservatory orders sought therein, which reliefs are similar to the ones sought in these proceedings.

13. For the above reasons, and for want of jurisdiction, the petition and notice of motion dated 21/4/2026 are hereby struck out with no orders as to costs.
14. This file is closed.

Dated, signed and delivered virtually at Nairobi this 23rd Day of April 2026

**R.E ABURILI
JUDGE**