

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

PETITION NO. E034 OF 2025

MOHAMMED FARAH ABDINOOR.....PETITIONER

VERSUS

**MINISTRY OF INTERIOR & NATIONAL
ADMINISTRATION.....1ST RESPONDENT**

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

**THE OFFICE OF THE COUNTY
COMMISSIONER, WAJIR.....3RD RESPONDENT**

**THE OFFICE OF THE DEPUTY COUNTY
COMMISSIONER.....4TH RESPONDENT**

MOHAMED YAROW IBRAHIM.....5TH RESPONDENT

JUDGMENT

The dispute in this matter is a contract between the Petitioner who held the position of Acting Chief Barmish Location in Wagalla Division, Wajir West Sub-County, Griflu from 2nd June 2022, a position he has held for 3 years to date of filing suit against the Respondents. The 5th respondent was after an impugned recruitment process appointed by a letter dated 13/1/2025 as the substantive chief II of Barnish Division effectively ending the acting tenure of the Petitioner.

The Petitioner posits that the appointment of the 5th Respondent was irregular and illegal since the 5th Respondent did not have the requisite academic and professional qualifications and certificates and was at the time of appointment only 32 years of age despite the advertisement for the position having prescribed a candidate of not less than 35 years of age.

That the Petitioner was left out despite being professionally qualified and held the position of Chief in acting capacity for more than 3 years.

That the action by the Respondents violated the Petitioner's rights to fair administrative action protected under Article 47, the right not to be discriminated upon protected under Article 27 and the right to be provided with information, duly requested under Article 35 of the Constitution of Kenya 2010.

Furthermore, the Respondents violated the obligation to observe transparency and provision to the public, timely, and accurate information under Article 232 (1)(f) and obligation to observe fair competition and merit as the basis of appointment and promotions under Article 232 (1) (a) of the Constitution of Kenya 2010 and section 36(1) (a) and (b) of the Public Service Commission Act and above all the Respondents did not act in an accountable manner in violation of Article 232(1)(e) of the Constitution.

That the Petitioner seeks the following reliefs:-

- (i) A declaration that the Respondents violated the Petitioner's rights under Article 27, 35, 41, 47, 73 and 232 of the Constitution of Kenya 2010.
- (ii) An order of certiorari to quash the appointment of the 5th Respondent to the position of Chief Barnish Location, Wagalla Division, Wajir West Sub County, Griflu.
- (iii) A permanent injunction stopping the 1st, 2nd, 3rd and 4th Respondents from removing the Petitioner from the position of Acting Chief Barnish Location as appointed on 2/6/2022.
- (iv) Award of damages for the violation of the Petitioner's rights under Articles 27, 35, 41, 47, 73 and 232 of the Constitution.
- (v) A declaration that the Respondents violated their obligation under Articles 35, 73 and 232 of the Constitution of Kenya 2010 and section 36 (1) (a) and (b) of the Public Service Commission Act.
- (vi) Costs of the suit.

The petition is supported by Affidavits, statement of facts and documents attached to the petition. The Petitioner prays that the petition be granted.

Replying Affidavits

The 1st, 2nd, 3rd and 4th Respondents filed a replying affidavit to the petition sworn to by Mr. K. J. Ngumo County Commissioner, Wajir County who deposes that the position of Chief Barnish Location, Wajir West Sub-County fell vacant upon death of the chief on 23/3/2022. That subsequently, the position was advertised four (4) times since most of the

Applicants did not meet the minimum requirements for shortlisting as stipulated in the Scheme of Service for Administrative Officers.

That the interviews in respect of the last advertisement and applications were carried out on 19/6/2024 by Sub-County Human Resource Advisory Committee (SCHRMAC) from which 3 names were recommended.

That the recommendation for appointment were sent to the Regional Commissioner north Eastern Region on 21/8/2024.

That by a letter dated 22/1/2025, the deponent received a letter appointing the 5th Respondent as the Chief subject to verification of his academic examination results.

That the whole recruitment exercise was conducted in accordance with the law and was fair, transparent and competitive.

That there were no interviews for recruitment of the Chief on 16/1/2024, as alleged by the Petitioner or at all.

That the Petitioner was not discriminated as he was invited for interviews even though he failed to produce form four certificate.

That the amended petition has no merit and it be dismissed.

The 5th Respondent filed a replying affidavit sworn to on 21/7/2025 in which he deposes that he applied for the advertised position of Chief for Barnish Location, Wajir West Sub County. That he was called for an interview which he attended and was thereafter informed that he was successful and was directed to submit all his academic documents for verification.

That he started the process of verifying his certificate via E-Citizen on 14/2/2025 which was the only process pending his appointment.

That he concluded the process of verification and he was given a letter of appointment by the Ministry of Interior and National Administration dated 10/6/2025.

That he accepted the appointment by a letter dated 17/6/2025 and was effectively appointed as Chief Barnish Location, Grade D of Wagalla Division, Wajir West Sub County.

That following his appointment he was summoned and has duly reported and completed his orientation.

That he had been issued with uniform and is ready to serve as the Chief.

That the recruitment was lawful and fair and the petition be dismissed with costs.

DETERMINATION

The Petitioner filed written submissions and the Respondents filed their submission late with leave of court. The objection by the Petitioner on the late filing of submissions was considered by the court and the Petitioner was granted leave on 18/12/2026 to file supplementary submissions within 10 days from that date.

The issues for determination are:-

- (a) Whether the Petitioner has proved violation of his rights set out in the petition.
- (b) Whether the Respondents failed in their obligation as set out in the petition.
- (c) Whether the recruitment of the 5th Respondent was lawful and fair.
- (d) Whether the Petitioner is entitled to the reliefs sought.

The Petitioner is to date enjoying stay orders granted to him by the court on 3/4/2025. The Petitioner continues therefore to act in the position of Chief as duly appointed on 2/6/2022.

In terms of section 24 of the Public Service Commission Act,

“(3) An officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months.”

The court having considered the deposition and submissions filed by the parties in respect of the petition itself is satisfied that the recruitment

process of the 5th Respondent as the substantive Chief of Barnish Location, Wajir Sub County was done in a lawful, fair and transparent manner.

The Petitioner has not proved on a balance of probability that the 1st, 2nd, 3rd and 4th Respondents, violated his rights by recruiting and appointing the 5th Respondent to the substantive position of Chief.

Indeed, the court finds that the Petitioner has unduly enjoyed the acting position as Chief of Barnish Location since by the time he came to court he had already acted for over 3 years, contrary to by the law.

Indeed, the Petitioner should be glad that, courtesy of the interim orders of the court, the grant of which is attributable to the need for the court to hear and determine all the relevant facts of the matter, he remains in the position to date.

The court finds that the 5th Respondent deserved to occupy the position he was appointed to by letter dated 17/6/2025.

The court therefore finds that the term of service of the 5th Respondent should be reckoned by the Respondents from that date and the Claimant be paid his salary and benefits from that date.

On the contrary, the Petitioner has failed to prove that any of his rights set out in this petition have been violated. The Petitioner has unduly enjoyed salary and allowance paid to him during the prolonged acting period. However, that should be the end of the

matter in recognition of the long service the Petitioner had given to the government as Acting Chief of Barnish Location.

Accordingly, the petition lacks merit in its entirety, and the same is dismissed with no orders as to costs.

Dated at Nairobi this 20th day of April 2026



Mathews Nduma
JUDGE

Dated, signed and delivered in open court at Nairobi this 22nd day of April 2026

Dr. Gakeri J.
JUDGE

Appearances:

Mr. Atulo for Petitioner

M/s. Mochoge for 1st to 4th Respondents

Mr. Mureithi for 5th Respondent

Mr. Kemboi – Court Assistant