

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

PETITION NO. E017 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

IN THE MATTER OF ARTICLES 1,3(1)
&(2),28,41(1),47(10&2),48&50(1)(2)(A) & 258 OF THE
CONSTITUTION OF KENYA,2010

AND

IN THE MATTER OF RULES 4,10,11,13 & 20 OF THE
CONSTITUTION OF KENYA (SUPERVISORY AND
PROTECTIONS OF FUNDAMENTAL RIGHTS AND FREEDOMS)
(HIGH COURT PRACTICE AND PROCEDURE RULES,2013)

AND

IN THE MATTER OF SECTION 27,28,29 &30 OF THE URBAN
AREARS AND CITIES ACT,2011

AND

IN THE MATTER OF THE URBAN AREARS AND CITIES
AMENDMENT ACT 2019

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION
ACT,2015

AND

**IN THE MATTER OF SECTION 65 & 66 OF THE COUNTY
GOVERNMENTR'S ACT**

TITO KOIYET PETITIONER

VERSUS

COUNTY PUBLIC SERVICE BOARD

UASIN GISHU.....1ST

RESPONDENT

COUNTY GOVERNMENT OF UASIN GISHU.....2ND

RESPONDENT

JUDGMENT

The Petitioner's case

1. The Petitioner filed the Amended Petition dated 9th May 2025 against the Respondents, invoking various provisions of the Constitution of Kenya and the Urban Areas and Cities Act. He seeks the following reliefs:
 - i. A declaration that the advertisement for the recruitment of a City Manager for Eldoret, dated 15th October 2024, was unconstitutional, unlawful and null

and void ab initio, having been published in the absence of a valid and gazetted City Charter, contrary to Section 9(5) of the Urban Areas and Cities Act, 2011.

- ii. An order of certiorari quashing the vacancy notice titled *“Advertisement for Recruitment of City Manager”*, together with any shortlist, interviews, or appointments arising therefrom.
- iii. An order of certiorari quashing the entire recruitment process undertaken pursuant to the said vacancy notice, and directing the 1st Respondent to initiate a fresh recruitment process in strict compliance with the Constitution, the Urban Areas and Cities Act and all other applicable laws.
- iv. A declaration that the intended decision of the 1st Respondent to conduct interviews and proceed with the appointment of a City Manager violates Articles 10, 35, 73, and 232 of the Constitution and is therefore unconstitutional.
- v. An order of permanent injunction restraining the Respondents, their agents, or servants from recruiting

or appointing any person to the position of City Manager for Eldoret without strict compliance with Articles 10, 232, and 236 of the Constitution, and Section 13A of the Urban Areas and Cities Act.

- vi. A declaration that the appointment of Mr. Samuel Kiptoo Kemboi as Acting City Manager, while the Petitioner's valid contract subsists, is irregular, unlawful, and void for want of consultation with the Municipal or City Board, contrary to Section 13A(2) of the Urban Areas and Cities Act.
- vii. An order of certiorari quashing the appointment of Mr. Samuel Kiptoo Kemboi as Acting City Manager of Eldoret.
- viii. An order of permanent injunction restraining the Respondents from making any further appointments to the office of City Manager without compliance with the Constitution and the Urban Areas and Cities Act.
- ix. A declaration that the withdrawal of the Petitioner's accounting rights by the Respondents, vide the letter dated 17th January 2025 was unconstitutional and in

breach of the right to fair administrative action under Article 47 of the Constitution.

- x. An order of mandamus compelling the Respondents to restore the Petitioner's role as the accounting officer of the City of Eldoret and enable him to discharge his duties lawfully and without interference.
- xi. An order directing the 1st Respondent to publish the complete list of all applicants for the City Manager position in at least two newspapers of national circulation and to invite public participation in accordance with Articles 10 and 35 of the Constitution.
- xii. A declaration that the Respondents' failure to stop the attempted forced eviction of the Petitioner on 18th February 2025 violated Articles 26, 28, 41 and 236 of the Constitution.
- xiii. A declaration that the Petitioner had a legitimate expectation to serve a further five-year term from 29th May 2024 pursuant to the Municipal Board resolution dated 21st December 2023.

- xiv. A declaration that the Municipal Board's resolution extending the Petitioner's contract for five (5) years is lawful, valid and binding upon the Respondents.
- xv. An order of mandamus compelling the County Secretary and the Secretary of the County Public Service Board to implement the said resolution and formally extend the Petitioner's contract.
- xvi. A declaration that the Respondents breached their statutory and constitutional obligations under the Constitution of Kenya and the Employment Act, 2007.
- xvii. A declaration that the designation of the Petitioner as Deputy Director of Administration on his payslip is inconsistent with his appointment as Municipal Manager and constitutes administrative malice and procedural unfairness.
- xviii. An order for damages to compensate the Petitioner for unlawful and discriminatory actions.
- xix. General damages for violation of constitutional rights, loss of professional status, mental anguish, and reputational harm.

- xx. Exemplary and aggravated damages for malicious abuse of office and deliberate disregard of lawful processes.
 - xxi. Interest on all sums awarded
 - xxii. Costs of the Petition.
 - xxiii. Any other relief the Court may deem just and appropriate under Article 23(3) of the Constitution.
2. It is the Petitioner's case that he was appointed as Municipal Manager of the Municipality of Eldoret vide a letter dated 22nd February 2019 and served continuously and diligently in that capacity up to and beyond the expiry of his initial contract term on 29th May 2024.
 3. The Petitioner avers that although the 1st Respondent unilaterally extended the contract term by one year to 28th May 2025, the Municipal Board had, by resolution dated 21st December 2023 approved a five-year extension based on his exemplary performance.
 4. It is the Petitioner's case that he formally following up on the Board's recommendation, but the 1st Respondent ignored the same and imposed a one-year extension of his contract,

thereby acting in breach of constitutional values under Article 10 of the Constitution and outside its statutory mandate.

5. According to the Petitioner, under Section 13A(2)(c) of the Urban Areas and Cities (Amendment) Act 2019, the Municipal Board is mandated to recommend the appointment and terms of the City Manager. The Petitioner thus avers that the Respondents' failure to implement the Board's recommendation for extension of his contract for 5 years was therefore ultra vires.
6. In addition, the Petitioner contends that his pay slip reflected the designation "Deputy Director of Administration," which is inconsistent with his contractual role as Municipal Manager and demonstrates administrative malice.
7. The Petitioner further states that the 1st Respondent unlawfully advertised the position of City Manager on 15th October 2024 and excluded him from the list of shortlisted candidates despite his qualifications. According to the Petitioner, the position was advertised without being declared vacant by the Municipal Board and without any consultation and in this regard, he avers that the advertisement and recruitment process were unlawful,

null and void ab initio, as the Respondents failed to comply with statutory and constitutional requirements, including publication in accessible media and facilitation of public participation.

8. It is the Petitioner's case that he was the lawful Municipal Manager and was entitled, by operation of law, to transition into the role of City Manager upon conferment of city status. In support of this position, the Petitioner relies on the City of Nakuru Presidential Charter, which provides for continuity of service upon conferment of city status.
9. The Petitioner avers that he met all statutory qualifications for the position and would have been shortlisted had the process been lawful. He maintains that the entire recruitment process was therefore fundamentally flawed and unconstitutional.
10. The Petitioner thus contended that the Respondents' conduct amounted to discrimination, procedural unfairness, and abuse of public power contrary to Articles 47 and 232(1)(g) and (h) of the Constitution.

The Respondents' case

11. The Respondents opposed the Petition through a Replying Affidavit sworn on 17th September 2025 by Kenneth K. Mutai, Legal Counsel for the Respondents, in which he deposes that the Petitioner was employed on a fixed-term contract as Municipal Manager, and that his contract lawfully expired on 28th May 2025.
12. According to the Respondents, upon the conferment of city status to Eldoret on 15th August 2024, the governance structure transitioned from a municipal to a city-level administration, thereby necessitating the recruitment of a City Manager to serve the interests of the residents of the City.
13. The affiant further deposes that the position of City Manager was publicly advertised through appropriate and accessible channels, including the County website, to ensure transparency and equal opportunity for all qualified candidates.
14. The Respondents contend that the recruitment process was open to public scrutiny and the Petitioner has no valid basis for complaint.
15. The Respondents further assert that the Petitioner had the opportunity to apply for the position but failed to do so, instead

relying on a mistaken assumption that he would automatically transition into the role.

16. The Respondents aver that all applications received were evaluated on the basis of merit, including educational qualifications, professional experience, leadership ability and knowledge of public administration.
17. The Respondents further state that shortlisted candidates were interviewed in accordance with established hiring policies and that the most suitable candidate was selected following due process.
18. It is the Respondents' position that the recruitment process complied with the Constitution of Kenya, the Public Service Act, the County Governments Act and the Fair Administrative Action Act, as well as other applicable laws.
19. The Respondents maintain that the County Public Service Board, as the recruiting authority ensured that the process was conducted in accordance with principles of merit, integrity, equity and inclusivity.
20. They further aver that the decision to appoint the current City Manager was made in the best interests of the City of Eldoret

and its residents, and that the appointed office-holder has since assumed office and commenced service delivery.

21. In response to the averment by the Petitioner that the Board made a recommendation on 21st December 2023 to extend his employment contract for 5 years as a City manager, the Respondents asserted that the recommendation for extension of the Petitioner's contract was not binding and could not override the statutory mandate of the 1st Respondent. In this regard, it is contended that the alleged five-year extension has no legal basis. That the Petitioner's contract was neither terminated prematurely nor unlawfully interfered with.
22. The Respondents also denied the allegation by the Petitioner that he was subjected to psychological distress and that his rights were violated.
23. The Respondents contend that there is no legal provision for automatic transition into the office of City Manager, and that no legitimate expectation arose in favour of the Petitioner.
24. While disputing the Petitioners' averment that the terms and conditions of the Nakuru Charter applied to the Eldoret Charter,

the Respondents maintained that the Nakuru Charter is specific to Nakuru and has no legal application to Eldoret.

25. In response to allegations of administrative failure, the Respondents contend that the Petitioner ought to have exhausted available administrative remedies prior to instituting the Petition.
26. With respect to the Petitioner's designation as Deputy Director of Administration, the Respondents maintain that designation does not constitute malice or illegality, and that the allegation is unsubstantiated.
27. The Respondents denied the allegation made by the Petitioner that the recruitment process was unlawful and asserted that the Petitioner's claims regarding lack of publication, exclusion and illegality are baseless.
28. With regard to the alleged eviction from office and intimidation, the Respondents aver that the Petitioner proceeded on annual leave on or about 14th April 2025 and that an acting appointment was made solely to ensure continuity of operations without affecting his substantive position.

29. It is further the assertion of the Respondents that the subsistence of the Petitioner's contract did not suspend the operation of the Urban Areas and Cities Act and that the recruitment process could proceed lawfully notwithstanding his tenure.
30. It is the position of the Respondents that the office of City Manager is now substantively filled and granting the orders sought in the petition would prejudice the Respondents, create confusion and disrupt service delivery in Eldoret City.
31. Accordingly, the Respondents urge the Court to dismiss the Petition with costs.

The rejoinder

32. The Petitioner filed a further affidavit sworn on 22nd October 2025, reiterating the averments he made in his Amended Petition and supporting affidavit.
33. The Petitioner denied that his tenure lawfully lapsed as alleged by the Respondents and contended that the assertion that his term had lapsed is inconsistent with the provisions of the Charter, which he avers provide that a person holding the office

of Municipal Manager prior to the appointed date shall continue in office until a City Manager is lawfully appointed.

34. The Petitioner further maintains that his tenure did not lapse by effluxion of time on 28th May 2025, as alleged.
35. He further maintains that the Municipal Board lawfully exercised its statutory mandate under Section 13A(1) of the Urban Areas and Cities Act by recommending a five-year extension of his term. On this basis, he contends that the resolution dated 21st December 2023 has never been lawfully set aside, varied, or rejected with written reasons and, as such, remains valid and binding.
36. The Petitioner thus asserted that the subsequent one-year extension issued by the County Public Service Board was ultra vires, as the Board lacked authority to unilaterally disregard a lawful recommendation without justification.
37. In addition, the Petitioner maintained that he had a legitimate expectation based on the Municipal Board's resolution that he should be allowed to continue working for the Respondents as a City Manager for a five-year term.

38. He Petitioner asserted that the failure of the Respondents to provide written reasons for departing from the Board's recommendation violated Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act.
39. In the end, Petitioner maintained that the Respondents' actions were unlawful, procedurally unfair and in violation of constitutional principles. He urged the Court to grant the reliefs sought in the Amended Petition.

The Evidence

40. The petition was heard viva voce, during which both parties tendered oral evidence in support of their respective cases.
41. At the close of the hearing, the Court directed the parties to file written submissions. Both parties duly complied, the Petitioner's submissions are dated 17th December 2025 while the Respondents' submissions dated 3rd February 2026.
42. The Petitioner testified as PW1 and adopted the contents of the Amended Petition and the Supplementary Affidavit dated 9th May 2025 as his evidence in chief.

43. It was his testimony that he was employed in 2019 as the Municipal Manager of Eldoret Municipality. That in 2020 he initiated the process of elevating Eldoret from a municipality to a city. He stated that the town was elevated to city status in 2024. That the Municipal Board subsequently passed a resolution to extend his contract for five (5) years to enable him oversee the transition.
44. He further testified that on 15th October 2024, he saw an advertisement for the position of City Manager and upon making inquiries, was informed that the advertisement would not affect his position. He stated that he nonetheless applied for the position but was not shortlisted.
45. The Petitioner stated that the advertisement of the position, coupled with his exclusion from the shortlist without justification, was unlawful.
46. He urged the Court to grant the reliefs he sought in his Amended Petition and restore him to the position of City Manager.
47. On cross-examination, the Petitioner confirmed that he was employed as Municipal Manager by the 1st Respondent

pursuant to a letter dated 22nd February 2019 and that his employment commenced on 1st March 2019 for a term of three (3) years. He stated that upon expiry of the initial term, the contract was renewed annually, with the last renewal expiring on 28th May 2025.

48. The Petitioner further testified that although the Municipal Board recommended a five-year extension of his contract, he did not produce any formal contract or appointment letter evidencing such extension. He confirmed that he did not hold an appointment letter for the position of City Manager. He also stated that Eldoret was formally gazetted as a city on 18th June 2025, and that his last contract as Municipal Manager expired on 28th May 2025.
49. It was the Petitioner's testimony that he was employed on permanent and pensionable terms as a Deputy Director, Administration, but was deployed to serve as Municipal Manager. He testified that his salary and benefits corresponded to the position of Deputy Director, Administration.
50. He further stated that upon elevation of Eldoret to city status, all staff transitioned. That he too ought to have been retained

or appropriately transitioned rather than replaced. It was the Petitioner's evidence that his employment relationship was informed not only by his contract but also by resolutions of the 1st Respondent.

51. On re-examination, the Petitioner testified that appointments relating to municipal or city management are undertaken in consultation with the Municipal Board, which he served as Secretary. He stated that the five-year extension was the product of a formal human resource process. He stated that his pay slips reflected the designation of Deputy Director, Administration, and that he had served as Municipal Manager for six (6) years.
52. The Respondents called one witness, Kenneth K. Mutai, Director of Legal Services, who testified as RW1. He adopted his Replying Affidavit sworn on 17th September 2025 as his evidence in chief and produced the annexures thereto.
53. RW1 testified that the Petitioner's employment was governed by a fixed-term contract which lapsed by effluxion of time on 28th May 2025. He further stated that the Petitioner's contract did not provide for automatic transition from Municipal

Manager to City Manager. He maintained that the position of City Manager has since been substantively filled.

54. RW1 thus urged the Court to dismiss the Amended Petition with costs.
55. On cross-examination, RW1 testified that the current City Manager, Ms. Eliseba Busienei, was appointed on 8th July 2025. He further stated that he was not aware of the specific advertisement pursuant to which she was recruited.
56. RW1 acknowledged that there existed a recommendation to extend the Petitioner's contract by five (5) years, but the recommendation was never adopted and no response was issued by the 1st Respondent.
57. He further stated that the standard term for a City Manager is five (5) years, and that the Petitioner's last contractual extension ran from 29th May 2024 to 28th May 2025.
58. He further testified that at the time the position of City Manager was advertised, the Petitioner was still serving as Municipal Manager and that the transition from municipality to city occurred while the Petitioner's contract was still subsisting.

59. RW1 confirmed that the Petitioner applied for the position of City Manager but was not shortlisted, as he did not meet the suitability criteria upon evaluation.
60. With respect to the Petitioner's pay slip designation as Deputy Director, Administration, RW1 explained that the payroll system (IPPD) may not reflect all job titles and may assign a comparable designation within the same salary scale.
61. On re-examination, RW1 reiterated that the designation appearing on the pay slip is system-generated and does not alter the Petitioner's substantive appointment as Municipal Manager.
62. By and large, the submissions reiterate the positions taken by the rival parties.

Determination

63. Having carefully considered the Petition, the response thereto, the evidence tendered in court and the rival submissions on record, the issues that fall for determination are: -

- i. Whether the Petitioner's contract as Municipal Manager lawfully expired or was validly extended for a further term of five (5) years.
- ii. Whether the Petitioner had a legitimate expectation to transition into, or be appointed as, the City Manager upon conferment of city status.
- iii. Whether the recruitment process for the position of City Manager was unlawful, unconstitutional or procedurally unfair.
- iv. Whether the Petitioner's constitutional and statutory rights were violated by the Respondents.
- v. Whether the Petitioner is entitled to the reliefs sought in the Amended Petition.

Whether the Petitioner's contract as Municipal Manager lawfully expired or was validly extended for a further term of five (5) years

64. The crux of the Petitioner's case is that his tenure did not lapse by effluxion of time but was lawfully extended for a further

term of five (5) years pursuant to a resolution of the Municipal Board. It is his position that the Respondents acted unlawfully in disregarding the resolution and in purporting to subject him to a further one-year extension instead.

65. In support of this position, the Petitioner relies on the Municipal Board's resolution dated 21st December 2023, which he avers approved the extension of his contract for a further term of five (5) years on account of his performance. He further places reliance on the Nakuru City Charter, contending that it embodies the principle of continuity of service upon conferment of city status. He argues that, by parity of reasoning, he was entitled to continue in office upon the elevation of Eldoret to city status.
66. According to the Petitioner, section 13A(2)(c) of the Urban and Cities Act, 2019 provides that the City or Municipal Board shall be recommend the appointment and terms of the City Manager. It is on the basis of this provision that the Petitioner submits the County Public Service Board acted ultra vires in failing to implement the recommendation of the Municipal Board.

67. The Respondents, on their part, contend that the Petitioner's employment was governed by a fixed-term contract which lapsed on 28th May 2025 by effluxion of time, and that no lawful basis exists for the alleged five-year extension. They maintain that while the Municipal Board may make recommendations, such recommendations are not binding on the appointing authority and do not, without more, create enforceable contractual rights.
68. Regarding the Petitioner's reliance on the Nakuru City Charter, the Respondents contend that the said Charter is specific to the City of Nakuru and has no legal application to the City of Eldoret. They maintained that the Petitioner's reliance on the Nakuru Charter to assert a right to continuity in office or automatic transition is legally untenable.
69. The starting point is the nature of the Petitioner's engagement. The evidence on record confirms that the Petitioner served on a fixed-term contract of 3 years which was thereafter renewed on one year basis, and the last renewal was for the period from 29th May 2024 to 28th May 2025. It is trite that a fixed-term

contract terminates automatically upon expiry, unless there is clear and unequivocal evidence of renewal or extension.

70. From a careful consideration of the Municipal Board's resolution dated 21st December 2023, I note that while the said resolution may well constitute a recommendation for extension, there is no evidence that it was formally adopted, approved, or implemented by the 1st Respondent who bears the statutory mandate in matters of appointment.
71. Significantly, the Petitioner did not produce any letter of extension, contract, or formal communication giving effect to the alleged five-year term. In the absence of such formalization, the resolution remains a proposal without legal force. Further, the Petitioner accepted and served for the subsequent one-year renewal contracts signifying acceptance thereof.
72. With regard to the Petitioner's reliance on the Nakuru City Charter, the Court finds that such reliance is misplaced. City charters are context-specific instruments applicable to the respective cities for which they are promulgated. They do not create binding norms applicable across different jurisdictions,

nor can they override the express provisions of statute governing appointments.

73. According to the Petitioner, section 13A(2)(c) of the Urban and Cities Act, 2019 provides that the City or Municipal Board shall be recommend the appointment and terms of the City Manager. It is on the basis of this provision that the Petitioner submits the County Public Service Board acted ultra vires in failing to implement the recommendation of the Municipal Board.

74. Section 13A of the Urban and Cities Act provides:

Appointment of Secretary of the Board of a city. 13A.

(1) The county public service board shall, through a competitive process appoint a Secretary to the board on such terms and conditions as the county public service board, in consultation with the city or municipal board, shall determine.

(2) A person is qualified to be appointed as the Secretary of the board, if that person—

(a) has a degree from an institution recognised in Kenya;

(b) has at least four years' experience in management; and

(c) satisfies the requirements of Chapter Six of the Constitution.

(3) The Secretary shall be—

(a) responsible for the day to day management of the affairs of the board; and

(b) perform such other duties as may be assigned by the board.

(4) The Secretary shall hold office for a term of five years.

(5) The provisions of section 16 relating to grounds for vacation of office shall, with necessary modifications, apply to the Secretary of the board appointed under this section.

75. Further, section 28 and 29 of the said Act provide:

City or municipal manager.

28. There shall be a city or municipal manager for every city or municipality established under this Act, who

shall implement the decisions and functions of the board and shall be answerable to the board.

Appointment of city or municipal manager.

29. A city or municipal manager shall be competitively recruited and appointed by the county public service board established under section 57 of the County Governments Act (Cap. 265).

Qualifications for appointment of city or municipal manager.

30. (1) Subject to Article 232 of the Constitution, a person shall qualify to be appointed as city or municipal manager if the person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognised in Kenya or its equivalent; and

(c) has proven experience of not less than ten years in administration or management either in the public or private sector.

(2) In appointing a manager under subsection (1) the body responsible for county public service shall ensure

—

(a) gender equity;

(b) the inclusion of minorities and marginalised communities; and

(c) the person satisfies the requirements of Chapter six of the Constitution.

76. It is clear that section 13A(2)(c) which the Petitioner relied on in asserting that his appointment was recommended by the Board is in error as the section refers to the appointment of the Secretary of the Board of the City and not the City Manager. There is no role for the Board of the City in the appointment of the City Manager as reflected in sections 28 and 29 of the Act.
77. In the premises, I find that the Petitioner has failed to demonstrate that his contract was validly extended for a further term of five (5) years.
78. Accordingly, the Court holds that the Petitioner's contract lawfully lapsed on 28th May 2025 by effluxion of time.

Whether the Petitioner had a legitimate expectation to transition into, or be appointed as, the City Manager upon conferment of city status

79. In **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR** the Supreme Court while discussing the doctrine of legitimate expectation pronounced itself as follows:

“Legitimate expectation” is a doctrine well recognized within the realm of administrative law, as is clear from the English case, In re Westminster City Council, [1986] A.C 668 at 692(Lord Bridge):

“... the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation”.

An illuminating consideration of the concept of “legitimate expectation” is found in the South African case, South African Veterinary Council v Szymanski 2003(4) S.A 42 (SCA) at [paragraph 28]: the court held as follows:

“The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation include the following:

- i. The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.*
- ii. The expectation must be reasonable: Administrator, Transvaal v Traub (supra [1989 (4) SA 731 (A)] at 756l -*

757B); *De Smith, Woolf and Jowell* (supra at 417 para 8-037).

- iii. *The representation must have been induced by the decision-maker: De Smith, Woolf and Jowell* (op cit at 422 para 8-050); *Attorney-General of Hong Kong v Ng Yuen Shiu* [1983] 2 All ER 346 (PC) at 350h - j.
- iv. *The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: Hauptfleisch v Caledon Divisional Council* 1963 (4) SA 53 (C) at 59E - G.”

This was also referred to with approval in Walele v City of Cape Town and Others; 2008 (6) S.A 129 (C.C.) paragraph 41.

The emerging principles may be succinctly set out as follows:

- a. *there must be an express, clear and unambiguous promise given by a public authority*
- b. *the expectation itself must be reasonable*

- c. *the representation must be one which it was competent and lawful for the decision-maker to make; and*
- d. *there cannot be a legitimate expectation against clear provisions of the law or the Constitution.*

De Smith, Woolf & Jowell, in “Judicial Review of Administrative Action cited in Republic v Kenya Revenue Authority Ex Parte M-Kopa Kenya Limited thus:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”

80. It therefore follows that legitimate expectation in employment arises where an employer through an express promise or consistent past practice creates an expectation that a benefit will accrue to an employee.
81. Applying the foregoing principles to the present case, the Petitioner contends that the resolution of the Municipal Board dated 21st December 2023, coupled with his continued service and role in the transition of Eldoret from municipality to city, created a legitimate expectation that his contract would be extended for a further term of five (5) years and that he would continue in office as City Manager.
82. I have carefully considered that contention. While it is not in dispute that the Municipal Board made a recommendation for extension, the question that arises is whether such recommendation amounted to a clear, unambiguous and binding representation capable of giving rise to a legitimate expectation.
83. In the Court's view, it did not. First, the resolution of the Municipal Board, by its very nature, constituted a recommendation subject to adoption and implementation by

the appointing authority. There is no evidence that the 1st Respondent made any express promise or representation to the Petitioner that the recommendation would be implemented. In addition, the Petitioner did not demonstrate the existence of a consistent past practice of automatic renewal or transition that would reasonably ground such expectation. On the contrary, the evidence shows that his engagement was governed by fixed-term contracts subject to periodic renewal.

84. Further, as is evident from the sections of the Urban and Cities Act referred to above, the Board does not have any role in the appointment of the City Manager and its recommendation was not and could not be the basis of any legitimate expectation.
85. In the foregoing circumstances, the Court finds that the Petitioner's expectation, if any, was neither reasonable nor legally enforceable.
86. Accordingly, the Court holds that no legitimate expectation arose in favour of the Petitioner capable of defeating the statutory mandate of the Respondents or invalidating the recruitment process.

Whether the recruitment process for the position of City Manager was unlawful, unconstitutional or procedurally unfair.

87. The Petitioner has challenged the recruitment process of the current City Manager arguing that the process was undertaken without consultation with the Municipal Board, without proper declaration of vacancy and in violation of constitutional principles of transparency, fairness and public participation.
88. On their part, the Respondents maintain that the position was duly advertised, applications were competitively evaluated and the process complied with all applicable legal requirements.
89. While the Petitioner alleges lack of transparency and procedural irregularities, including an apparent inconsistency in the timeline of the recruitment process, the evidentiary material placed before the Court does not sufficiently establish that the impugned appointment was undertaken in violation of the Constitution or the applicable statutory framework.
90. According to the evidence of RW1 on cross-examination, the current City Manager was appointed in July 2025. This however was not confirmed through a letter of appointment or any other evidence of such appointment. The only evidence on record

relating to the appointment of the City Manager is the list of shortlisted candidates following the advertisement of the position in October, 2024 where Ms. Elzeba Busienei is listed as No. 3 in the list of shortlisted female candidates. RW1 stated that he was not aware of the specific advertisement pursuant to which the appointment of the current City Manager was made. No other advertisement for the position was presented to the court. According to the evidence of RW1 Kenneth K. Mutai, the said Elzeba Busienei is the current City Manager.

91. In those circumstances, no cogent evidence was tendered to demonstrate that the appointment in question was not preceded by a lawful and competitive process, or that it was linked to an irregular or undisclosed recruitment process.
92. In the absence of such proof, the Court is unable to infer illegality from the evidence on record. I accordingly find that the Petitioner has not discharged the burden of demonstrating that the recruitment process for the position of City Manager was unlawful or unconstitutional.

Whether the Petitioner's constitutional and statutory rights were violated by the Respondents

93. The Petitioner alleges that the Respondents violated his rights under Articles 10, 47, 73 and 232 of the Constitution, contending that their actions were marked by procedural unfairness, lack of transparency, discrimination, and abuse of public power. In particular, he faults the Respondents for disregarding the Municipal Board's recommendation, advertising the position of City Manager during the subsistence of his contract, and excluding him from the shortlist without justification.
94. The Respondents, on their part, maintain that the Petitioner's contract lawfully lapsed by effluxion of time and that the recruitment process for the position of City Manager was conducted in accordance with the Constitution and all applicable statutory provisions. They further contend that the Petitioner was afforded an equal opportunity to apply for the position and that his non-selection was based on merit.

95. From the material on record, and as already found, the Petitioner's engagement was governed by a fixed-term contract which expired on 28th May 2025. In the absence of a valid renewal or extension, the Petitioner had no subsisting contractual right to the office beyond that date.
96. With regard to Article 47 of the Constitution, no evidence has been presented to the Court to prove any administrative action taken against the Petitioner that was unlawful, unreasonable, or procedurally unfair. The decision to recruit a City Manager was undertaken within the Respondents' statutory mandate and in furtherance of the transition to city status.
97. As concerns the alleged violation of Articles 10 and 232 of the Constitution, the Petitioner has not demonstrated, to the required standard, that the recruitment process was conducted in a manner that was opaque, discriminatory, or contrary to the principles of public service. On the contrary, the evidence indicates that the position was publicly advertised and that candidates were competitively evaluated. The Petitioner participated in the recruitment process as an applicant for the position.

98. The Petitioner's non-inclusion in the shortlist, without more, cannot be construed as evidence of discrimination or unfair treatment, particularly in the absence of proof that the process was tainted by illegality or bias. There is no allegation that the Petitioner called for particulars of the shortlisting or for reasons why he did not make it to the shortlist and was denied the information.
99. In the circumstances, the Court finds that the Petitioner has failed to establish that his constitutional or statutory rights were violated by the Respondents.

Whether the Petitioner is entitled to the reliefs sought in the Amended Petition.

100. Before I consider the reliefs if any, that the Petitioner is entitled to, I wish to mention in passing one prayer that was sought by the Respondents being that this court had no jurisdiction to entertain the petition herein by virtue of sections 77 of the County Governments Act and section 87 of the Public Service Commission Act. the two sections require that appeals against

the decisions of the County Public Service be made to the Public Service Commission in the first instance.

101. This issue was never raised by the Respondents in its pleadings and was first raised in the submissions. It is trite law that submissions are not pleadings and an issue that was not pleaded cannot be raised in submissions.
102. Turning to the reliefs sought by the Petitioner, it is trite that the grant of reliefs in constitutional and employment disputes is contingent upon a party establishing violation of rights, breach of statutory duty, or in the impugned conduct. The Petitioner bears the burden of demonstrating that the remedies sought are warranted in law and justified by the facts of the case.
103. The Petitioner herein sought a long list of reliefs as set out at the top of this judgment, including declaratory orders, orders of certiorari and mandamus, injunctive reliefs, as well as general, exemplary and aggravated damages.
104. Having found that the Petitioner's contract lawfully lapsed by effluxion of time, that no legitimate expectation arose in his favour, and that he did not demonstrate that the recruitment process for the position of City Manager was unlawful or

unconstitutional, there exists no legal basis upon which the Court can grant the declaratory or prerogative orders sought.

105. Additionally, the prayer for mandamus compelling the extension of the Petitioner's contract or reinstatement to the office of City Manager cannot issue, as the Petitioner was never appointed to that position. Reinstatement cannot issue to a position that a person never held.
106. The injunctive reliefs sought are also untenable, as the Court has not found any ongoing or threatened violation capable of being restrained.
107. With regard to the claim for damages, it is trite that such relief can only issue upon proof of violation of rights or unlawful conduct. In the absence of such proof, the claim for general, exemplary and aggravated damages cannot be sustained.
108. Consequently, the Court finds that the Petitioner is not entitled to the reliefs sought in the Amended Petition.
109. Accordingly, the Petition is hereby dismissed.
110. Given the nature of the dispute, the Court directs that each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 7TH DAY OF MAY, 2026**

**MAUREEN ONYANGO
JUDGE**