



Kangor v Ministry of Interior and Coordination of National Government & 3 others; Public Service Commission & another (Interested Parties) (Petition E004 of 2024) [2025] KEELRC 842 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 842 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

PETITION E004 OF 2024

MA ONYANGO, J

MARCH 13, 2025

IN THE MATTER OF THE ALLEGED VIOLATION OF ARTICLES 2(1) AND (2),3(1),10(1) AND (2)(C), 19,20(1),22,23, 27(1) AND (2), 41(1), 47,232, 258 AND 259(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF APPOINTMENT OF SAMMY KIROR AS ASSISTANT CHIEF GRADE II OF KASAKA SUB-LOCATION. KELYO LOCATION, KABARTONJO DIVISION, BARINGO NORTH SUB-COUNTY

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015 AND IN THE MATTER OF THE EMPLOYMENT ACT, 2007

BETWEEN

PHILEMON SONGOL KANGOR PETITIONER

AND

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

COUNTY COMMISSIONER, BARINGO COUNTY 2ND RESPONDENT

DEPUTY COUNTY COMMISSIONER, BARINGO NORTH SUB-COUNTY 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

PUBLIC SERVICE COMMISSION INTERESTED PARTY

SAMMY KIROR INTERESTED PARTY



JUDGMENT

1. Philemon Songol Kangor, the Petitioner herein filed the instant Petition on 26th April 2024 against the Respondents seeking the following reliefs: -
 - a. A declaration that the 1st and 2nd Respondents' choice of the 2nd interested party as the Assistant Chief Kasaka Sub Location violated the Constitution hence is null and void.
 - b. A permanent order of injunction restraining the 1st and 2nd Respondents from installing the 2nd Interested Party as the Assistant Chief Kasaka sub location based on the advert of 3rd November,2023.
 - c. An order restraining and/or prohibiting the 2nd interested Party from assuming office, exercising powers and functions of Assistant Chief Grade II for Kasaka sub location, Kelyo Division, Baringo North sub-county or drawing and/or earning any salaries or allowances thereof.
 - d. An order directing the 1st and 2nd Respondents to re- advertise and conduct fresh recruitment of an Assistant Chief Kasaka sub-Location.
 - e. That Costs be provided for.
 - f. Any other or better orders this court may deem mete and just to grant.
2. The basis of the Petition is that on 3rd November, 2023 the Ministry of Interior and Coordination of National Government posted an advert for the position of Assistant Chief Grade II, Kasaka sub-location of Baringo North Sub-County.
3. The Petitioner avers that the requirements for the advertised position were that for one to be appointed, the Applicant ought to:
 - a. Have Kenya Certificate of Secondary Education (KCSE) Mean grade C- (minus) or its equivalent from a recognized examining body.
 - b. Be not less than 30 years of age and not more than 45years
 - c. Be a resident of the particular sub location.
 - d. Have a Certificate of good conduct.
 - e. Have good communication skills
 - f. Have certificate in computer application skills course from a recognized institution
4. It is contended that shortlisting was done and the Petitioner together with three other applicants including the 2nd Interested Party, were invited for interview on 16th January 2024 which was rescheduled to 23rd January 2024 following inquiry by one candidate who was shortlisted but not called for the interview.
5. According to the Petitioner, the 1st Respondent in total disregard of the report by the Senior Chief Kelyo Location and the report by the National Intelligence Service that the 2nd Interested Party did not meet the set qualifications, appointed him as the Assistant Chief of Kasaka sub-location.



6. The Petitioner asserts that by choosing an unqualified candidate for the post of Assistant Chief the 1st Respondent's actions are discriminative, unfair, unjust and unconstitutional.
7. The Petitioner avers that his fundamental rights and freedoms in the bill of rights have been denied, violated and infringed in appointing an unqualified candidate to the advertised position owing to his political association, nepotism and other unfathomable reasons best known to Respondents.
8. It is therefore the Petitioner's case that unless conservatory orders are issued at this stage restraining the 1st Respondent from installing the 2nd Respondent as the Assistant Chief, the Petitioner's rights remain violated.

The Response to the Petition.

9. The Respondents in opposition to the Petition filed a Replying Affidavit sworn on 5th May 2024 by Malack Makunda Namal, the Deputy County Commissioner, Baringo North Sub County. The deponent avers that the interviews of 23rd January 2024 were conducted by a 7-member panel and overall performance marks awarded to each interviewee by each member of the panel then the total aggregate of the marks were awarded based on the same.
10. According to the Respondents, upon completion of the process that was open and procedural, the interview panel recommended and forwarded the names of the top three candidates to the Principal Secretary, State Department for Internal Security and National Administration for appointment to wit:
 - i. Sammy Cheboi Keror who scored 83.80%
 - ii. Philemon Songol Kangor who scored 68.50%
 - iii. Grace Muthoni Njiri who had a mean score of 64.80%.
11. In response to the allegation by the Petitioner that the 2nd Respondent was not qualified for appointment on the basis that he is not a resident of Kasaka sub location, ^{the respondents maintained that the 2nd interested party is a} resident of Kasaka Sub Location as he raises a family therein; he owns a home in the said area; his father is a village elder of one of the villages and his National Identification Card indicates that he hails from Kasaka sub location.
12. The Respondents further contended that the Petitioner was aware and participated in the entire process and did not raise any issue as to the suitability of the 2nd Interested Party in the earliest opportune moment from the time he was shortlisted.
13. It is on this basis that the Respondents aver that the Petitioner has not proved his case to the required standard of proof to warrant the issuance of the orders sought.
14. The 2nd Interested Party opposed the Petition vide a Replying Affidavit sworn on 16th May 2024. In the affidavit he avers that he attended the interviews that were conducted on 23rd January 2024 and 20th March 2024, he was issued with an appointment letter from the 1st Respondent appointing him as the Assistant Chief Kasaka Location.
15. In response to the allegations made by the Petitioner that he is not a resident of Kasaka Sub-Location, the 2nd Interested Party contended that he is a resident of Kasaka Sub-Location having lived in Kasaka Sub-Location since birth. In this regard, the 2nd Interested Party annexed copies of his birth certificate and National Identity card.



16. The 2nd Interested Party maintained that he was appointed to the position of Assistant Chief Kasaka Sub-Location, having fully qualified as he met all the requirements for the position.
17. According to the 2nd Interested Party, his appointment was legal, procedural and did not violate the Petitioner's constitutional rights as alleged as the recruitment process was transparent, open and conducted without bias. Further, that the Respondents being employers have the prerogative to advertise, short list and interview candidates to fill any vacancies that may arise within its establishment.
18. It is the position of the 2nd Interested Party that the orders sought by the Petitioner in the instant application have been overtaken by events as he received his appointment letter on 20th March 2024 and assumed office soon thereafter.
19. The 2nd Interested Party urged the court to dismiss the Petition with costs.
20. Pursuant to the directions of this court, the petition was disposed of by way of written submissions.

The Petitioner's Submissions.

21. The Petitioner in his written submissions dated 24th September 2024 framed the following two issues which he asked the court to determine:
 - i. Whether the 2nd Interested Party is qualified for appointment to the position of Assistant Chief grade II Kasaka sub-location, Kelyo Location
 - ii. Whether any of the Petitioner's rights have been violated.
22. On the first issue, the Petitioner submits that the 2nd Interested Party is not qualified for appointment as the Assistant Chief Kasaka Sub-location as he does not meet all the requirements for appointment.
23. According to the Petitioner, the 2nd Interested Party is not a resident of Kasaka sub-location and should not have made it to the shortlist at all.
24. The Petitioner contends that the advert and the Revised Scheme of Service for National Government and Administrative Officers provides that a candidate must be a resident of the particular sub-location and not just any sub-location.
25. According to the Petitioner, the letter marked PSK-3 annexed to the Petitioner's supporting affidavit shows that the 2nd Interested Party is a resident of Trans Nzoia County, Cherangany Constituency, Motosiet Ward.
26. In this regard, it is the Petitioner's submission that the requirement for residency was clearly stated in the job advert and by considering and appointing the 2nd Interested party, who did not meet this fundamental criterion, the Respondents acted contrary to the principles of good governance, fairness, and transparency as envisaged under Article 10 and Article 232 of our Constitution.
27. The Petitioner maintained that there was no merit in the selection process and that the selection panel were hell-bent in ensuring that the 2nd Interested Party becomes the Assistant Chief Kasaka Sub-location despite the ground reports from the area chief and the National Intelligence service indicating otherwise on his residence. In support of this position, the Petitioner cited the case of Mohamed & another v Deputy County Commissioner Wajir South Sub-County & 4 others (Petition E040 of 2022) [2022] KEELRC 13323 (KLR) (25 November 2022) (Judgment)
28. On the second issue whether any of the Petitioner's rights were violated, the Petitioner submitted that the appointment of the 2nd Interested Party discriminated against him and the other applicants who



were competent and qualified for the position as the recruitment was not on merit but based on who could give a bribe. Further, that the Respondents violated his right to fair labour practices and fair administrative action under the bill of rights, when they solicited for bribes and sitting allowances from the candidates. The solicitation undermined the integrity and legality of the process as receipt of the said sitting allowance hampered the judgment of the panelists and instilled in them the need to reward the candidate who had complied with the request.

29. In the end, the Petitioner submitted that he has proved that the recruitment exercise for the position of Assistant Chief Grade II Kasaka Sub-Location was not free, fair and transparent, but discriminated against other applicants who were qualified but were locked out of the interviews without an explanation or for failing to comply with the requirement for a sitting allowance. The Petitioner thus submitted that the Respondents acted contrary to the principles set out in Articles 41(1), 47(1) and Article 232 of the Constitution.

The Respondents' submissions.

30. The Respondents in their submissions dated 4th October 2024 framed the issues for determination to be:
- a. Whether the 2nd Interested Party is qualified;
 - b. Whether the process was lawful; and
 - c. Whether the orders sought should be granted.
31. On the first issue, the Respondents contend that the Petitioner's main bone of contention is that the 2nd Interested Party does not meet the 3rd qualification in the advert that the Applicant must be a resident of a particular sub location as he is not a resident of Kasaka Location. In response, the Respondents submit that the allegation is unfounded on the basis that the 2nd Interested Party raises a family and owns a home in the said area; his father is a village elder; his National Identity card shows that he hails from the area; he is a proprietor of land in Kasaka and is a member of AIC Kasaka location church as per the letter from the pastor intimating that he has been a member thereof for over seven years.
32. With regard to the Petitioner's argument that the 2nd Interested Party's birth certificate was issued in Trans Nzoia and is therefore evidence that the 2nd Interested Party is not a resident of Kasaka sub location, the Respondents urged the court to take judicial notice that birth records are available in this digital era and can be printed from anywhere in the Republic where there is a registrar of births office and even in Huduma Centres.
33. The Respondents maintained that the allegation by the Petitioner that the 2nd Interested Party does not reside in Kasaka Sub-location has not been proved to the required standards and prayed that the petition be dismissed.
34. On whether the process was lawful, the Respondents aver that the Petitioner has claimed that his rights in the bill of rights have been denied, violated and infringed by the appointment of an unqualified candidate but from his Petition, it is unclear which particular rights under the bill of rights the Petitioner alleges was violated and in what manner was it violated. In this regard, the Respondents submit that the instant petition on this facet does not meet the requirements set out in the classic cases of Anarita Karimi and Mumo Matemu.
35. The Respondent submits that having failed to properly plead the said violations of the bill of rights, the same was not proved and the Petition should be dismissed.



36. Lastly, on whether the orders sought should be granted, the Respondents submitted that the appointment of the Interested Party as the Assistant Chief was procedural and met the threshold of the law. It is the Respondents' submission that there is no reason why the same should be set aside and re-advertised.

37. The Court was urged to dismiss the Petition with costs.

The 2nd Interested Party's submissions.

38. In his submissions dated 1st October 2024, the 2nd Interested Party identified the issues for determination to be:

- a. Whether the Respondents are in violation of the Constitution.
- b. Whether the Petitioner is entitled to the orders sought.
- c. Who should bear the costs.

39. On the first issue whether the Respondents are in violation of the Constitution, the 2nd Interested Party submits that the Petitioner has not narrated the rights in his petition which he alleged have been violated and or infringed by the Respondents.

40. According to the 2nd Interested Party, the Petition before court, the supporting affidavit and the annexures thereto reveal that the Petitioner's allegations are misconceived, unfounded, and baseless. That the petition is an abuse of the court process.

41. The 2nd Interested Party submits that the Petitioner's allegations of violation of his constitutional rights are unfounded and without any basis as the allegations are premised on falsehoods and unsubstantiated facts. In addition, it is submitted that it is a legal dictate that he who alleges must prove and the Petitioner has not produced any evidence to prove the alleged violations and/or infringements of his constitutional rights. The 2nd Interested Party submitted that the instant petition does not meet the threshold for constitutional petitions as set out in the Anarita Karimi case.

42. On the second issue as to whether the Petitioner is entitled to the orders sought, the 2nd Interested Party submitted that the Petitioner sought permanent injunctive orders against the 1st and 2nd Respondents based on the advert of 3rd November 2023. That for one to be granted injunctive orders, they have to meet the criteria and the guiding principles set out in the case of *Giella v Cassman Brown* [1973] EA 358. It is submitted that it must be seen from the face of it that the person applying for an injunction has a right which has been violated or is threatened with violation. According to the 2nd Interested Party, the Petitioner has failed to prove that he has a prima facie case with a likelihood of success and thus, the permanent injunction sought ought not to be granted.

43. It is submitted that before granting an injunctive order, the court also considers the irreparable injury to be suffered by the applicant. That the 2nd Interested Party submitted that the Petitioner merely averred that the 1st Respondent's act of choosing the 2nd Interested Party as the successful candidate amounts to discrimination, unfair practice, injustice and unconstitutionality but did not tender evidence of the same. It is submitted that this averment by the Petitioner is not substantial to amount to irreparable injury as it is speculative in nature and does not amount to injury that is actual, substantial and demonstrable. The 2nd Interested Party further submitted that the Petitioner was aware that there was a chance that he might not emerge as the successful candidate for the position and he therefore cannot claim that he suffered any kind of harm by not being picked as the successful candidate.



44. It was submitted that in this Petition, the balance of convenience tilts in favour of the Respondents and Interested Parties as the Petitioner has failed to prove the alleged rights and fundamental freedoms that have been violated by the Respondents and to what extent and degree they have been violated.
45. It was the 2nd Interested Party's submission that the instant suit is vexatious and an abuse of the court process. The court was urged to dismiss the Petition with costs.

Determination.

46. From the Petition, the responses thereto and the submissions on record, the issues that fall for determination are:
 - i. Whether the petition meets the constitutional threshold
 - ii. Whether the Respondents breached the Petitioner's constitutional rights by appointing the 2nd Interested Party as the Assistant Chief of Kasaka sub-location
 - iii. What orders should issue.

Whether the petition meets the constitutional threshold.

47. The Respondents and the 2nd Interested Party in their respective submissions averred that the Petitioner's petition has not set out in precision how the Respondents have violated their rights under the Constitution nor provided any evidence to back the assertions as laid down in the cases of Anarita Karimi Njeru v Attorney General [1979] KLR 154 and Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR
48. The constitutional provisions upon which the petition before the court is premised are Articles 2(1) and (2), 3(1), 10(1) and (2)(C), 19, 20(1), 22, 23, 27(1) and (2), 41(1), 47, 232, 258 and 259(1) of the Constitution.
49. Although the Petitioner did not particularise the provisions of the Constitution he alleged to have been violated by the Respondents on the face of the petition, from the title of the petition, the Petitioner referred to Article 10 which provides for national values and principles of governance, Article 19 relating to rights and fundamental freedoms, Article 21 on implementation of rights and fundamental freedoms, Article 22 on enforcement of Bill of Rights, Article 23 on authority of courts to uphold and enforce the Bill of Rights, Article 27 relates to equality and freedom from discrimination, Article 41 on labour relations, Article 47 on fair administrative action which is expeditious, efficient, lawful, reasonable, and procedurally fair, Article 232 for values and principles of public service and Article 258 on enforcement of the Constitution.
50. The Petitioner has set out the factual basis and averred that the 2nd Interested Party did not qualify to be appointed as an Assistant Chief of Kasaka Sub-location on the basis that he is not a resident of Kasaka sub-location. The Petitioner contends that the appointment of the 2nd Interested Party is against the law as he is not a resident of the subject sub-location to qualify for the said position in which he has been appointed. The Respondents and the 2nd Interested Party in response to the Petition availed their documents in answer to the allegations made by the Petitioner meaning that they understood the issues raised in the Petition.
51. From the above, I find that the Petitioner has set out, with a reasonable degree of precision, that which he complained of with the factual basis setting out how the violation happened. The Court holds that the petition has met the constitutional threshold.



Whether the Respondents breached the Petitioner’s constitutional rights by appointing the 2nd Interested Party as the Assistant Chief of Kasaka sub-location

52. The Petitioner has alleged that the 2nd Interested Party did not qualify to be appointed Assistant chief of Kasaka Sub-Location within Baringo County on the basis that he is not a resident of the sub-location. This allegation was rebutted by the Learned State Counsel representing the Respondents and the 2nd Interested Party in their responses and submissions to the Petition.
53. The 2nd Interested party in his Replying Affidavit sworn on 16th May 2024 deposed that he is a resident of Kasaka Sub-Location and annexed copies of his birth certificate as well as his national identity card as evidence that he is a resident of Kasaka sub location.
54. Apart from stating that the 2nd Interested Party was a resident of Trans-Nzoia County as his birth certificate was issued in Trans-Nzoia, and that the Respondents ignored the ground reports from the area chief and the National Intelligence Service indicating that he was not a resident of Kasaka Sub-Location, the Petitioner did not adduce any evidence to support his averments. He did not produce the report by the said area chief or from the National Intelligence Service to confirm that indeed the 2nd Interested Party’s residence was outside Kasaka sub location. He further did not submit evidence of bribery of the interview panel or bias by the panel.
55. On the contrary the 2nd Interested Party produced his national identity card and birth certificate both of which prove that he is a resident of Kasaka Sub-Location. He further produced Kenya Certificate of Secondary Education (KCSE) and Kenya Certificate of Primary Education (KCPE) certificates together with the respective school leaving certificates Kapkiamo Secondary School and Mormori Primary School both of which are in Kabartonjo. He further produced affidavits of several persons who attested to his origin to be Kasaka Sub-Location.
56. It is the court’s conclusion that the 2nd Interested Party was qualified for the position based on the evidence on record and his appointment did not violate any constitutional or statutory provision as alleged or at all.

What orders should issue?

57. Having made a determination that the 2nd Interested Party met the qualification for appointment of Assistant Chief Grade II Kasaka Sub-Location, Kelyo Location, Kabartonjo Division as advertised on 3rd November, 2023, the Petitioner is not entitled to any of the reliefs sought in his petition.
58. The Petition is accordingly dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14TH DAY OF MARCH 2025

MAUREEN ONYANGO

JUDGE

