



Mboga & 3 others v Public Service Commission & 3 others; South Eastern Kenya University (Respondent) (Petition E004 of 2024) [2025] KEELRC 722 (KLR) (7 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 722 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
PETITION E004 OF 2024**

B ONGAYA, J

MARCH 7, 2025

IN THE MATTER OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 27, 28, 29, 30, 41, 43, 47, 53, 234, 236, 237, 258, AND 259 OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT

IN THE MATTER OF THE EMPLOYMENT ACT, 2007

**IN THE MATTER OF THE INTERPRETATION OF THE
PUBLIC SERVICE COMMISSION ACT IN CONFORMITY**

WITH ARTICLES 234 AND 237 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

**WILLIS MANYURA MBOGA 1ST PETITIONER
DANIEL NYABUTI 2ND PETITIONER
ERICK MUTWIRI 3RD PETITIONER
NICHOLAS OTIENO 4TH PETITIONER**

AND

**PUBLIC SERVICE COMMISSION 1ST RESPONDENT
CABINET SECRETARY, MINISTRY OF PUBLIC SERVICE PERFORMANCE
AND DELIVERY 2ND RESPONDENT
CABINET SECRETARY, MINISTRY OF LABOUR AND SOCIAL
PROTECTION 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

AND

SOUTH EASTERN KENYA UNIVERSITY RESPONDENT



JUDGMENT

1. The petitioners filed the petition dated 23.09.2024 through Mwaura Muroki Associates Advocates. The petitioners prayed for reliefs as follows:
 - a. A declaration that the 1st respondent's Public Service Internship program and all the subsequent contracts contravened the provisions of the Constitution when it recruited and employed duly trained, qualified graduates as interns.
 - b. An order of declaration that the rights to fair labour practices and remunerations of interns who the 1st respondent recruited and employed as interns were violated.
 - c. An order of prohibition to issue stopping the 1st respondent from recruiting and employing interns.
 - d. Any other reliefs the court may deem fit to grant.
 - e. Provide costs.
2. The petitioners pleaded as follows:
 - a. The 1st respondent is the independent Commission established under Article 233 of the Constitution of Kenya, 2010. The functions include establishing and abolishing offices in the public service, appointing persons to hold or act in those offices, and, confirming appointments.
 - b. The petitioners are male adults residing and working for gain in Nairobi. They are beneficiaries of the public service internship program which is a Government initiative of opportunity for college graduates to acquire and develop valuable and professional skills while gaining work experience. The program was rolled out in financial year 201/2020 and it is a one year non-renewable contract offered by the 1st respondent to college graduates aimed at equipping them with skills for employability.
 - c. Cohort VI of the program is currently underway. With plans to recruit and interview Cohort VII. The program has been of great benefit to beneficiaries in view of its purposes and monthly stipend. However, it does not address the unemployment of thousands of graduates constantly being churned out by the universities on annual basis. The 1st respondent has reported that of the 25,000 beneficiaries of the program, only 1,964 were subsequently absorbed into employment under permanent and pensionable terms representing 7.7% absorption rate.
 - d. It is unfair for the program to go on in circumstances that it does not solve the unemployment problem in the country and is also discriminatory.
 - e. New cohorts when recruited provides the Government cheap labour while overlooking increased cost of training and maintenance of interns resulting into a heavy tax burden on Kenyan citizens. It does not meet provisions of Article 41 on fair labour practices. The program should therefore be declared unconstitutional, illegal and therefore null and void
3. The petition was based on the supporting affidavit of Daniel Nyabuti sworn on 23.09.2024 and his further affidavit sworn on 02.11.2024. it was stated and urged as follows:



- a. The program has turned out to be a use and dump for thousands of the interns following the expiry of internship program which, undermines labour rights and amounts to discrimination.
 - b. It is not true as urged for 1st respondent that only persons without prior work experience have been recruited to the program. An example of a person recruited with prior work experience is one Mwereria Thurania, a public health officer.
 - c. The interns are employees under Employment Act even if they are supervised trainees.
 - d. Guidelines on Management of Public Service Internship Programme on post internship gains states that experience gained during the internship is an added advantage when seeking employment in public service.
 - e. The recruitment is discriminatory because report of the National Cohesion and Integration Commission (NCIC) has stated that over 80% of public service jobs are dominated by only 10 tribes. Further discrimination is based on intern recruits by discipline like in 322 former interns only 7 had Bachelor of Actuarial Science.
 - f. Absorbing interns would not amount to discrimination because, other Commissions, such as Teachers Service Commission have absorbed interns into permanent and pensionable terms. Further, on 08.12.2023 the President (as per exhibits DK 17, 18 and 19) directed that National Youth Service Cadets be given priority in the National Police Service, Kenya Coast Guard, and Kenya Defence Forces so that recruitment of trainees into public service is wide spread.
 - g. The interns have not been given certificates of completion of internship or appraisal certificates except for Cohort I. the 1st respondent has not awarded fair scores to former interns who go for 1st respondent's interviews as happens with Teachers Service Commission per exhibited advert by that Commission.
 - h. The 1st respondent admits in the replying affidavit that it employed 450 former interns, between, 25.07.2024 and 31.10.2024, into permanent and pensionable service.
 - i. Since 2021 over 15,000 interns have not been issued with certificates of completion of internship per clause 20(iii) of the Guidelines.
 - j. The program has substituted entry jobs with internship.
 - k. On 22.09.2020 Hon. Tindi Mwale MP for Butere Constituency published a petition proposing that vacancies due to retirement of public officers be given to interns.
 - l. The 1st respondent has implemented the program in discriminatory manner contrary to Article 27. While the program is to equip interns with work experience, it does not achieve that goal because most graduates in the program have work experience from their training in their respective fields. It aims to increase employability but the goal is not achieved looking at the numbers that are absorbed or gained employment after the completion. It undermines the right of the youth to access employment as envisaged in Article 55(1) of the Constitution.
4. The 1st respondent filed the replying affidavit of Paul Famba, Secretary and Chief Executive Officer of the Commission sworn on 14.11.2024 and filed and drawn by Jacqueline Manani Advocate, Director, Legal Services. It was urged as follows:
- a. The petition does not set out pleadings with precision per Anarita Karimi Njeru –Versus- the Republic (1976-1980) KLR 1272. It does not comply with Rule 10(1) and (2) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and



Procedure Rules (Mutunga Rules). The petition is in the name of 1st petitioner who does not mention authority to represent other petitioners. The 1st, 2nd and 3rd petitioners are strangers and their addresses are not disclosed. Willis Manyura Mboga has made a supporting affidavit but is not described in the petition. Particulars of constitutional violation are not pleaded. The injury caused to petitioners is not disclosed. The petition should therefore fail.

- b. Article 234(2) (a) (ii) of the Constitution empowers that 1st respondent to appoint persons to act or hold public office. In that view, the 1st respondent appoints persons graduates with no work experience to undertake a one-year non-renewable internship program. The appointment is per Regulation 45 of Public Service Commission Regulations which states as follows:
45. (1) Under this paragraph “intern” means a supervised trainee working to gain experience or satisfy requirements for an academic, professional, technical, occupational or trade certification, registration or licensing.
 - (2) The relevant authorised officer of a public body, with the approval of the Commission, may engage any qualified person as an intern.
 - (3) A public body shall notify the Commission of the available opportunities for internship before engaging any person as an intern.
 - (4) Subject to any other written law, all opportunities for internship shall be advertised in accordance with the provisions of section 37 of the Act.
 - (5) The engagement of interns in the public service shall be through a competitive process, be transparent and accountable and accord equal opportunity for all qualified applicants.
 - (6) Interns shall be deemed to be public officers for the purposes and duration of the internship and shall be subject to these regulations and prevailing code of conduct for public officers in the public body to which the intern is attached.
 - (7) Interns may be paid such stipends as the Commission may approve or prescribe.
 - (8) An internship shall be for a non-renewable period not exceeding one year and shall not be a guarantee for employment in the public service.
 - (9) The Commission shall monitor and evaluate internship programmes for the public service.
 - (10) No public body shall engage interns for another public body without the written approval of the Commission.
- c. It is clear that an intern is a supervised trainee and cannot therefore be offering cheap labour in the public service. Regulation 45(8) is clear that internship shall not guarantee employment.
- d. The interns are recruited through open competitive process.
- e. It would be discriminatory to offer employment to interns on priority or by assured absorption as those not participating in the internship would be disadvantaged. It would be contrary to Articles 27 and 232(1) (g) (h) and (i) of the Constitution. Former interns do not have a superior chance and basis to be employed in the public service.



- f. It is unfair for the 2nd petitioner to have benefited from internship program in 2019/2020 and now wants it to be abolished so as to deny other Kenyan youth an opportunity to benefit from the program as it amounts to bad faith. The program had benefited a total of 25,200 graduates since inception in 2019. Those who have been competitively recruited to established positions in the public service are 2,414 as at 31.10.2024 and employed by the 1st respondent; Commissions; State Corporations; Public Universities; County Governments and other government entities.
 - g. No evidence is provided by the petitioners to show the 1st respondent engages in corruption, nepotism, cronyism, and outright discrimination in undertaking its powers and functions. The relevant investigative agencies like Ethics and Anti-corruption Commission or Director of Criminal Investigations have not reported as is being alleged for the petitioners.
 - h. No reasons have been shown why the Court should grant the reliefs sought.
5. The 2nd to 4th respondents associated themselves with the 1st respondent's case. The 1st respondent and petitioners filed their final submissions. The Court has considered the material on record. The Court returns as follows:
- a. While 3rd and 4th petitioners' consent for the other two petitioners to swear and make affidavits on their behalf is not exhibited, the Court finds that the petition is not thereby fatal. The Court will determine the petition based on the material before the Court. In any event paragraph 5 of the petition has stated that all petitioners are beneficiaries of the internship program implemented by the 1st respondent. The petitioners have disclosed their address in paragraph 1 being their Advocates' address. To that extent it appears to the Court that they have described themselves and provided address per Rule 10(2) (a) on address and their names.
 - b. The Court finds that while the title has enumerated some constitutional provisions and the body of the petition alleged violation as pleaded, as urged for the respondents, the petitioners have failed to particularize or plead specific facts that show the alleged constitutional violation. The respondent's case is upheld in that respect. Further, the petitioners have failed, per Rule 10(2) (d) of the Mutunga Rules, to plead and then establish the nature of the injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or, in a public interest case to the public, class of persons or community. As submitted for respondents, the petitioners mention Article 41 and their understanding of its meaning without particularizing facts, and then, providing evidence to show, the violation thereof. It is upheld that the petition failed to plead and disclose with particularity the alleged violation of the Constitution and rights, and, the particulars of facts in that regard. Instead, and as urged for the respondents, the petitioners have pleaded and confirmed that they are beneficiaries of the internship program and further per paragraph 1 of the petition, they are residing and working for gain in Nairobi County. The Court infers that they have actually benefited and are working so that as beneficiaries they have suffered no loss but the program was useful for their advancement. As urged for respondents, it will be in bad faith for the petitioners to want the program abolished as unlawful.
 - c. It is established for 1st respondent that the internship program by standing regulatory provision (which the petitioners have not challenged) does not guarantee employment or absorption of former interns in the public service. The court considers that the instances cited for the petitioners in the supplementary affidavit suggesting absorption or priority of employment of Government trainees or interns have not been shown to apply the regulatory framework as is urged for the respondents in the instant case – as there is no shown comparability.



The petitioners have not challenged the respondent's case that absorption or employment of interns on priority or favored basis without competitive recruitment for established public service jobs would by itself be discriminatory for non-former interns. The Court returns that alleged discrimination contrary to Article 27 of the *Constitution* is not established at all.

- d. As submitted for 1st respondent, interns are deemed public officers during service with full benefits such as leave and other benefits accruing to public officers. Accordingly, the Court finds that the petitioners have failed to show that interns in the program are denied the rights to fair labour practices as envisaged in Article 41. Further, the graduates are not employed to established posts, they are assigned as trainees, the regulatory regime allows graduate interns to be employed in public service per the said regulation 45 appear to the Court (and as submitted for the respondents) to distinguish the instant case from *Forum for Good Governance and Human Rights v Teachers Service Commission (TSC) & 2 others* (Petition E223 of 2023) [2024] KEELRC 795 (KLR) (17 April 2024) (Judgment) Neutral citation: [2024] KEELRC 795 (KLR) where the teachers held established positions, were assigned duties like other qualified teachers, and there was no regulatory framework shown permitting employment of the teachers as interns.
- e. In view of the foregoing findings the petition is amenable to dismissal and being in the nature of a public interest litigation each party to bear own costs.

In conclusion the petition is hereby dismissed with orders each party to bear own costs, and, the Deputy Registrar to cause the case file returned to the Machakos Sub-Registry forthwith.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 7TH MARCH, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

