



Esuron v Turkana County Public Service Board & another (Judicial Review E001 of 2025) [2025] KEELRC 1260 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1260 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
JUDICIAL REVIEW E001 OF 2025**

MA ONYANGO, J

APRIL 30, 2025

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT
AND IN THE MATTER OF AN APPLICATION TO ENJOIN BY INJUNCTION
THE RESPONDENTS FROM CONDUCTING INTERVIEWS OF THE
COUNTY SOLICITOR OF THE COUNTY GOVERNMENT OF TURKANA**

BETWEEN

DAVID EYANAE ESURON APPLICANT

AND

**TURKANA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT
COUNTY SECRETARY, COUNTY GOVERNMENT OF TURKANA 2ND
RESPONDENT**

JUDGMENT

1. The Originating Motion before me for determination is dated 3rd February, 2025 and seeks the following orders: -
 - i. Spent
 - ii. An order of mandamus to issue to compel the 1st Respondent to include the name of David Eyanæ Esuron, herein the Applicant, among the shortlisted candidates for the position of Solicitor for the County Government of Turkana and to conduct an interview for him objectively and without bias.
2. The motion is premised on the grounds set out on its face, the statutory statement, affidavit verifying the facts relied upon and supporting affidavit sworn on 3rd February 2025.



3. In brief the Applicant's case is that he joined the County Government of Turkana as a legal counsel on 16th December, 2016, that he was transferred to the Office of the County Attorney, Turkana County on 1st April 2020 as Principal Legal Counsel. He avers that he diligently served in that position, which position he still holds to date. The Applicant states that he was appointed as County Solicitor in acting capacity on 2nd September 2024 following the end of the contract of the then County Solicitor.
4. The Applicant contends that on 27th August, 2024, the Turkana County Public Service Board posted an advert for filling of the position of County Solicitor which he applied for. That on 16th November 2024, the Turkana County Public Service Board re-advertised the position of Turkana County Solicitor; that due to the short notice given to interested candidates to make applications, the Applicant applied for the position on 25th November, 2024; that on 16th January, 2025, Turkana County Public Service Board published a list of candidates shortlisted for the position of County Solicitor and his name was missing from the list of shortlisted candidates despite having been appointed as County Solicitor in acting capacity, and having served in that position; that he had legitimate expectation that having served as County Solicitor in acting capacity since 2nd September, 2024, he would be shortlisted for the interviews for the position of County Solicitor.
5. The Applicant contended that Section 64(1) of the *County Governments Act*, 2012 provides that a person shall not be appointed to hold a public office in an acting capacity unless the person satisfies all the prescribed qualifications for holding that public office, that as such, his appointment as County Solicitor in acting capacity was sufficient proof that he satisfied all the prescribed qualifications for holding that public office.
6. It was the Applicant's case that the criteria used by the Public Service Board is prejudicial to him and contravenes the principles of governance and national values.
7. The Respondents opposed the motion vide a Replying Affidavit sworn on 10th February 2025 by CS CHRP Francisca Bartoo Jelagat, the 1st Respondent's Secretary. It is averred in the Replying Affidavit that on 10th August 2024, the position of the County Solicitor in the County Government of Turkana became vacant after the expiry of the contract of the then County Solicitor. That on 2nd September 2024, the 2nd Respondent, acting on erroneous advice, appointed the Applicant to serve in acting capacity as the County Solicitor to ensure the continuity of departmental and county functions while the process of substantively filling the position was underway. The Respondents state that on 17th October 2024, the Applicant circumvented the Office of the County Secretary and directly petitioned the Board, seeking authorization for the payment of his acting allowance. It is averred that on 19th November 2024, the Board through the 1st Respondent duly responded to the said letter through the 2nd Respondent declining the request as the Applicant's appointment to the acting position was irregularly made without the Board's approval contrary to the provisions of section 59(1)(b) of the *County Governments Act*. That the Board recommended the revocation of the appointment.
8. According to the Respondents, the 1st Respondent was duly advised that an advocate gains experience through the practice of law, which is contingent upon holding a valid practicing certificate. It asserted that in the interest of due diligence, the 1st Respondent vide a letter dated 23rd September 2024 sought an advisory opinion from the Law Society of Kenya to verify whether the listed candidates, including the Applicant, had continuously held valid practicing certificates for the past five (5) years.
9. That in response, the Law Society of Kenya through a letter dated 26th September 2024 confirmed that out of the four candidates, only two had continuously held valid practicing certificate for the past five years and the applicant was not among them. That the 1st Respondent initiated the selection process and upon review, established that in accordance with section 17(2)(b) of the Office of the County



Attorney Act and the advisory issued by the Law Society of Kenya on 26th September 2024, only three candidates met the requisite qualifications, while two candidates, including the Applicant did not satisfy the necessary criteria. That thereafter, the 1st Respondent notified the shortlisted candidates of their invitation for interviews and concurrently made the information available to the general public through the county government's website.

10. The Respondent contends that the Applicant did not meet the necessary qualifications to be shortlisted for the position of County Solicitor and that he cannot claim a legitimate expectation for a role to which he was mistakenly appointed, as he had not fulfilled the legally required five years experience and also considering that his appointment as the acting County Solicitor was not approved by the Board.
11. In addition, the Respondent asserted that from the evidence annexed to the Affidavit of the Applicant, he failed to renew his practicing licenses on yearly basis thus depriving him of the necessary experience required for the subject position. The Respondent asserted that the Applicant has not approached this court with clean hands and is therefore undeserving of the discretionary order of an injunction against the 1st Respondent.
12. In a rejoinder, the Applicant filed a supplementary affidavit sworn by himself on 11th February 2025, reiterating the averments he made in his Judicial Review application. In addition to the assertion that he has five years' experience as an advocate, he maintained that he had demonstrated his qualifications for the appointment as County Solicitor in an acting capacity.
13. The Judicial Review Application was disposed of by way of written submissions which were filed by the Applicant and Respondents respectively on 19th March 2025 and 25th March 2025. Both parties attached authorities to their submissions. Counsel for the parties subsequently highlighted their submissions on 26th March 2025 before me.

The Applicant's submissions

14. The Applicant submitted that under section 17(1) of the Office of the County Attorney Act, an applicant for the position of County Solicitor must have at least five years' experience as an advocate of the High Court of Kenya. That section 2 of the [Advocates Act](#) defines an advocate as any person whose name is duly entered upon the Roll of Advocates.
15. According to the Applicant, he was admitted to the Roll of Advocates on 4th May 2016. He avers that the computation of five years starts from the date one is admitted as an advocate of the High Court of Kenya and that as such, the issue of valid practicing certificate is not pertinent in the computation of years of experience.
16. He further contends that all advocates must have a valid practicing certificate in conformity with section 9 of the [Advocates Act](#) but section 10 exempts certain persons from taking out practicing certificates because such persons are not permitted to charge legal fees for their services.
17. The Applicant submitted that the practice of an advocate and accruing experience starts running on the date a person is admitted as an advocate of the High Court.
18. The Applicant also raised an issue that he was not informed by the Respondents why his name was missing from the shortlisted candidates. He contended that under section 4 of the [Access to Information Act](#), he had a right to be informed the reason why his name was missing and the criteria used to expunge his name.



19. In response to the allegations made in the Respondents at paragraph 8 of the Replying affidavit that the Applicant circumvented the Office of the County Secretary and and petitioned the Board for payment of acting allowance, the Applicant submitted that the 1st Respondent wrote to the Law Society of Kenya seeking to know whether the Applicants for the position of County Solicitor, Turkana County, had consistently taken out practicing certificates for the previous five year, yet the provisions of section 17 of the County Attorney Act requires at least five years' experience as an advocate of the High Court of Kenya.
20. The Applicant asserts that the request to the Law Society of Kenya was coached in such a way as to exclude the Applicant from the process, notwithstanding that the Board introduced extraneous qualifications that fall out of the requirements of the law. He submits that the Respondent's in their advertisement required ten (10) years' experience, three of which should have been served in a senior managerial position. He stated that two of the shortlisted candidates were admitted as advocates in 2020. That as such the Board cannot be heard to say that the shortlisted candidates met the 10 years' experience required in the advertisements.
21. The Applicant contended that the process of recruitment and shortlisting of candidates for the position of County Solicitor was marred with maladministration contrary to the law hence the instant Judicial Review application to quash the ongoing process of recruitment. He sought that a new process of shortlisting be initiated for the position of County Solicitor, Turkana County

The Respondents' Submissions

22. The Respondents in their submissions framed the issues for determination to be: -
 - i. Whether the 1st Respondent was justified in excluding unqualified applicants for the position
 - ii. Whether the Applicant was qualified to be appointed in an acting capacity to warrant legitimate expectation on his part
 - iii. Whether the Applicant is entitled to the prayers sought
 - iv. Who bears the costs of the suit.
23. On the first issue, the Respondents while citing section 9 and 10 of the *Advocates Act* asserted that the Applicant was an unqualified advocate. In support of this position, the Respondent placed reliance on the case of National Bank of Kenya Limited v Anaj Warehousing Limited (Petition 36 of 2014(2015) KESC 4 (KLR) where the Supreme Court stated that an advocate who fails to take out practicing certificates but holds himself out as a qualified advocate is deemed a transgressor.
24. The Respondents submitted that the 1st Respondent required candidates to fill the position of the County Solicitor who must have at least five years' experience. According to the Respondents, the only way the 1st Respondent would have been assured of five years' experience was through production of at least five practicing certificates for different practice years. That this is because the 1st Respondent did not have the benefit of accessing the Roll of Advocates to verify whether or not an advocate is in the roll.
25. The Respondents contended that the years of experience is determined by the number of practicing certificates taken out by an advocate. That in the Applicant's case, he supplied three practicing certificates which meant that he had three years of work experience thus unqualified for recruitment in the position of County Solicitor. By way of explanation, the Respondents submitted that the Applicant was not a qualified advocate for the years 2018, 2019, 2020 and 2023 as he did not take out



practicing certificates yet as a substantive litigation counsel, he was required to have a valid practicing certificate every year.

26. It is the submission of the Respondents that the position of a County Solicitor is a serious position which should not be compromised on any ground. That under section 17(3) of the County Attorney Act, the County Solicitor is the principal assistant to the County Attorney in the execution of the functions of the County Attorney. It is submitted that in the absence of the County Attorney, the County Solicitor would have to execute the functions of the County Attorney, which functions are critical for the county government and require the relevant experience which the Applicant does not possess as evidenced by the absence of at least five practicing certificates.
27. The Respondents submitted that they were therefore properly guided in law in not shortlisting the Applicant for the position of County Solicitor
28. On the second issue, the Respondents submitted that the claim of legitimate expectation by the Applicant by virtue of the fact that he had been appointed earlier in an acting capacity does not hold water as the said appointment was not done by the 1st Respondent. In this regard, the Respondents submit that upon learning that the Applicant was unqualified for the position, the 1st Respondent recommended the revocation of the Applicant's appointment for the reason that he lacked the necessary qualifications to hold the office as required by the relevant provisions of the law.
29. While placing reliance on the cases of Communications Commissions of Kenya & 5 others v Royal Medial Services & 5 others SC Petitions No. 14, 14a, 14b & 14c (Consolidated)(2014) KESC 53 (KLR) and Republic v Principal Secretary, Ministry of Transport Housing and Urban Development Ex parte Soweto Residents Forum CBO (2019) KEHC 10312 (KLR), the Respondents asserted that the Applicant is estopped from claiming legitimate expectation on the ground that he did not have the necessary qualifications to be appointed as a County Solicitor.
30. The Respondents further contend that the Applicant did not possess the right qualifications for the position whether in acting capacity or otherwise from the onset and therefore cannot claim legitimate expectation. It was submitted that the Applicant's claim for legitimate expectation is unfounded, unlawful and unmerited and the court was urged to hold as such.
31. On the issue whether the Applicant is entitled to the prayers sought, the Respondents submitted that it is trite law that mandamus is issued to remedy defects of justice where an injustice has been committed. According to the Respondents, failure to list the name of the Applicant among the shortlisted candidates for not meeting the minimum requirements did not amount to an injustice against the Applicant.
32. It is the submission of the Respondents that an order of mandamus cannot issue when a body has not committed any injustice by not listing an unqualified person for an advertised position.
33. Lastly, as to the issue of costs, the Respondents urged the court to dismiss the Judicial Review application dated 3rd February 2025 with costs on the basis that the Applicant was not qualified to be shortlisted for interview for the position of County Solicitor as he did not meet the minimum threshold.

Determination

34. Upon careful consideration of the facts as presented by the respective parties herein together with the rival submissions, the issue that falls for determination is whether the Applicant merits the grant of the judicial review orders sought.



35. In judicial review proceedings the court is not concerned with the merits of the case but with the decision-making process.

36. The Supreme Court Practice 1997 vol 53/1-14/6 states:

“The remedy of judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute by law the decision in the matter in question.”

37. In the case of Republic v National Land Commission and another; Ex parte Farmers Choice Limited [2020] eKLR, the Court explained the concept of judicial review, whilst relying on the case of Municipal Council of Mombasa v Republic Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007 (2002) eKLR, as follows: -

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review.”

38. Section 17 of the Office of the County Attorney Act provides as follows: -

1. There shall be a County Solicitor who shall be competitively recruited and appointed by the county public service board.
2. A person is qualified for appointment to the office of County Solicitor if the person—
 - a. has at least five years' experience as an Advocate of the High Court of Kenya; and
 - b. meets the requirements of Chapter Six of *the Constitution*.
3. The County Solicitor shall be the principal assistant of the County Attorney in the execution of the functions of the County Attorney under this Act and any other written law.

39. The bone of contention as can be deduced from the rival parties' affidavits is with regard to section 17(2)(a) above. It is not contested that the Applicant is an advocate of the High Court. The dispute is whether the Applicant has at least five years' experience as an advocate.

40. Section 2 of the *Advocates Act* defines an advocate as a person “whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank of Senior Counsel and, for the purposes of Part IX, includes any person mentioned in section 10”.

41. Further, section 10 of the *Advocates Act* provides as follows: -

10. Certain officers entitled to act as advocates



Each of the following persons shall, if he holds one of the qualifications specified in paragraphs (a), (b) and (c) of section 13(1) at the time of his appointment to his office, be entitled in connection with the duties of his office to act as an advocate, and shall not to that extent be deemed to be an unqualified person, that is to say—

- a. An officer in the office of the Attorney-General or the office of the Director of Public Prosecutions;
- b. The Principal Registrar of Titles and any Registrar of Titles; or
- c. Any person holding office in a Local Government Act, (Cap. 265)
- d. Such other person, being a public officer or an officer in a public corporation, as the Attorney-General may, by notice in the Gazette, specify:
- e. Provided that the officers referred to in this section shall not be entitled to charge fees for so acting.

42. By virtue of section 10(c) above, the Applicant who was an employee of the 2nd Respondent as a Principal Legal Counsel was therefore exempted by the [Advocates Act](#) from the requirement of taking out a practicing certificate during his employment with the 2nd Respondent.
43. Section 17(2)(a) of the Office of the County Attorney Act provides that for a person to qualify for appointment to the office of County Solicitor, the person should have at least five years' experience as an Advocate of the High Court of Kenya. My understanding of the provision is that for an advocate to qualify for appointment as a County Solicitor, the advocate must have worked for five years' after qualifying, that is, after admission as an advocate.
44. Experience as an advocate does not necessarily mean that one must have a practicing certificate. As recognized by the [Advocates Act](#), an advocate working in a public office and who does not charge fees does not require a practicing certificate. The court further notes that section 17(2)(a) of the Office of the County Attorney Act does not make any reference to practicing certificates but to experience as an Advocate of the High Court of Kenya.
45. The Concise Oxford English Dictionary Twelfth Edition defines experience as practical contact with and observation of facts or events; knowledge or skill gained over time; an event or activity which leaves a lasting impression.
46. The above definition, read together with section 2 and 10 of the [Advocates Act](#) and section 17(2)(a) of the Office of the County Attorney Act do not disqualify the Applicant from holding the position of County Solicitor.
47. I therefore do not agree with the Respondents that the Applicant was not qualified to be shortlisted for interview to fill the position of County Solicitor for lack of the requisite practicing certificates to prove experience through practice of law. Both the definitions in section 2 and 10 of the [Advocates Act](#) and section 17(2)(a) of the Office of the County Attorney Act do not refer to holding of practicing certificates but rather, to experience as an advocate.
48. Section 10 of the [Advocates Act](#) is clear that a public officer or any person holding office under the Local Government Act is deemed to be practicing as an advocate. The Local Government Act was repealed by section 135 of the County Government Act. The County Government Act therefore replaced the Local Government Act. A reference in the [Advocates Act](#) to the Local Government Act must be thus be



construed to refer to the County Government Act under the transitional and consequential provisions set out in the Sixth Schedule to *the Constitution*.

49. The Applicant has been in employment in the County Assembly of Turkana as Legal Counsel since 16th December, 2016 and in the Office of County Attorney since 1st April, 2020 as Principal Legal Counsel.

50. The Applicant is thus qualified for appointment as County Solicitor under Section 17(2)(a) of the Office of the County Attorney Act which provides: -

A person is qualified for appointment to the office of County Solicitor if the person has at least five years' experience as an Advocate of the High Court of Kenya.

51. In light of the foregoing, it is my finding that the Applicant's application dated 3rd February 2025 is merited. I therefore allow the same and hereby grant an order of mandamus to issue to compel the 1st Respondent to include the name of David Eyanae Esuron, the Applicant, among the shortlisted candidates for the position of Solicitor for the County Government of Turkana and to conduct an interview for him objectively and without bias.

52. The 1st Respondents shall pay the Applicants costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF APRIL 2025

MAUREEN ONYANGO

JUDGE

