



**Abuya v CS, Ministry of Agriculture & Livestock Development & 2 others;
Linyiru & 2 others (Interested Parties) (Employment and Labour Relations
Petition E058 of 2024) [2025] KEELRC 1182 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1182 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E058 OF 2024**

**HS WASILWA, J
APRIL 28, 2025**

BETWEEN

JARED ONSONGO ABUYA PETITIONER

AND

**CS, MINISTRY OF AGRICULTURE & LIVESTOCK DEVELOPMENT 1ST
RESPONDENT**

THE HON ATTORNEY GENERAL 2ND RESPONDENT

THE AGRICULTURE & FOOD AUTHORITY 3RD RESPONDENT

AND

CPA DR BRUNO MUGAMBI LINYIRU INTERESTED PARTY

**THE ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED
PARTY**

THE LAW SOCIETY OF KENYA INTERESTED PARTY

JUDGMENT

1. By a Petition dated 23rd April, 2024, the petitioner sought for the following reliefs; -
 - a. A declaration that for the reason of the pending prosecution of the 1st Interested Party for economic crimes in Nairobi Milimani Anti- Corruption Court 1 in ACC No.20 of 2015, the 1st Respondent does not meet the requirement for Chapter 6 of *the Constitution* of Kenya under leadership and integrity and is incapable of recruitment, employment or appointment to a public office, unless and until he is acquitted in the said court.



- b. A declaration that the decision to consider for recruitment and appointment , and or of recruitment and appointment of the 1st Interested Party As Director General Of The Agriculture and Food Authority under Section 10(1) and (2) of the *Agriculture And Food Authority Act* (Chapter 317 Of The Kenya Laws), during the pendency of the 1st Interested Party’s prosecution for economic crimes, is unconstitutional and illegal, and egregiously contravenes Articles 10(1) (c) and (2) (c) , Article 73(1) (a)(i) and (iv), and (2)(a) and(b) of *the Constitution* , and further violates provisions of Section 3(1) and (2)(a) and (c) ,7(1) and (2), 8,10(a) and (b) and 11(a) of the *Leadership and Integrity Act* (Chapter 185c) of the Laws of Kenya.
- c. An Order of Certiorari to bring any decision of the 1st and 3rd Respondents to recruit and appoint the 1st Interested Party as the Director General of the Agriculture and Food Authority (3rd Respondent), 2020 and to quash any such decision.
- d. An Order of Permanent Injunction restraining the 1st and 3rd Respondents, whether by themselves , agents, nominees or any other person whosoever acting on their behalf and instructions from recruiting , appointing , publication in the Kenya Gazette , or from howsoever installing the 1st Interested Party as Director General of the Agriculture and Food Authority (the 3rd Respondent , unless and until he is acquitted in Nairobi Milimani Anti-corruption Court 1 in ACC NO. 20 of 2015 , or any other pending criminal prosecution.
- e. Any other appropriate relief that the honorable court shall in the circumstances of the case deem fit to grant.
- f. An order of costs on indemnity basis.

Petitioner’s Case

2. Petitioner avers that section 10(1) of the *Agriculture and Food Authority Act*, Chapter 317 of the Laws of Kenya provides that the 3rd Respondent shall recruit the Director General of the Agriculture and Food Authority. Hence on 19th December 2023, the 3rd Respondent advertised the recruitment of the Director General and part of the mandatory requirement was that the candidates comply with Chapter 6 of *the Constitution* on Leadership and Integrity.
3. The Petitioner avers that the 3rd Respondent vide a letter dated 7th February 2024 sought background checks from the 2nd Interested Party on whether the final 3 candidates including the 1st Interested Party met the requirement of integrity.
4. In its response, the 2nd Interested Party vide a letter dated 29th February 2024, confirmed that 2 of the candidates met the requirements, whereas the 3rd one, being the 1st Interested Party herein did not as he was charged before Nairobi Milimani Anti-Corruption Court 1 in ACC No 20 of 2025 with the offence of wilful failure to comply with the law relating to procurement contrary to section 45(2)(b) read with section 48 of the *Anti-Corruption and Economic Crimes Act*, 2003 and that the matter is still pending in court.
5. The Petitioner avers that the matter is in public domain and that the 1st Interested Party filed a petition to challenge his prosecution in the said case which ended in the Supreme Court Petition No. 39 of 2019, consolidated with Petition No. 40 of 2019 Bruno Mugambi Linyuri & Others vs DPP & Others. This suit was dismissed vide a ruling of 27th January 2023 which ordered the cases against the 1st Interested Party to proceed on priority basis.



6. It is the Petitioner's case that a person facing prosecution for economic crimes, until and unless he/she is acquitted, such person does not meet the requirement of integrity as intended by Chapter 6 of *the Constitution* and the Leadership & Integrity Act. However, despite the 1st Interested Party clear handicap, the Respondents still regarded him as a suitable candidate for the position.
7. The Petitioner avers that the petition is brought under public interest to protect the provisions of Article 3 and 258 of *the Constitution* and enabling provisions of the *Leadership and Integrity Act*.
8. It is the Petitioner's case that the insistence of the Respondents, who are public officers, to consider the recruitment and appointment of the 1st Interested Party despite the fact he is facing prosecution for economic crimes, is a violation of Article 10(1) (c) and 2(c) of *the Constitution* on national values of good governance and integrity.
9. Further, the Respondents insistence is contrary to Article 73 of *the Constitution* as it does not promote confidence in the integrity of the office; the selection is not based on personal integrity and it is not objective or impartial. It is the Petitioner's case that there is no doubt that the same is influenced by other improper motives or corrupt practices.
10. It is the Petitioner's case that the 3rd Respondent is an agency of the government in charge of the main agricultural cash crop earners for Kenya; a critical position of interest to all Kenyans, therefore, an appointment of its Director General has to be by candidates that have competence and integrity.

Respondents' Case

11. In opposition to the Petition, the Respondents filed a Replying Affidavit dated 13th May 2024 sworn by Jairus Ombui, a Board Director at the Agriculture & Food Authority and the Chairperson of the Human Resources & Administration Committee.
12. The Respondents aver that at its 9th Special Meeting held on 30th November 2023, the 3rd Respondent's Board resolved and approved the recruitment of a substantive Director General and on its direction, the position was advertised on 4th December 2023 in the dailies running until 22nd December 2023.
13. Consequently, the 3rd Respondent was served with a demand letter from Bond Advocated Llp on 11th December 2023 that requirement set in the advertisement were not in conformity with the AFA Act and were beyond the qualification set out in the Mwongozo Code of Governance and requested the Authority to clarify and administratively correct the anomaly within 7 days.
14. The Petitioner avers that a suit was subsequently filed at the Employment and Labour Relations Court by Gabriel Owino against the Public Service Commission, Cabinet Secretary, Ministry of Agriculture and Livestock Development and the Chairperson of AFA alleging the recruitment process was discriminatory since it limited applications facing discipline contrary to the law. The parties explored an out of court settlement and in accordance with consent by the parties, the Authority re-advertised the position on 19th December 2023.
15. The Respondents aver that it received 76 application which upon review, 20 applicants were shortlisted for the interview. Upon completion of the recruitment exercise in the 3rd Respondent's 14th full Board Meeting held on 7th February 2024, the Board resolved to forward the names of the top 3 candidates for consideration and appointment to Cabinet Secretary, Ministry of Agriculture and Livestock Development in line with section 10(1) of the *Agriculture and Food Authority Act*.
16. The Respondents aver that the 1st Respondent vide a letter dated 13th February 2024 Ref; MOALF/CS/SC/42 communicated to the Chief of Staff and Head of Public Service his intention to appoint



the 1st Interested Party as the 3rd Respondent's Director General. He further responded to the 3rd Respondent vide a letter dated 28th March 2024 Ref; MOA/A.11/10/2/VOL.1 communicating his decision to appoint the 1st Interested Party and directed the Board to prepare the appointment letter and contract.

17. In compliance with the direction, the 3rd Respondent issued the 1st Interested Party with a contract of employment dated 15th April 2024; and the 1st Interested Party reported for duty on 17th April 2024 and was issued with a driver and an office vehicle.
18. It is the Respondents case that it complied with the relevant laws and procedures in the recruitment and appointment of the Director General; and the Petitioner has not made a case to warrant the orders sought and the petition should be dismissed.

2nd Interested Party's Case

19. In support of the Petition, the 2nd Interested Party filed a replying affidavit sworn by its Investigator Mohamud Hassan dated 3rd May 2024.
20. The 2nd Interested Party avers that pursuant to its statutory mandate and functions, it investigated a complaint of failure to comply with procurement laws by the Geothermal Development Company (GDC) Tender Committee in the procurement Rig Move services through tender number GDC/HQS/OT/086/2011-2012 between July and August 2012 vide Investigation file ref EACC/FI/INQ/23/2015. The 1st Interested Party herein was member of the Tender Committee that handled both tenders.
21. The complaint arose from GDC's procurement of Rig Move services from Bonfide Clearing and Forwarding Limited for Menengai Geothermal project in 2011/2012 financial year at a cost of 42,746,000 per Rig Move. The investigations established that GDC had entered into a similar contract for similar service with Bonfide Clearing and Forwarding Limited for Menengai Geothermal project in the 2010/2011 financial year at a cost of 19,55,000 per Rig Move through tender number GDC/HQS/OT/038/2010-2011. It was further established that KENGEN obtained similar service from the same supplier in the financial year 2013/2014 at Olkaria and Eburu Geothermal fields at a cost of Kshs 20,253,660 per rig move double the costs incurred by GDC for the same in the previous financial year.
22. The 2nd Interested Party avers that the 1st Interested Party herein was a member of the Tender Committee that handled both tenders.
23. On conclusion of its investigation, the 2nd Interested Party submitted its report to the Director of Public Prosecution who evaluated the report and decided to charge the 1st Interested Party who was arraigned in Milimani Magistrate Court, Anti-Corruption Case Number 20 of 2015 on charges of wilful failure to comply with the law relating to procurement contrary to section 45(2)(b) read with section 48 of the *Anti-Corruption and Economic Crimes Act, 2003*
24. The 2nd Interested Party avers that the 1st Interested Party moved the High Court to quash its decision to recommend to the DPP to be charged and an order prohibiting DPP from prosecuting the matter. The matter culminated to the Supreme Court which dismissed the appeal on 27th January 2023 in Saisi & 7 others v Director of Public Prosecutions & 2 others (Petition 39 & 40 of 2019 (Consolidated)) [2023] KESC 6 (KLR) which dismissed the appeal and ordered that Anti-Corruption Case No 20 of 2015 before the Chief Magistrates' Court in Milimani proceed and be heard on priority basis.
25. The 2nd Interested Party avers that it received a letter dated 27th February 2024 from the 3rd Respondent's Chairperson relating to the background check of the candidates recommended for its



Director General position; in response, the Commission informed the Chairperson of AFA that the 1st Interested Party was charged in Milimani Magistrate Court, Anti-Corruption Case Number 20 of 2015.

26. It is the 2nd Interested Party's case that the 1st Interested Party being already charged in Court, he is not suitable for appointment to public office as per Article 10, Chapter 6 of *the Constitution* and section 62(1) of the *Anti-Corruption and Economic Crimes Act*.

1st Interested Party's Case

27. The 1st Interested Party in opposition to the 2nd Interested Party's replying affidavit filed a replying affidavit dated 8th May 2024.
28. The 1st Interested Party avers that the 2nd Interested Party's action of concealing information and providing misleading information in respect to Milimani Magistrate Court, Anti-Corruption Case Number 20 of 2015 amounts to harassment and intimidation. He contends that at no point to his prior appointments had the 2nd Interested Party informed him that he is subject to investigations on his non-compliance with the code of conduct in Chapter 6 and that he has been submitting his self-declaration forms to the Commission in compliance to Section 12A of the Leaderships and Integrity Act.
29. In respect to the complaint concerning failure to comply with procurement law by GDC, the 1st Interested Party avers that this Court is not a trial court in respect to economic crimes and the issues therein were placed before Milimani Magistrate Court, Anti-Corruption Case Number 20 of 2015.
30. It is the 1st Interested Party's case that the 2nd Interested Party is ill-advised by asserting that he is not suitable for public office appointment by virtue of being charged in court; the only bar to a person seeking appointment in public office is conviction of a crime.

Petitioner's Submissions

31. The Petitioner submitted on four issues: (i) the locus standi of the Petitioner to institute the Petition; (ii) the jurisdiction of Court to hear the Petition; (iii) whether the 1st Interested Party satisfies threshold of integrity under Chapter Six of *the Constitution*, for appointment in light of the pending prosecution for economic crimes; and (iv) the violation of Article 10 and Article 73 by 1st and 3rd Respondents in recruitment and appointment of 1st Interested Party, in light of pendency of prosecution for economic crimes.
32. On the first issue, the Petitioner submitted that that there is no bar to who can institute court proceedings founded on a claim that *the Constitution* has been contravened or is threatened with contravention. As long as this Honourable Court is vested with jurisdiction, then the Petitioner is rightly endowed with locus standi.
33. On the second issue, the Petitioner relied on Articles 3 and 258 of *the Constitution*; the case of Okiya Omtatah Okoiti v Joseph Kinyua, Public Service Commission & Attorney General [2018] eKLR, and the Supreme Court decision in Samuel Kamau Macharia v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR. Against this background, the Petitioner submitted that that public interest litigation is justified and that jurisdiction flows from *the Constitution*. The appointment of the Director General, a position regulating critical agricultural sectors under the *Crops Act* (Chapter 318, Laws of Kenya), was a matter of national interest. The Petitioner maintained that the recruitment process must comply with constitutional principles and fell within the jurisdiction of this Honourable Court.
34. The Petitioner submitted that this Court has jurisdiction under Section 12(1) of the *Employment and Labour Relations Court Act* and Article 162(2) of *the Constitution* to determine constitutional issues



- arising from employment disputes. He relied on *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 Others (Civil Appeal 656 of 2022)* [2023] eKLR, where the Court of Appeal affirmed that jurisdiction exists where a court is properly constituted, the subject matter falls within its mandate, and due process is followed.
35. The Petitioner argued that the recruitment and appointment of the 1st Interested Party by the 3rd Respondent falls under Section 12(1)(a) of the *Employment and Labour Relations Court Act* and violates Articles 10 and 73 of *the Constitution* and the *Leadership and Integrity Act* (Chapter 185C, Laws of Kenya).
36. He cited *KKB v SCM & 5 Others (Constitutional Petition 014 of 2020)* [2022], which defined a constitutional question as one requiring the interpretation of *the Constitution* rather than a statute. In *Okoiti & 3 Others v Anne Waiguru, the Cabinet Secretary, Devolution and Planning & 5 Others (Petition 42 & 27 of 2014 (Consolidated))* [2021] and *Okiya Omtatah Okoiti v Joseph Kinyua, Public Service Commission & Attorney General* [2018] eKLR, the courts upheld the right of the public to file constitutional petitions challenging appointments that contravene leadership and integrity principles.
37. On the third and fourth issue, the Petitioner submitted that the 1st Interested Party, facing prosecution in Nairobi Milimani Anti-Corruption Court 1, ACC No. 20 of 2015, does not meet the integrity threshold under Chapter Six of *the Constitution*. In Supreme Court Petition No. 39 & 40 of 2019, the Supreme Court upheld his prosecution and ordered the trial to proceed on a priority basis, superseding an earlier discharge order of 18th October 2017. The Petitioner argued that the 1st Interested Party's appointment violates Articles 10 and 73, which mandate integrity, transparency, and accountability in public service. Sections 3, 7, 8, and 10 of the *Leadership and Integrity Act* reinforce these requirements, obligating public officers to uphold constitutional values. The Petitioner urged the Court to find that the appointment of the 1st Interested Party violates constitutional and statutory provisions and is, therefore, null and void.
38. The Petitioner submitted that a person facing prosecution for economic crimes does not meet Chapter Six's integrity threshold until acquitted. The 1st Interested Party remains subject to prosecution in Nairobi Milimani Anti-Corruption Court 1, ACC No. 20 of 2015, yet the 1st and 3rd Respondents proceeded with his appointment. The Respondents decision contravened Article 73(1)(a)(i) by failing to uphold constitutional objectives, Article 73(1)(a)(iv) by undermining public confidence, Article 73(2)(a) by disregarding integrity, and Article 73(2)(b) by being influenced by improper motives. He relied on the Matter of Peter Makau Musyoka and Award of Mining Concessionary Rights to the Mui Coal Basin Deposits (Petition No. 305 of 2012) [2015] eKLR which affirmed the justiciability of Article 10.
39. The Petitioner maintained that the issue was not just the 1st Interested Party's integrity but the constitutionality of the 1st and 3rd Respondents' decision to appoint him despite ongoing prosecution. This violated Article 10, Chapter Six, and the *Leadership and Integrity Act*. Under Article 159(2)(e), this Court must enforce constitutional principles. The Petitioner distinguished the case from *Benson Riitho Mureithi v J.W. Wakhungu & 2 Others* [2014] eKLR, arguing that this Petition challenges an already made appointment. In *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 Others (Civil Appeal 656 of 2022)* [2023] eKLR, the Court of Appeal held that case precedents must be contextually relevant.
40. The Petitioner submitted that the appointment of the 1st Interested Party, despite his ongoing prosecution, violated Articles 10 and 73 of *the Constitution*, which mandate integrity, transparency, and public trust. The *Leadership and Integrity Act* operationalizes these principles, and the 1st and 3rd



Respondents' decision contravened them. The Petitioner urged the Court to declare the appointment unconstitutional and grant the reliefs sought.

41. The Petitioner submitted that the doctrine of *functus officio*, as affirmed in *Asanyo & 3 Others v Attorney-General*, ensures finality in judicial decisions. The Supreme Court in *Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR upheld that a decision is final unless appealed. The Petitioner argued that ACC No. 20 of 2015 against the 1st Interested Party had not been concluded, as Section 87(a) of the [Criminal Procedure Code](#) states that a discharge does not bar future proceedings. In *Richard Mbaabu Ithalie v Republic* [2017] eKLR, the Court of Appeal confirmed that such a discharge is not an acquittal. The Supreme Court in *Petition No. 39 of 2019* directed the prosecution of the 1st Interested Party to proceed, making his pending case a constitutional concern.
42. The Petitioner emphasized that integrity is a constitutional requirement for public office under Articles 10 and 73 of [the Constitution](#). The 1st Interested Party's submissions of 16th May 2024 indicated that the Director of Public Prosecutions sought a fresh discharge in ACC No. 20 of 2015, but the application was dismissed by Magistrate Thomas T. Nzyoki on 22nd May 2024, reaffirming the validity of the Supreme Court order. The Petitioner argued that this decision confirmed the ongoing nature of the prosecution, rendering the 1st Interested Party ineligible for appointment.
43. Under Section 12(3) of the Employment and Labour Relations Court Act, the Court has broad remedial powers. In *Nancy Makokha Baraza v Judicial Service Commission & 9 Others* [2012] eKLR, the Court held that constitutional courts have discretion to grant necessary reliefs. The Petitioner submitted that the Respondents acted in bad faith by disregarding legal standards, warranting an award of costs, citing [Kenya Revenue Authority v Export Trading Company Limited \(Petition 20 of 2020\)](#) [2022], which held that regulatory bodies should not bear costs unless acting unreasonably. The Petitioner reiterated the prayers in the Petition and urged the Court to declare the appointment unconstitutional, grant the reliefs sought, and award costs in the Petitioner's favour.

Respondent's Submissions

44. The Respondent submitted on three issues: whether the 1st and 3rd Respondents acted within their constitutional and statutory powers to appoint the Interested Party as the Director General of the 3rd Respondent; whether this Honourable Court has jurisdiction to entertain the suit and issues the orders sought; whether the Petitioner is entitled to the prayers sought.
45. The Respondents submitted that the 1st Respondent had the legal mandate to appoint the Director General in conjunction with the Board and relied on Section 51(1) of the [Interpretation and General Provisions Act](#), Cap 2, which grants the power to appoint, remove, or revoke appointments unless stated otherwise. They asserted that the appointment met Article 10(2)(c) standards of transparency.
46. Challenging jurisdiction, the Respondents cited *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, arguing that Article 162(2) and Section 12 of the [Employment and Labour Relations Court Act](#) limit the Employment and Labour Relations Court (ELRC) to employment disputes, excluding leadership and integrity matters. They relied on *Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others* [2012] eKLR and *In the Matter of Interim Independent Electoral Commission* [2011] eKLR, where courts held that jurisdiction stems from [the Constitution](#) or statute and cannot be inferred.
47. It is the Respondents' submission that the petition falls outside LRC's jurisdiction, as it did not involve an employer-employee dispute. The Respondents further argued that the Petitioner failed to prove any



violation of *the Constitution* or statutory provisions in the appointment process. They urged the court to dismiss the Petition for lack of merit and jurisdiction.

48. The 3rd Respondent in its submission, argued that recruitment processes, including advertisement, shortlisting, and interviews, do not constitute employment disputes under Section 12(1), citing *Nick Githinji Ndichu v Clerk Kiambu County Assembly & Another* [2014] eKLR and *In Touch Sports Ltd v Kenya Rugby Union* [2020] eKLR.
49. It further submitted that the Petitioner lacked locus standi, as he was not an affected employee, citing *Kenya Council of Employment and Migration Agencies v Samuel Mwangera Arachi & 2 Others* [2015] eKLR and *Joy Brenda Masinde v Law Society of Kenya & Another* [2015] eKLR, where courts held that jurisdiction cannot be founded on speculative claims.
50. The 3rd Respondent maintained that the Petition raised constitutional rather than employment issues, which fall under Article 165(3) of *the Constitution*, as held in *Wambua Maithya v Pharmacy and Poisons Board; Pharmaceutical Society of Kenya & Another* eKLR. It urged the Court to decline jurisdiction and dismiss the Petition.
51. The 3rd Respondent, in further argued that the Employment and Labour Relations Court (ELRC) lacks jurisdiction over constitutional claims unrelated to Article 41 of *the Constitution*. Citing *Kenya Universities Staff Union v University Council of Masinde Muliro University of Science and Technology & 2 Others* [2018] eKLR and *Sollo Nzuki v Salaries and Remuneration Commission & 2 Others* [2019] eKLR, it asserted that the ELRC's mandate is confined to employment matters under Article 162(2) and Section 12 of the *Employment and Labour Relations Court Act*.
52. The 3rd Respondent submitted that the Petitioner failed to meet the evidentiary burden under Sections 107 and 108 of the *Evidence Act*, as no employee of the 3rd Respondent supported the Petition. It further submitted that under Article 50(2)(a), a person is presumed innocent until proven guilty and that mere prosecution does not disqualify one from office. It cited Article 157(6), arguing that only the Director of Public Prosecutions has prosecutorial powers, and the Ethics and Anti-Corruption Commission's findings did not automatically bar the 1st Interested Party from appointment.
53. The 3rd Respondent submitted that no criminal conviction existed against the 1st Interested Party to justify disqualification under Chapter Six of *the Constitution*.

1st Interested Party Submissions

54. The 1st Interested Party submitted that his appointment as Director General of the 3rd Respondent was lawful under Section 10(1) and (2) of the *Agriculture and Food Authority Act* No. 13 of 2013.
55. On jurisdiction, the 1st Interested Party relied on *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, arguing that the Employment and Labour Relations Court lacks jurisdiction as the dispute does not fall under Section 12(1) of the *Employment and Labour Relations Court Act*, 2011, since no employer-employee relationship existed when the Petition was filed. He further contended that integrity concerns fall under the mandate of the Ethics and Anti-Corruption Commission (EACC) as per Section 4(3) and (5) of the *Leadership and Integrity Act*, which allows the EACC to enforce Chapter Six of *the Constitution* and apply to the High Court where compliance is lacking.
56. Citing *Benson Riitho Mureithi v J.W. Wakhungu & 2 others* [2014] eKLR and *International Centre for Policy and Conflict & 5 others v Attorney General & 5 others* [2013] eKLR, the 1st Interested Party submitted that integrity challenges must follow the process under Section 42 of the *Leadership*



- and Integrity Act*, which provides for lodging complaints with public entities before seeking judicial intervention. He maintained that the Petition was incompetent for failing to follow this procedure and should be dismissed for lack of standing.
57. The 1st Interested Party submitted that where statutory mechanisms exist, they must be exhausted before seeking judicial intervention. He relied on *Michael Wachira Nderitu & Others v Mary Wambui Munene & Others* [2013] eKLR, *International Centre for Policy and Conflict & 5 Others v Attorney General & 5 Others* [2013] eKLR, and *Re Francis Gitau Parsimei & Others v National Alliance Party & Others* (Petition No. 356 of 2012), which held that where *the Constitution* or statute prescribes a dispute resolution mechanism, it must be followed.
58. He argued that the Ethics and Anti-Corruption Commission (EACC), established under Article 79 of *the Constitution*, is mandated to enforce Chapter Six and should have been the first body to handle any integrity concerns under the *Leadership and Integrity Act*, 2012. Since the Petitioner failed to file a complaint with the 3rd Respondent or the EACC under Section 4(3) and (5) of the Act, the Petition was premature.
59. The 1st Interested Party submitted that the Petition was overtaken by events, as he had already assumed office on 17th April 2024 following his appointment on 28th March 2024 and issuance of a contract on 15th April 2024. The Petitioner misled the court by failing to disclose this and falsely claiming that the recruitment process was ongoing. He also misrepresented that he had an ongoing case in Milimani Magistrates Court ACC No. 20 of 2015, despite being discharged on 18th October 2017. He cited *Nixon Murathi Kiratu v DCI & 2 Others*; *Mercy Nyakio Mburu & Another (Interested Parties)* [2019] eKLR, *Uhuru Highway Development Ltd v Central Bank of Kenya & Others* [1995] eKLR, and *Sidhu & Another v Memory Corporation PLC* No. CHAN/1999/0636/AJ, which emphasized that material non-disclosure justifies setting aside court orders.
60. The 1st Interested Party contended that his appointment was lawful and that he had no pending case. While he was charged in Milimani Magistrates Court ACC No. 20 of 2015, his discharge under Section 87 of the *Criminal Procedure Code* effectively terminated the prosecution, as affirmed in *Patel Rameshbhai Gordhanbhai v Stanley Ajonga Kivasa & Another; AG (Interested Party)* [2020] eKLR, *Paramount Bank Ltd v Vaqui Syed Qamara & Another* [2017] eKLR, and *Egbema v West Nile Administration* (1972) EA 60, where courts held that prolonged inaction after a discharge is equivalent to acquittal. He maintained that the Petition lacked merit, was moot, and should be dismissed.
61. The 1st Interested Party submitted that the charge sheet relied upon by the 2nd Interested Party was from 2015, and no charges had been preferred against him post-2017 after his discharge by Hon. Lawrence N. Mugambi on 18th October 2017. He relied on *Patel Rameshbhai Gordhanbhai v Stanley Ajonga Kivasa & Another; AG (Interested Party)* [2020] eKLR, asserting that more than six years had passed without fresh charges, amounting to an acquittal. His interdiction was lifted by the Head of Public Service on 4th April 2018, in line with Section 62(2) of the *Anti-Corruption and Economic Crimes Act*, which provides that a public officer ceases to be suspended if proceedings are discontinued or he is acquitted.
62. He argued that the Chief Magistrate in Milimani Magistrates Court ACC No. 20 of 2015 did not summon him following the Supreme Court's directive, confirming he was no longer a party to the proceedings. He contended that the Employment and Labour Relations Court lacked appellate jurisdiction over economic crimes and could not pronounce itself on the matter. He relied on *International Centre for Policy and Conflict & 5 Others v AG & 5 Others* [2013] eKLR and *State v Coetzee* [1997] 2 LRC 593, emphasizing that Article 50(2)(a) of *the Constitution* guarantees the presumption of innocence and that Article 25(c) classifies the right to a fair trial as an absolute right.



63. The 1st Interested Party submitted that the Petition unlawfully sought to limit his rights Article 43 of *the Constitution* without a conviction disqualifying him under Article 73. He contended that his appointment was lawful, as no court had declared him unfit for office. He argued that the reliefs sought fell outside the jurisdiction of the Employment and Labour Relations Court, citing International Centre for Policy and Conflict (Supra), where the court dismissed a petition for lack of merit.
64. The 1st Interested Party further submitted that the Petition misrepresented his recruitment and appointment and that Section 27 of the *Civil Procedure Act* and Section 29 of the Employment and Labour Relations Court (Procedure) Rules provide that costs follow the event. He urged the court to dismiss the Petition and award him costs, as in International Centre for Policy and Conflict (Supra), where costs were granted despite the public interest nature of the case.
65. The 1st Interested Party submitted that there are no criminal charges pending against him in ACC No. 20 of 2015. He relied on a letter dated 27th May 2024 from the 2nd Interested Party, signed by then Deputy CEO Abdi A. Mohamud, stating that as of that date, he had not been formally charged and that a further direction would be provided after 25th June 2024, which had not occurred. He also referenced affidavits sworn by Nicholas Karume Weke, Peter Ayodo Omenda, and Caleb Indiatsi, annexed to his Replying Affidavit dated 7th October 2024.
66. He supported the ruling in *Abuya v CS Ministry of Agriculture, Livestock, Fisheries & Co-operatives & 2 others; Linyiru & another (Interested Parties) (Petition E058 of 2021) [2024] KEELRC 13253 (KLR) (27 November 2024) (Ruling)*, where the court noted that despite an order on 9th July requiring the 2nd Interested Party to submit a report on whether he had been charged, no such report was provided, and no charge sheet was produced. The court ruled that the interim orders were unsustainable.
67. The 1st Interested Party submitted that no evidence had been adduced to prove a pending case against him, asserting that his discharge amounted to an acquittal. He argued that under Article 157 of *the Constitution*, only the Director of Public Prosecutions can institute criminal proceedings, and no charge sheet had been produced against him. He prayed for the dismissal of the Petition dated 23rd April 2024 with costs.

2nd Interested Party's Submissions

68. The 2nd Interested Party submitted that the Employment and Labour Relations Court had jurisdiction under Article 162(2) of *the Constitution* and Section 12(1) of the *Employment and Labour Relations Court Act*. Citing *Kenya Tea Growers Association & 2 others v National Social Security Fund Board of Trustees & 13 others (Petition E004 & E002 of 2023 (Consolidated)) [2024] KESC 3 (KLR)*, the Supreme Court held that jurisdiction is based on whether a dispute arises from an employer-employee relationship. Since the Petition challenged a recruitment process creating such a relationship, the court had jurisdiction.
69. The 2nd Interested Party submitted that the 1st Interested Party did not meet Chapter Six of *the Constitution*'s integrity threshold. He was charged in Milimani Anti-Corruption Case No. 20 of 2015 with procurement-related corruption under Section 45(2)(b) as read with Section 48 of the *Anti-Corruption and Economic Crimes Act*, 2003 and Section 38(1)(b) as read with Section 38(2)(a) of the Public Procurement and Disposal Act. Although the High Court initially granted orders prohibiting prosecution, the Court of Appeal in Civil Appeal No. 184 of 2016 & Civil Appeal No. 2 of 2017 overturned the decision, and the Supreme Court in *Saisi & 7 others v DPP & 2 others (Petition 39 &*



- 40 of 2019 (Consolidated)) [2023] KESC 6 (KLR) dismissed the appeal, directing the case to proceed on a priority basis.
70. In its submissions, the 2nd Interested Party emphasized that under Section 62(1) of the *Anti-Corruption and Economic Crimes Act*, a public officer charged with corruption must be suspended until the case concludes. Appointing the 1st Interested Party violated Article 10, Article 73, and Section 62(1) of the Act. The EACC's letter dated 29th February 2024 confirmed the charges, showing unresolved integrity issues. In *Benson Riitho Mureithi v J. W. Wakhungu & 2 others* [2014] eKLR, Mumbi Ngugi J. defined lack of integrity as having unresolved issues, a principle upheld in *Trusted Society of Human Rights Alliance v Attorney General & Others*, Nairobi Petition No. 229 of 2012, and *International Centre for Policy and Conflict & 4 others v Hon. Uhuru Kenyatta & Others*, Petition No. 552 of 2012.
71. The 2nd Interested Party refuted the claim that the 1st Interested Party had been acquitted, noting that a discharge under Section 87(a) of the *Criminal Procedure Code* is not an acquittal and allows for re-prosecution. This was affirmed in *George Taitumu v Chief Magistrates Court, Kibera & 2 others* [2014] eKLR, where Majanja J. held that a discharge under Section 87(a) does not clear integrity concerns.
72. It is the 2nd Interested Party's submission that given the unresolved criminal charges, the the 1st Interested Party was unfit for public office under Chapter Six of *the Constitution*, and his appointment should be quashed.

3rd Interested Party Submissions

73. The 3rd Interested Party submitted that by the 1st Interested Party facing pending charges in ACC No. 20 of 2015, he did not meet the requirements under Chapter Six of *the Constitution* and was ineligible for appointment as Director General of the Agriculture and Food Authority (AFA).
74. The 3rd Interested Party submitted that the Petitioner had locus standi under Articles 3 and 258 of *the Constitution* to challenge unconstitutional conduct. Citing *Priscilla Nyokabi Kanyua v AG & Interim Independent Electoral Commission* [2010] eKLR, it asserted that public interest litigation ensures constitutional enforcement.
75. On jurisdiction, the 3rd Interested Party relied on *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others* (Civil Appeal 656 of 2022) [2023] KECE 80 KLR, where the Court of Appeal held that jurisdiction depends on court composition, subject matter, and procedural compliance. It submitted that under Article 162(2)(a) and Section 12(1) of the *Employment and Labour Relations Court Act*, ELRC has jurisdiction over employment matters, including recruitment disputes.
76. The 3rd Interested Party cited *Okoit v AG; Njenga* (Petition E101 of 2020) [2022] KEELRC 2 (KLR), which held that employment includes professional roles, and labour relations extend to governance and public service disputes. Further, in *Okoit & 3 others v Anne Waiguru, CS Devolution & Planning & 5 others* (Petition 42 & 27 of 2014) [2021] KEELRC 2306 (KLR), the ELRC affirmed jurisdiction over constitutional matters concerning public service appointments.
77. In view of the foregoing, the 3rd Interested Party submitted that the ELRC was the proper forum to determine whether the 1st Interested Party's appointment complied with Articles 10, 73, and the *Leadership and Integrity Act* (Cap 185C). It relied on *Patrick Musimba v National Land Commission*, which cited *Spiliada Maritime Corp v Consulex Ltd* [1987] AC 460, stating that the court with the closest connection to a dispute should assume jurisdiction. The ELRC, as the constitutional court for employment matters, had exclusive original jurisdiction over the Petition.



78. The 3rd Interested Party submitted that the Petition was not moot, as it sought to nullify the appointment despite the 1st Interested Party assuming office. Citing *Ole Pere v District Land Adjudication Officer* (Civil Appeal 79 of 2019) [2025] KECA 113 (KLR), it asserted that mootness does not apply where constitutional issues remain unresolved. The 1st Interested Party was charged under Section 45(2)(b) and 48 of the *Anti-Corruption and Economic Crimes Act*, 2003. His challenge to prosecution reached the Supreme Court in *Bruno Mugambi Linyiru v DPP* (Petition Nos. 39 & 40 of 2019), which dismissed his appeal and directed the trial to proceed.
79. The 3rd Interested Party in its submission emphasized that the 2nd Interested Party warned the 3rd Respondent against the appointment due to pending corruption charges, but this was ignored in violation of Articles 10 and 73 of *the Constitution*.
80. The 3rd Interested Party submitted that the 1st Interested Party's previous interdiction and ongoing prosecution disqualified him under Section 62(1) of the *Anti-Corruption and Economic Crimes Act*. Further, the presumption of innocence under Article 50 does not override constitutional integrity requirements, as affirmed in *Trusted Society of Human Rights Alliance v AG* [2012] eKLR.
81. I have examined all the averments and submissions of the parties herein. The issues for this courts determination are as follows:
1. Whether this court has jurisdiction to handle this matter.
 2. Whether the respondent's actions of appointing the 1st interested party as Director General of the 3rd respondent was confidential and was done within statutory provisions.
 3. What remedies to grant in the circumstances

Issue No 1 Jurisdiction of the ELRC

82. The respondents have argued that the issue before court is not an employer-employee issue and therefore the Employment and Labour Relations Court lacks jurisdiction to handle it.
83. The jurisdiction of the Employment and Labour Relations Court stems from *the Constitution* article 62(2) and the ELRC Act section 12 which provides that this Court has jurisdiction to handle various issues.
84. The Supreme Court of Kenya has however settled the issue of the Employment and Labour Relations Court in the *Kenya Tea Growers vs NSSF and Others* (KESC3) KLR. Where the court held that the jurisdiction ELRC is not limited to employer-employee matters but extends to matters that directly or indirectly affect an employee/employer.
85. Having stated as above, I do find that this Court has jurisdiction to handle this petition and proceed to determine it.

Issue No 2 Whether the Appointment of the 1st Interested Party Was In Line With *The Constitution* And Statutory Provisions.

86. The petitioner submitted that the 1st interested party lacks the requisite qualifications to be appointed as Director General of the 3rd Respondent while facing criminal prosecution in Nairobi Milimani Anti Corruption Court 1 ACC No 20 of 2015.



87. The petitioner argued that the fact that the 1st interested party is facing criminal prosecution is an indication of his failure to meet the requirements of chapter 10 of [the Constitution](#) which provides as follows:
- (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—
 - (a) applies or interprets this Constitution;
 - (b) enacts, applies or interprets any law; or
 - (c) makes or implements public policy decisions.
 - (2) The national values and principles of governance include
 - (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
 - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
 - (c) good governance, integrity, transparency and accountability; and
 - (d) sustainable development
88. The 3rd respondent on the other hand stated that vide article 50(2)(a) of [the Constitution](#) a person is presumed innocent until proven guilty and that mere prosecution does not disqualify one from office. They also argue that only the Director of Public Prosecution has prosecutorial powers and the Ethics and Anti-Corruption Commission’s findings did not automatically bar the 1st interested party from appointment.
89. The 1st interested party submitted that the petition is overtaken by events as he already assumed office on 17th April 2024. The 1st interested party also submitted that there is no ongoing criminal case against him as he was discharged on 18th October 2017 under section 87 of the [Criminal Procedure Code](#) which effectively terminated the prosecution against him. He also avers that his interdiction was lifted on 5/4/2018 by the head of public service in line with section 62(2) of the [Anti-Corruption and Economic Crimes Act](#) which provides that a public officer ceases to be suspended if proceedings are discontinued or he is acquitted.
90. The 1st interested party also relied on a letter dated 27th May 2024 from the 2nd interested party signed by the then deputy CEO Abdi A. Mohamud stating that at that date, he had not been formally charged and that a further direction would be provided after 25th June 2024 which has not occurred to date.
91. The 2nd interested party submitted that the 1st interested party lacked integrity as there were pending unresolved issues. He submitted that the 1st interested party was acquitted under section 87 (a) of [Criminal Procedure Code](#) and this allows for re- prosecution.
92. Having considered all these averments, I note that it is indeed true that the 1st interested party had indeed been charged in Acc No 20 of 2025. This was the position agreed upon by all the parties. It is however true that the 1st interested party was discharged of these charges in 2017 eight (8) years ago. No charges have since been preferred against him. As per the submissions of the 1st interested party the issue was to be revisited after 25th June 2024 still this was not done to date.



93. The 3rd interested party, the LSK, submitted that the previous interdiction and ongoing prosecution disqualified the 1st interested party from appointment under section 62 of the Anti Corruption and Economic Crimes Act. They cited *Trusted Society of Human Rights Alliance vs Mumo Matemo & Others* Supreme Court of Kenya 26 (KLR) which provided that article 50 of *the Constitution* does not override constitutional integrity requirement.
94. As indicated above there is no indication that the 1st interested party is still under investigation. It is also clear that the charges against him were withdrawn in 2017 and no fresh charges have been preferred against him. The question then is how long the life of the 1st interested party should come to a standstill as the Anti-Corruption Commission mules over prosecuting him. He was discharged in 2017 and since then no fresh charges have been preferred.
95. In my view, this is an indication that there are really no valid issues pending which should bar the 1st interested party from being appointed Director General of the 3rd respondent. In appointing the 1st interested party, I do not find any un constitutionalism or impropriety employed. The 3rd respondent did due diligence and even the 2nd interested party affirmed that there was no on going prosecution on going against the 1st interested party.
96. It is therefore my finding that the appointment of the 1st interested party was proper and there is no reason that would bar his appointment or continued service in the position of the Director General of the 3rd respondent.

Issue No 3 Remedies

97. Having found as above, I find that the petition herein lacks merit and the same is dismissed accordingly in its entirety. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH OF APRIL, 2025.

HELLEN WASILWA

JUDGE

