



Osman v Ministry of Interior and National Administration & 4 others (Employment and Labour Relations Petition E217 of 2024) [2025] KEELRC 1204 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1204 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E217 OF 2024**

**HS WASILWA, J
APRIL 29, 2025**

BETWEEN

ISMAIL ABDIKADIR OSMAN PETITIONER

AND

**MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 1ST
RESPONDENT**

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

THE OFFICE OF THE COUNTY COMMISSIONER, WAJIR . 3RD RESPONDENT

**THE OFFICE OF THE SUB-COUNTY COMMISSIONER,
WAJIR 4TH RESPONDENT**

IBRAHIM ADAN ABDULLAHI 5TH RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 23rd December 2024 seeking orders that: -
 1. Spent
 2. pending the hearing and determination of this application inter parties and determination of the substantive suit, there be a conservatory order of injunction restraining the 1st, 2nd, 3rd and 4th Respondents and their agents from effecting the appointment of any individual to fill the vacancy for the position of Chief II in Lagbogol North Location in Hadado Sub-County
 3. pending hearing and determination of this application inter parties and determination of the substantive suit, there be a conservatory order of injunction restraining the occupation, assumption of office for the position of Chief II of Lagbogol North Location - Hadado Sub-



County and the exercise of powers and discharge of duties related to that office by any persons identified by the 1st, 2nd, 3rd and 4th Respondents.

4. pending hearing and determination of this application inter-parties and determination of the substantive suit, there be a conservatory order restraining the 1st, 2nd, 3rd, and 4th Respondents and their agents from removing the Applicant/Petitioner from his position as Acting Chief of Lagbogol North Location - Hadado Sub-County.
5. costs hereof be provided for.
2. The Application was brought pursuant to Section 44(1) & 3 of the Employment and Labour Relations Rules, 2024, and the High Court (Practice And Procedure) Vacation Rules, Part 1 Rule 3.

Applicant/Petitioner's Case

3. The Applicant avers that he has been the Assistant Chief within Lagbogol North Location - Hadado Sub-County for the past 15 years.
4. The Applicants further avers that on 30th December 2022, the Chief Lagbogol North Location - Hadado Sub-County, Mohammed Ibrahim Abdullahi retired leaving the position vacant. Subsequently he was directed to occupy the position on acting capacity which he has done to date.
5. The Applicant avers that the chief position was advertised on 20th July 2023; he applied and undertook interviews on 11th January 2024. He was ranked first with a score of 86.4% and was chosen to taken up the position.
6. The Applicant further avers that while the 5th Respondent and a third interviewee, Mr. Ali Dahir Abdi, who come the same Dogodiya sub-clan called Mithimal, which is considered a majority, were ranked second and third with a score of 62% and 54.1% respectively.
7. It is the Applicant's case that on the 29th March 2024, the same position was re-advertised without any reasons being given, however, he reapplied. Surprisingly, upon culmination of the interviews, he was ranked third after the 5th who emerged first and, Mr. Ali Dahir Abdi, second.
8. The Applicant avers that subsequently, the 3rd Respondent vide a letter dated 6th December 2024, directed the 4th Respondent to effect appointment of the 5th Respondent.
9. It is the Applicant's case that 5th Respondent is a brother to the retired chief Mohammed Ibrahim Abdullahi.

1st Respondent's Case

10. In response to the Application, the 1st Respondent filed a replying affidavit dated 19th February 2025.
11. The 1st Respondent avers that vide a letter dated 15th June 2023, the Regional Commissioner authorised the advertisement of vacant post of chiefs and assistant chiefs- Wajir County: The interviews were conducted and the results forwarded to the Regional Commissioner.
12. The 1st Respondent avers that upon receiving the results and in the process of drafting his recommendation to the Principal Secretary on the appointments, the Regional Commissioner noted some of the interviewees did not meet the key qualification as per the advertisement of grade C plain in the Kenya Certificate of Secondary Education (KCSE).
13. It is the 1st Respondent's case that the Applicant/Petitioner herein obtained a grade of C minus (C-) in his KCSE.



14. The 1st Respondent avers that having noted the error, the Regional Commissioner delegated the power to re-advertise the position of Chief II Lagbogol North and directed the County Commissioner to re-advertise the position and conduct fresh interviews. The position was re-advertised on 29th March 2024.
15. The 1st Respondent avers that a committee sat on 23rd May 2024 at the DCC's office to shortlist the applicants and VIA letters dated 3rd June 2024, the interviewees were invited for interviews.
16. The 1st Respondent avers that after the interviews, the Respondents held a meeting on 12th June 2024 and based on its recommendation, the Regional Commissioner vide a letter dated 7th August 2024 wrote to the Principal Secretary recommending the appointment of various chiefs and assistant chiefs. Upon this recommendation and his discretion, the Principal Secretary appointed Ibrahim Adan Khehley as the Chief for Lagbogol North location.
17. The 1st Respondent avers that the Applicant's production and reliance of third party and confidential documents is against the provisions of Article 31, 35 and 50(4) of *the Constitution* and should be expunged.

5th Respondent's Case

18. The 5th Respondent avers that there was an advertisement for a vacant position of Chief Lagbogol North location- Hadado Sub-county; he applied for the post and was invited for an interview on 11th January 2024 at the DCC's office.
19. It is the 5th Respondent's case that the recruitment process was conducted in accordance with the laid down regulations as the shortlisted candidates appeared before the Sub County interviewing panel.
20. The 5th Respondent avers that the ranking scores were never published; the Applicant being able to access the results is marred with irregularities, nepotism and partiality and was motivated by political considerations contrary to the law and stipulated regulations.
21. The 5th Respondent confirms that the position was subsequently re-advertised in which he re-applied and attended the interview on 12th June 2024. He later received a call from the DCC directing him to take his original documents for verification as a successful candidate having confirming his credentials, abilities, experience and qualities met the threshold of the advertised position.
22. It is the 5th Respondent's case that the 1st, 3rd and 4th Respondent's administrative action to appoint him was lawful, reasonable, procedurally fair and/or transparent or accountable.
23. The 5th Respondent avers that the interview process and his qualification complied with the provisions of Article 41 of *the Constitution* read together with section 4(3) of the *Fair Administrative Action Act*.

Applicants/Petitioners' Submissions

24. The Applicant submitted on whether the Court should maintain in place the conservatory order of injunction barring the Respondents from effecting the appointment of the position of Chief II in Lagbogol North Location in Hadado Sub- County pending the hearing and determination of this Application and the accompanying Petition.
25. To cement its case, the Applicant relied on Civil Application No. 5 of 2014 Gatirau Peter Munya -v- Dickson Mwenda Kithinji & 2 Others (2014) eKLR and the Board of Management of Uhuru



Secondary School vs. City County Director of Education & 2 Others [2015] eKLR, where the Court summarized the principles for grant of conservatory orders as: -

- i. The need for the applicant to demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice.
- ii. The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.
- iii. Thirdly, the Court should consider whether, if an interim conservatory order is not extended, the petition or its substratum will be rendered nugatory.
- iv. Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.”

26. The Applicant submitted that he has meets the threshold for a prima facie case as in the absence of a valid legal explanation as to the re-advertisement, the appointment of the 5th Respondent was calculated and based on grounds of nepotism and discrimination, in breach of his Article 27 and Article 47 rights under *the Constitution*.
27. The Applicant submitted that the grant of conservatory orders sought would protect him from the violation of freedom from discrimination as he has shown that he was discriminated on account of his ethnicity. It is the Applicant’s case that he comes from the Ajuran sub-clan called Walmega – a minority community. whereas upon investigation, he discovered that the 5th Respondent and interviewee were from the Dogodiya sub-clan called Mithimal.
28. The Applicant submitted that his right to employment and freedom from discrimination were violated by the Respondents by its unilateral decision to re-advertise the position without any reason in violation of his right to fair administrative action provided under Article 47 of *the Constitution*. A conservatory order would prevent crystallization of this illegality, enhancing his rights.
29. It is the Applicant’s submission that the 1st to 4th Respondents are yet to effect the 5th Respondent’s appointment: If the Court fails to grant conservatory orders, the appointment will be effected and the Applicant’s rights as an employee and as an individual will be violated without the possibility of being undone, with the aid of this Court.
30. The Applicant submitted that if conservatory orders are denied, and the Court finds that the 5th Respondent ascended to office illegally; the 1st to 4th Respondents have to redo the recruitment process, following the 5th Respondent’s vacation of office after he has enjoyed salaries and benefits during the pendency of the suit to the detriment of the tax payers.

1st Respondent’s Submissions

31. The 1st Respondent submitted on two issues:- Whether the unauthorized production of confidential documents relating to third parties should be expunged forthwith; and whether the application meets the threshold to be granted conservatory order.
32. The 1st Respondent submitted that the Applicant cannot anchor his application and petition on illegally obtained documents to advance his case. The Applicant has fallen short of the values of good governance, integrity, transparency, accountability, honesty and discipline of a civil servant by the fact that he is civil servant and holder of the office of Assistant Chief Lagbogol North. He relied on



Nairobi Law Monthly & Anor Vs Kengen eKLR 2013 where the Learned Judge while expunging the documents that were unlawfully obtained by the Petitioner held that:

“the petitioner has an obligation to request for information and the State has the obligation to disclose the said information unless there are sufficient reasons for non-disclosure. The use of clandestine means in the face of clear Constitutional means is unwarranted.”

33. On the second issue, the 1st Respondent submitted that the threshold of granting conservatory orders has been set out in the case of *Giella vs. Cassman Brown* in three sequential requirements:

“a. Whether the Applicant has a prima facie case with a probability of success; b. The Applicant should demonstrate that damages would not be an adequate remedy; and c. The Applicant should demonstrate that the balance of convenience tilts in her favour.”

34. The 1st Respondent submitted that the Applicant has failed to demonstrate that he has a prima facie case bearing in mind that the Applicant has not adduced any evidence to demonstrate that the interviews that were conducted breached *the Constitution* of Kenya or were marred with unfairness or corruption. On this limb, the Respondents pray that this court declares that the Applicant has not met this threshold.

35. On public interest, the 1st Respondent submitted that the position of Chief in any area with the Republic of Kenya is a vital administrative position which cannot be left vacant for an indefinite period of time more so in Wajir County. Further, the current status is that the position of Chief Lagbogol North has been filled and the duly qualified person has been appointed to the said position hence the grant of the conservatory orders sought herein will be in-vain as the position is no longer vacant.

5th Respondent's Submissions

36. It is the 5th Respondent's submission that the Applicant has not established a prima facie case as the interview exercise was carried out with strict adherence to the relevant laws and no evidence has been adduced to demonstrate that the Respondents acted ultra vires their constitutional and statutory mandate. Further, the Applicant has not challenged his credentials or that he is not qualified candidate for the position.

37. The 5th Respondent submitted that the Applicant has not set out in precision how the Respondents violated his constitutional rights or provided any evidence to back his assertions. He relies on the case of *Anarita Karimi Njeru vs. Attorney General* (1979) KLR 154; *Trusted Society of Human Rights Alliance v AG & 2 others* (2012)eKLR where the court states that :-

“We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed.” a petitioner must set out, with a reasonable degree of precision, that of which they complain, the provisions said to be infringed and the manner in which they are alleged to be infringed with the factual basis setting out how the violation came to play.”

38. It is the 5th Respondent's submission that his appointment was based on constitutional criteria and strict compliance with the provisions of Articles 10 and 73 of *the Constitution*.



39. The 5th Respondent submitted that the Petition will not be rendered nugatory if the conservatory orders are not granted and the Applicant will not suffer any prejudice should the court not grant the conservatory orders since the Applicant/Petitioner is still the Assistant chief of Lagbogol North Location- Hadado Sub County which position the Applicant still holds and was only acting as a Chief of Lagbogol North Location- Hadado Sub County since the previous Chief has retired.
40. I have considered the averments and submissions of the parties herein. The only issue for consideration is whether the applicant has established a prima facie case with a probability of success to warrant issuance of injunctive orders.
41. From the averments herein, the applicant avers that the respondent conducted interviews for the position of Chief for which he applied and was shortlisted. He then emerged winner. The respondents did not appoint him but proceeded to re-advertise the same position and then appointed someone else to the position of chief.
42. The applicant now seeks to have the already appointed chief not to take his position. The application seeking to stay filling of the position of Chief is in my view overtaken by events because the appointment has already taken place and the 5th respondent assumed office.
43. The orders sought therefore cannot be granted. I decline to allow this application and direct the main petition to proceed. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH OF APRIL, 2025.

HELLEN WASILWA

JUDGE

