



**Kango & another v Ministry of Interior and Coordination of National Government & 4 others; Kipaa (Interested Party) (Petition E018 of 2025) [2025] KEELRC 1563 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1563 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E018 OF 2025**

**B ONGAYA, J**

**MAY 29, 2025**

**IN THE MATTER OF ALLEGED VIOLATION OF ARTICLES 2(1) & (2), 3(1), 10 (1) & (2) (C), 19, 20(1) & (2), 22, 23, 27(1) & (2), 41(1) , 47, 232, 233, 258, AND 259(1) OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF THE PROCESS OF APPOINTMENT OF THE ASSISTANT CHIEF, MATASIA SUB-LOCATION, OLKERRI LOCATION WITHIN KAJIADO NORTH CONSTITUTENCY, KAJIADO COUNTY**

**IN THE MATTER OF THE EMPLOYMENT ACT, CAP 226 LAWS OF KENYA**

**IN THE MATTER OF THE NATIONAL GOVERNMENT CO-ORDINATION ACT, CAP 127 LAWS OF KENYA**

**BETWEEN**

**ALLAN SAITOTI KANGO ..... 1<sup>ST</sup> PETITIONER**

**SALOME KARANJA MASHIPEI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY COMMISSIONER, KAJIADO COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER, KAJIADO COUNTY .... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**SANAPEI KIPAA ..... INTERESTED PARTY**



## JUDGMENT

1. The petitioners filed the petition dated February 13, 2025 through Sheria Mtaani Na Shadrack Wambui Advocates. The petitioners prayed for orders as follows:
  - a. A declaration be and is hereby issued under Articles 41, 47, 23, and 232(g) of the Constitution, and Sections 4, 5, and 6 of the *Fair Administrative Action Act* No. 4 of 2015, that the Respondents are legally bound to consider the originally advertised prescribed minimum qualifications, along with competence, suitability, experience, merit, and ability, as objectively assessed and recommended by the Sub-County Selection Panel or any other valid committee or panel lawfully empowered to conduct the assessment, when approving and appointing any candidate to the position of Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North.
  - b. A declaration be and is hereby issued that the Respondents, in appointing the Interested Party as an Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North, failed to adhere to the originally advertised minimum qualifications and merit-based criteria, as assessed by the Sub-County Selection Panel or any other legally mandated body, thereby violating constitutional and statutory principles governing public service appointments.
  - c. A declaration be and is hereby issued that the Respondents' failure to uphold the originally advertised minimum qualifications, along with competence, suitability, experience, merit, and ability, as assessed by the Sub-County Selection Panel or any other legally mandated body, renders their actions illegal, unconstitutional, and a violation of fair administrative action & the doctrine of legitimate expectation.
  - d. A declaration be and is hereby issued that the approval and appointment of the Interested Party to the position of Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North, having been made in violation of constitutional and statutory requirements, is null and void and should be set aside to allow for a lawful appointment based on fairness, transparency, and meritocracy.
  - e. A judicial review order of certiorari be and is hereby issued to bring before this Honourable Court for quashing the Respondents' decision, as communicated through the letter referenced CON.ST.1/2/1/VOL.IV/169 dated 22nd January 2025, or any prior or subsequent correspondence conveying the appointment of the Interested Party as Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North.
  - f. A judicial review order of mandamus be and is hereby issued compelling the Respondents to immediately select and appoint a deserving & meritorious candidate with the highest marks from the remaining pool of applicants, ensuring a just and expedient conclusion to the process without imposing additional financial strain on taxpayers.
  - g. A judicial review order of mandamus be and is hereby issued compelling the Respondents to forthwith undertake a fresh advertisement, shortlisting, and recruitment process for the position of Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North, ensuring full compliance with the law and rectifying the defects identified herein, so as to facilitate the competitive appointment of a duly qualified and deserving candidate.
  - h. Costs of this Petition be awarded to the Petitioners.



- i. Any other relief the Court deems fit and just to grant.
2. The petition was based upon the following facts:
- a. The Petition is based on the Supporting Affidavit deposed to by Allan Saitoti Kango, which lays the foundation of the facts prompting the filing of this Petition to safeguard the rule of law, good governance, and integrity in public office.
  - b. The deponent/ petitioner is a lifelong resident of Olkeri Location, where Lower Matasia Sub-location is situated.
  - c. Upon the dismissal and subsequent retirement of the previous officeholder, Raphael Gichuri, a vacancy arose for the position of Assistant Chief Grade II.
  - d. The position remained unfilled for approximately two years, during which an improper announcement was issued inviting qualified and interested applicants to submit their applications.
  - e. Pursuant to the provisions of the *Public Service Commission Act* and its accompanying regulations, any public office vacancy must be advertised both on the Commission's official website and in at least one daily newspaper of nationwide circulation. This requirement is designed to ensure transparency and to provide all eligible candidates with a fair opportunity to apply.
  - f. Among the stipulated qualifications, the most fundamental requirement was that applicants must be residents of the area.
  - g. The advertisement further outlined the core duties and responsibilities of the position, which included leading the sub-location's peace and security committee, identifying citizens for both national and civil registration, and liaising with security agencies to promote law and order.
  - h. The deponent, having duly applied and attended the interview, awaited the outcome with legitimate expectation. However, the results later revealed that the application had been unsuccessful and that the Interested Party had been selected.
  - i. To the deponent's knowledge, all candidates who participated in the interview were residents of the area, except for the Interested Party, who was unfamiliar to the applicants and the local community at large.
  - j. The appointment of the Interested Party was not only unexpected but also raised serious concerns regarding the integrity of the selection process. Every other interviewee was a local resident who met and, in several cases, exceeded the stated qualifications. Yet, these candidates were overlooked in favor of an individual who failed to meet even the most basic eligibility criterion—residency. This clear departure from the advertised requirements renders the entire process unlawful, unconstitutional, and a flagrant violation of the legitimate expectations of the residents.
  - k. The Interested Party, who was born and raised in Lekuruiki Sublocation, Lekuruiki Location, is neither a resident nor a constituent of Matasia Sublocation, Olkeri Location. Her appointment appears to have been imposed upon the community, to their utter disbelief.
  - l. The announcement, as well as the representations and expectations derived therefrom, expressly required that any candidate for the position be a resident of Matasia Sublocation.



- m. The law enjoins the Respondents to adhere strictly to the terms of the advertisement. Any deviation from the originally stated criteria constitutes a breach of fairness, transparency, and due process. By failing to select a candidate in accordance with the advertised requirements, the Respondents have acted in bad faith, undermined public trust, and rendered the recruitment process null and void. The gravity of this matter cannot be overstated. Entrusting an individual whose legitimacy and competency are under serious dispute with classified security matters, sensitive administrative functions, and the facilitation of national identification processes poses an unacceptable risk to the community. The role of a National Government Administrative Officer is one of immense public importance, requiring deep-seated trust and connection with the local population—elements that are now entirely absent.
- n. Given the widespread opposition to the Interested Party's appointment, it is imperative for this Honourable Court to intervene by halting the process and conducting a thorough examination of the Petitioners' concerns.
- o. The decision has sparked widespread protests and public outcry, as residents struggle to comprehend how such an appointment could have been made in disregard of clear legal and procedural requirements. There was a legitimate expectation that the long-vacant position would be filled by a deserving member of the community—someone with established roots and a demonstrated understanding of local needs.
- p. Despite numerous attempts to engage the relevant stakeholders, these efforts have yet to bear fruit. There appears to be a concerted effort by powerful actors to impose the Interested Party on the residents, despite their unanimous objection.
- q. The residents of Lower Matasia Sub-location have been subjected to clear and unjustifiable discrimination, as they alone have been denied the fair, transparent, and merit-based selection process that every other sub-location within Olkeri has enjoyed.
- r. While all other sub-locations have appointed chiefs and assistant chiefs in accordance with advertised qualifications and legal requirements, Lower Matasia stands as the sole exception—arbitrarily subjected to an opaque process that has imposed an unqualified individual upon them. This glaring disparity not only undermines their legitimate expectations but also disenfranchises them, depriving them of equal treatment under the law. Such an exclusionary and irregular process constitutes a violation of their constitutional rights and an indefensible act of discrimination. 60. The intervention of this Honourable Court is therefore necessary as this petition represents an earnest and bona fide effort by the affected residents to safeguard their security, uphold constitutionalism, and ensure strict adherence to due process.
- s. The petitioners have exhibited a memorandum of objection and protest to the appointment of the interested party delivered to the respondents on or about 03.02.2025. The memorandum is signed by hundreds of residents of the sub-location in issue, Matasia Sub-location.
- t. The petitioners have also exhibited the notice to produce dated 20.02.2025 demanding production for inspection of the copies of identification documents for all interviewees; copies of their application; full register of applicants; list of shortlisted and interviewed candidates; grading methodology used; individual scores awarded to each interviewed candidates.
- u. The advertisement inviting suitable candidates to apply prescribed qualifications including being a resident of the area; KCSE mean grade C-; be not less than 30 years of age; have a certificate of good conduct; have good communication skills; and, have a certificate in



computer application skills from a recognised institution. The 1<sup>st</sup> petitioner has also exhibited the documents showing that he participated in the interviews as a candidate.

3. The petitioners pleaded the nature and particulars of violation of *the Constitution* and statutory provisions as follows:
  - a. Violation of Articles 10 and 232 of *the Constitution* – Principles of Good Governance and Public Service. The Respondents' failure to adhere to transparent, merit-based, and lawful recruitment procedures contravenes Article 10, which enshrines national values and principles, including good governance, integrity, transparency, and accountability. Additionally, Article 232 mandates fair competition, merit-based appointments, and representation of Kenya's diverse communities, all of which were disregarded in the impugned appointment.
  - b. Breach of Article 27 – Right to Equality and Freedom from Discrimination. The recruitment process unfairly disadvantaged qualified local residents by appointing an individual who did not meet the core residency requirement. While other sublocations 23 had their rightful representatives appointed in accordance with the established criteria, the residents of this sublocation were denied the same fair consideration. This unjust selection not only deprived them of equal opportunity but also placed them at a clear disadvantage compared to other regions, undermining their rightful stake in public service employment. Such an arbitrary and exclusionary decision constitutes discrimination and a violation of their constitutional right to equality.
  - c. Non-compliance with Article 73 – Responsibilities of Leadership. Public office is a public trust, and appointments must be based on integrity, competence, and suitability. The appointment of the Interested Party, who does not meet the fundamental eligibility criteria, constitutes an abuse of power and a deviation from the principles of public trust, accountability, and service to the people.
  - d. Contravention of Article 47 – Right to Fair Administrative Action. The failure to adhere to a transparent, objective, and procedurally fair recruitment process denies the applicants their right to fair administrative action. The arbitrary appointment, which disregarded the advertised qualifications and the principles of fairness, is unlawful, unreasonable, and procedurally irregular.
  - e. Failure to Adhere to Section 15 of the National Government Coordination Act. The Act vests recruitment authority in the Public Service Commission, which is mandated to ensure a lawful, structured, and consultative appointment process. The Respondents, by making an appointment in contravention of these statutory provisions, have acted ultra vires and in defiance of legal requirements.
  - f. Breach of Sections 36 and 37 of the *Public Service Commission Act* – Violation of Merit-Based & originally prescribed recruitment criteria. The *Public Service Commission Act* establishes clear, binding principles for public appointments, including merit, equity, suitability, and integrity. Section 37 further mandates broad public advertisement to ensure transparency, inclusivity, and equal opportunity for all qualified candidates. These are not optional guidelines but legal requirements that the Respondents were duty-bound to uphold. By failing to adhere to these fundamental standards, the Respondents undermined the fairness of the recruitment process, rendering the appointment unlawful and nullifying its validity.
  - g. Violation of Regulation 16 of the Public Service Regulations, 2020. Regulation 16 codifies essential, non-negotiable criteria for public appointments—merit, qualifications, experience,



and integrity. These minimum thresholds were established to prevent arbitrary appointments and ensure that public service positions are filled by deserving candidates. The Respondents' decision to appoint an individual who neither meets the basic residency requirement nor enjoys local recognition blatantly disregards these mandatory provisions. Their failure to abide by these legal obligations makes the appointment unlawful and a direct affront to the principles of fairness and accountability in public service recruitment.

- h. Breach of Sections 36 and 37 of the *Public Service Commission Act* – Merit-Based Recruitment. The *Public Service Commission Act* prescribes merit, equity, suitability, and integrity as guiding principles in recruitment. Section 37 further mandates broad public advertisement to ensure inclusivity and equal opportunity. The Respondents' failure to adhere to these provisions nullifies the recruitment process and renders it null and void.
  - i. Violation of Regulation 16 of the Public Service Regulations, 2020. The Regulations reinforce statutory principles requiring appointments to be based on merit, qualifications, experience, and integrity. The appointment of an individual who neither meets the basic residency requirement nor enjoys local recognition is in direct contravention of these mandatory guidelines.
  - j. Violation of the Doctrine of Legitimate Expectation. The issuance of a public advertisement outlining specific qualifications created a legitimate expectation that the selection process would adhere to these criteria. The failure to appoint a qualified local resident, despite this clear commitment, constitutes a breach of legitimate expectation, undermining public confidence in the selection process and administrative fairness.
  - k. Failure to Adhere to Section 59(d) of the *Public Service Commission Act* – Standardized Recruitment Procedures. The Act mandates compliance with standard personnel practices, including transparent recruitment procedures. The deviation from these established procedures, particularly in favoring an unqualified candidate, is a blatant violation of statutory norms governing public appointments.
  - l. Breach of Article 47(2) – Right to written Reasons for Administrative Decisions. Article 47(2) of *the Constitution* guarantees every person affected by an administrative decision the right to be provided with written reasons. In a recruitment process, this extends to all applicants, including the Petitioners and other qualified candidates, who were entitled to a clear, written explanation for their non-selection. The failure to issue formal reasons or a structured scorecard detailing the evaluation process deprived them of their constitutional right to fair process. Instead, the Petitioners only became aware of their non-selection through unofficial means, which not only undermines due process but also raises serious concerns about the fairness and integrity of the recruitment exercise. Without a proper record of scores and justification for the appointment, the entire process remains opaque and arbitrary.
  - m. Compromise of Public Trust and Security Concerns. The imposed appointment places a non-local, unfamiliar individual in a sensitive administrative and security role, undermining the confidence and cooperation of the local community. This compromises the effective delivery of government services and the maintenance of law and order, further aggravating the unconstitutionality of the decision.
4. The respondents filed the replying affidavit of Yusuf Mohamed, Deputy County Commissioner of Kajiado North Sub-County in Kajiado County. It was sworn on 07.03.2025 and filed through the Attorney General. He stated and urged as follows:



- a. On 16th September, 2024 the Office of the President, Ministry of Interior & National Administration through the office of the Deputy County Commissioner, Kajiado North Sub-County advertised through advertisement Ref ST.1/26/VO.I/129 for the vacant position of Assistant Chief, II of Lower Matasia Sub- Location, Ngong Division and therein invited applicants to submit their applications to my office on or before 9th October, 2024. (Annexed hereto & Marked "YM 1" is a copy of advertisement dated 16.09.2024).
- b. The advertisement stipulated therein the duties and responsibilities of Assistant Chief, II and requirements for appointment.
- c. The said advertisement dated 16.09.2024 did not illicit the required Public Service Commission requirements for appointment and the number of Applications was minimal.
- d. Thus, the office issued an extension for advertisement for the vacant post of Assistant Chief, II of Lower Matasia Sub- Location, and Ngong Division through advertisement Ref ST.1/26/VO.1/130 and therein invited applicants to submit their applications to my office on or before 28th October, 2024. (Annexed hereto & Marked "YM 2" is a copy of the extension for advertisement dated 14.10.2024).
- e. During the shortlisting of Lower Matasia Sub-Location applicants meeting held on 30th October, 2024 the panelists therein agreed that shortlisting of the Applicants thereof will be in accordance with the Public Service Commission requirements.
- f. The total number of Applicants for the Position of Assistant Chief II of Lower Matasia Sub-Location, Ngong Division were 12 Applicants and those who met the requirements and were shortlisted were eight (8) in number.
- g. The interviews were held on 06.11.2024 and therein all the shortlisted applicants were scored accordingly to their performance.
- h. The interested Party herein emerged as the best applicant during the interview process for the vacant post of Assistant Chief II of Lower Matasia Sub- Location, Ngong Division scoring 86% in the interviews.
- i. Kajiado North Sub-County falls in the Kajiado County but it is within Nairobi Metropolitan due to its proximity to Nairobi City and most of the residents of the Sub-County have close interaction with the City where most of the residents work and reside in the suburb towns of Ngong, Ongata Rongai, Embulbul, Gataka, Matasia and Partly Kiserian. Kajiado North Sub-County has an approximate population of over 306,000 people.
- j. Due to its cosmopolitan nature the Sub -County has chiefs and Assistant chiefs from different ethnicity with all tribes across the country being well represented.
- k. The interested Party contrary to assertions of the Petitioner/Applicant herein is a bonafide resident of Lower Matasia Sub- Location, Ngong Division thus shall put the Petitioner/Applicant to strict proof thereof.
- l. That Public interests supercedes the private claims of an individual as said in the words of Nyamu J (as he then was) in Kenya Guards & Allied Workers Union v Security Guards Services and 38 others and Another (IP) H.C. Misc. 1159 of 2003, where Justice Nyamu (as he then was) expressed himself as follows: "Where national or public interest is denied the gates of hell open wide to give way to deforestation, pollution, environmental degradation, poverty, insecurity and instability. At the end of the day, we must remember those famous words of



a famous jurist-Justice is not a cloistered virtue. I must add that where justice is done and public interest upheld, it is acknowledged by the public at large, the sons and daughters of the land dance and sing, and the angels of heaven sing and dance and Heaven and Earth embrace. By upholding the public interest and treating it as twinned to the human rights we shall be able to do away with poverty eradication programmes and instead we shall have empowered our people to create real wealth for themselves. Public Interest must be the engine of the millennium and it must where relevant occupy center stage in the courts..."

- m. That the instant Petition and Petition is marred with malice as a result of the Petitioner / Applicant's failure to be appointed the Assistant Chief II of Lower Matasia Sub-Location, Ngong Division and in return allege constitutional violations to bring into disrepute the recruitment process and appointment of the Assistant Chief II of Lower Matasia Sub-Location, Ngong Division.
  - n. That the Petitioner herein has not demonstrated with precision the alleged constitutional breaches/violations committed by the 1st Respondent thus does not meet the constitutional test as was held in the case of case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, where the High Court held that; "It is our finding that the petition before the High Court was not pleaded with precision as required in constitutional petitions. Having reviewed the petition and supporting affidavit, we have concluded that they did not provide adequate particulars of the claims relating to the alleged violations of *the Constitution* of Kenya and the *Ethics and Anti-Corruption Commission Act*, 2011. Accordingly, the petition did not meet the standard enunciated in the ANARITA KARIMI NJERU CASE.
  - o. The 3rd and 4th Respondents conducted the recruitment process of Assistant Chief II of Lower Matasia Sub- Location, Ngong Division and the 5]Page CS CamScanner subsequent appointment of the Interested Party herein was done within the confines of *the Constitution* and Statutory laws and regulations as demonstrated in the replying affidavit.
5. The petitioners filed the further supporting affidavit of Allan Saitoti Kango sworn on 04.04.2025 and stated as follows:
- a. That having carefully examined the respondents' reply, their narrative in essence is that they duly advertised the positions, received twelve applications, shortlisted eight candidates, conducted interviews, assigned scores, and selected the best-performing candidate—who, coincidentally, is the interested party. They portray the petition as a personal grievance aimed at reversing a legitimate recruitment exercise and argue that the broader public interest outweighs any private dissatisfaction.
  - b. The purported compliance with advertisement requirements, fall egregiously short of the mandatory standards set out under Section 37 of the *Public Service Commission Act*. That provision imposes a clear duty: to invite applications via both the Public Service Commission website and a newspaper of nationwide circulation. The respondents have neither alleged nor established adherence to this unequivocal statutory obligation.
  - c. The impugned purported advertisement imposed several prerequisites, including that an applicant must be a resident, hold a KCSE certificate with a minimum grade of C-, be at least 30 years of age, possess a valid certificate of good conduct, demonstrate strong communication abilities, and produce evidence of computer literacy.
  - d. For the twelve applicants, four were disqualified on various grounds, including failure to provide proof of computer literacy and failure to meet the minimum KCSE grade of C-.



Strikingly, the interested party—who, as of October 2024, had not obtained a certificate of good conduct—was nonetheless cleared and shortlisted, even as others were disqualified for lacking a computer certificate.

- e. To date, and as confirmed by the replying affidavit, she still has not obtained this certificate. What she has produced is merely a receipt evincing an application for it. That she was shortlisted in the face of this glaring deficiency exemplifies institutional impunity and suggests a recruitment process that was manifestly skewed in her favor, seemingly designed to ensure her eventual selection regardless of merit.
- f. It bears emphasis that several of the twelve applicants possessed exemplary qualifications, including: Peter Gichuki Muriuki, holder of a BSc in Industrial Chemistry with a KCSE grade of A-; Jane Wanjiku Timoi, with a Bachelor of Commerce and a KCSE grade of C-; and Kirui Chelangat Zipporah, who holds a Diploma in Information Technology and scored a B+ in KCSE.
- g. The interested party, by contrast, holds a diploma in Sociology and attained a KCSE grade of C+. Despite this, she was awarded the same score for academic and professional qualifications as the three applicants mentioned in paragraph 6—individuals whose academic credentials were demonstrably superior. This parity in scoring, in the face of such evident disparity in merit, is unjustifiable. It strongly suggests that the evaluation was neither objective nor fair, but rather orchestrated to secure the interested party's success regardless of merit.
- h. The scoresheet annexed as YM-6 shows the interested party scored 86%, ranking highest among all candidates. Notably, paragraph 10 of the scoresheet, which is intended to provide justification for recommending a candidate for appointment, offers only the vague phrase: “She is highly recommended.” This raises a fundamental concern—who exactly is recommending her, and on what basis? If merit were the true guiding principle, one would expect a detailed, objective rationale. Instead, this ambiguous endorsement reveals the shadows of influence and manipulation, confirming the existence of an orchestrated effort to secure her appointment under the veneer of recommendation.
- i. It is noted from paragraph 9 of annexure YM-6 that the interested party is said to have no criminal record. This statement, however, is made without the benefit of a certificate of good conduct, which is the standard and mandatory proof of such a status. The conclusion is thus speculative and indicative of the undue latitude extended to the interested party. For a role that involves oversight of security matters, such guesswork is not merely irregular—it is profoundly irresponsible. Without proper vetting, we risk entrusting sensitive security responsibilities to individuals who may not be fit to serve.
- j. The respondents' claims in paragraph 12, and particularly the contents of annexure YM-7, are of no probative value. It purports to classify local administrators by ethnicity, a matter irrelevant to the issues before this Court. The document lacks the most basic elements of credibility: no official letterhead, no signature, and no indication of its authorship. The question is not about tribal composition, but whether the recruitment process adhered to the mandatory requirements under law.
- k. It is firmly reiterated that this Petition is not animated by personal ambition, as falsely alleged. The prayers sought make no demand for personal appointment, but rather seek declaratory and corrective orders to uphold due process. It is a public interest Petition rooted in constitutional accountability, not a private contest for office.



- l. Return to what is perhaps the most fundamental issue: the requirement that the applicant for the position of Assistant Chief for Lower Matasia must be a resident of the area. This was the first and foremost criterion in the advertisement. Yet, the respondent has conspicuously failed to prove—let alone even making an averment—that the interested party resides in Lower Matasia. Generalizations about the county’s diversity & its alleged cosmopolitan nature are a red herring and have no bearing on the matter.
  - m. From the very beginning, and as clearly illustrated in our annexures ASK03 and ASK-04, the genuine residents of Lower Matasia expressed unanimous outrage at the appointment of the interested party. Hundreds of them signed a petition demanding her removal on the ground that she is a stranger to the area—unknown to the very community she purports to serve. Their voice deserves not just to be heard, but to prevail—for it is they who will live under the leadership imposed upon them.
  - n. It is noteworthy that our averment—that the interested party was born and brought up in Lekuruki Sub-Location, within Lekuruki Location, and is neither a resident nor a constituent of Matasia Sub-Location, Olkeri Location— has not been controverted. It therefore stands as unchallenged truth. Indeed, her national identity card affirms that her place of origin is Upper Matasia, further discrediting the assertion that she qualifies as a resident of the area in question.
  - o. In light of the foregoing, it is abundantly clear that the recruitment process did not adhere to the law. Worse still, the process appears to have been manipulated to impose the interested party upon a community that neither knows her nor accepts her. Whereas an advertisement in accordance with the Human Resource Policies and Procedures Manual for the Public Service, 2016 which provides in section B 4(1) ought to last at least 21 days, here it was limited to 14 days and for this contravention compounded by the ones restated above, the process is a nullity ab initio. (Annexed hereto and marked ASKB-02 is an excerpt of the HR Manual the same being accessible at: [https://publicservice.go.ke/wpcontent/uploads/2024/03/PSC\\_HR\\_POLICIES\\_MAY\\_2016.pdf](https://publicservice.go.ke/wpcontent/uploads/2024/03/PSC_HR_POLICIES_MAY_2016.pdf))
  - p. The Honourable Court to therefore intervene, invalidate the impugned appointment, and order that due process be respected.
6. Despite service, the interested party did not enter appearance or file replying affidavits. The Public Service Commission, 2<sup>nd</sup> respondent, submitted that it relied upon submissions and replying affidavit filed for the Attorney General. Final submissions were filed for the petitioners. The Court returns that the petition must succeed and the petitioners have established their case. The Court specifically returns as follows:
- a. The petitioners have established that the interested party lacked requisite qualifications namely, she was not a resident of the area and she did not, by the respondents’ own exhibited evidence, possess the requisite certificate of good conduct as at recruitment, selection and appointment time. The respondents confirm that position by remaining completely unresponsive to the memorandum they received from the area residents protesting that the interested party was not an area resident.
  - b. The petitioners have confirmed procedural impropriety or breach as relates to the prescribed mode of advertising per the [Public Service Commission Act, 2017](#) requiring wide advertisement



including on the Commission website. In particular the respondents failed to comply with section 37 of the Act thus:

“ 37. Advertisement of vacancies

- (1) Where a vacancy in a public office is to be filled, the Commission or authorized officer shall invite applications by advertising the vacancy in the Commission's website, at least one daily newspaper of nationwide coverage, the radio and other modes of communication, so as to reach as wide a population of potential applicants as possible.
- (2) The Commission or an authorised officer shall ensure that an invitation for application does not discriminate against any person.
- (3) The advertisements in subsection (1) shall be conducted in an efficient and effective manner so as to ensure that the applicants, including persons who for any reason have been or may be disadvantaged, have an equal opportunity to apply for the advertised positions.
- (4) An advertisement inviting applications to fill any vacancy in a public office shall provide for—
  - (a) the title and rank of the public office;(b)the public body in which the office is tenable;
  - (c) the background and context of the work, where necessary;
  - (d) the terms of employment;
  - (e) the applicable remuneration including salary, allowances and other benefits;
  - (f) the prescribed qualifications applicable, including any desired previous achievements;
  - (g) the core duties of the office;
  - (h) the expected deliverables of the office;
  - (i) the supervision, accountability and reporting arrangements;
  - (j) any added advantage applicable;(k)the mode and deadline of transmitting the application;(l)any consideration that may occasion disqualification; and,



(m) any consideration of equity or affirmative action.”

7. In view of the findings, the Court returns that the petitioner has established a genuine case and further shown that the provisions in the Bill of Rights and other cited constitutional provisions have been violated as was alleged. Despite the demands, the respondents failed to correct the impugned appointment by recalling it. The impugned appointment has been shown to have been unlawful and unconstitutional both in substance. It will be reversed in terms of the petitioners’ prayers.
8. In conclusion, judgment is hereby entered for the petitioners against the respondent for the following reliefs:
  - a. The declaration be and is hereby issued under Articles 41, 47, 23, and 232(g) of *the Constitution*, and Sections 4, 5, and 6 of the *Fair Administrative Action Act* No. 4 of 2015, that the Respondents are legally bound to consider the originally advertised prescribed minimum qualifications, along with competence, suitability, experience, merit, and ability, as objectively assessed and recommended by the Sub-County Selection Panel or any other valid committee or panel lawfully empowered to conduct the assessment, when approving and appointing any candidate to the position of Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North.
  - b. The declaration be and is hereby issued that the Respondents, in appointing the Interested Party as an Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North, failed to adhere to the originally advertised minimum qualifications and merit-based criteria, as assessed by the Sub-County Selection Panel or any other legally mandated body, thereby violating constitutional and statutory principles governing public service appointments.
  - c. The declaration be and is hereby issued that the Respondents’ failure to uphold the originally advertised minimum qualifications, along with competence, suitability, experience, merit, and ability, as assessed by the Sub-County Selection Panel or any other legally mandated body, renders their actions illegal, unconstitutional, and a violation of fair administrative action & the doctrine of legitimate expectation.
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  - e. A judicial review order of certiorari be and is hereby issued quashing the Respondents’ decision, as communicated through the letter referenced CON.ST.1/2/1/VOL.IV/169 dated 22nd January 2025, or any prior or subsequent correspondence conveying the appointment of the Interested Party as Assistant Chief Grade II of Matasia Sub-Location, Ngong Division, Kajiado North.
  - f. The judicial review order of mandamus be and is hereby issued compelling the Respondents to immediately select and appoint a deserving & meritorious candidate with the highest marks from the remaining pool of applicants, ensuring a just and expedient conclusion to the process without imposing additional financial strain on taxpayers.
  - g. The judicial review order of mandamus be and is hereby issued compelling the Respondents to forthwith undertake a fresh advertisement, shortlisting, and recruitment process for the



position of Assistant Chief Grade II of Matasia SubLocation, Ngong Division, Kajiado North, ensuring full compliance with the law and rectifying the defects identified herein, so as to facilitate the competitive appointment of a duly qualified and deserving candidate.

h. Costs of the Petition are awarded to the Petitioners.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

