



**Mboya v Brigadier (Rtd.) Richard Mbithi & another; Chief of Staff
& Head of Public Service & 4 others (Interested Parties) (Petition
E032 of 2025) [2025] KEELRC 1562 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1562 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E032 OF 2025**

B ONGAYA, J

MAY 29, 2025

**IN THE MATTER OF ARTICLES 2, 19, 20(1-4), 21(1) & (3), 22(1) & (2)(B) & (C),
23(1) & (3), 27, 28, 41(1) & (2)(B), 47, 48, 50(1), 73, 75, 159, 162(2)(A), 165(3)(B),
232, 258(1) & (2)(B) & (C) AND 259(1) OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF SECTION 5(3) OF THE STATE CORPORATIONS ACT, CAP 446

AND

IN THE MATTER OF THE EMPLOYMENT ACT, 2007.

AND

IN THE MATTER OF EAST AFRICAN PORTLAND CEMENT COMPANY

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES**

AND

**IN THE MATTER OF CONTRAVENTION OF NATIONAL VALUES AND PRINCIPLES
OF GOVERNANCE UNDER ARTICLE 10, THE PRINCIPLE OF LEADERSHIP AND
INTEGRITY UNDER ARTICLE 73, AND THE VALUES AND PRINCIPLES OF
PUBLIC SERVICE UNDER ARTICLE 232 OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

APOLLO MBOYA PETITIONER

AND

BRIGADIER (RTD.) RICHARD MBITHI 1ST RESPONDENT

EAST AFRICA PORTLAND CEMENT COMPANY PLC 2ND RESPONDENT



AND

CHIEF OF STAFF & HEAD OF PUBLIC SERVICE INTERESTED PARTY
**CABINET SECRETARY, MINISTRY OF INDUSTRY, TRADE &
INVESTMENTS INTERESTED PARTY**
THE ATTORNEY GENERAL INTERESTED PARTY
BRUNO OGUDA OBODHA INTERESTED PARTY
MOHAMED OSMAN ADAN INTERESTED PARTY

JUDGMENT

1. The petitioner is Apollo Mboya, and Advocate of the High Court of Kenya. He filed the petition dated 07.03.2025 through Apollo & Company Advocates. He humbly prayed for the following orders:
 - a. A declaration be and is hereby issued that the failure by the 1st respondent to provide information sought under Article 35(1) (b) on the basis of the petitioner’s request dated 03.03.2025 violated the petitioner’s constitutional right to access information.
 - b. A declaration be and is hereby issued that the 4th interested party is the Chief Executive Officer of East Africa Portland and Cement Company PLC as communicated by the Press Release of the Notification of Presidential Action [II] – 20.11.2024.
 - c. A declaration be and is hereby issued that the actions of the 1st respondent violated national values and principles of governance under Article 10, the principles of leadership and integrity under Article 73, and the values and principles of public service under Article 232 of *the Constitution* of Kenya.
 - d. An order of certiorari be and is hereby issued removing into the Court and quashing the letter by the respondent dated 27.12.2024 addressed to the 2nd interested party.
 - e. Any other relief or orders the Honourable Court deems appropriate, just and fit to grant.
 - f. The costs of the petition be provided.
2. The petitioner has pleaded that Rule 4(2) (iii) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 permits a person acting in the public interest to institute proceedings where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened. It is his case that he has filed the instant petition in the public interest to remedy violation of rights and fundamental freedoms, violation of constitutional provisions, and, violation of public service policies.
3. The petition is based upon the petitioner’s affidavits on record, and exhibits thereto and upon the following facts:
 - a. The 2nd respondent advertised for the position of a Managing Director on the dailies on 16.10.2024. The 4th interested party applied in response to the advertisement. He was invited for an interview on 22.11.2024 and the Board of the 2nd respondent resolved to forward the names of top three (3) best candidates for the vacancy to the Cabinet Secretary, Ministry of Investment, Trade and Industry, the 2nd respondent.



- b. The petitioner has exhibited an extract of the 2nd respondent's minutes of the Board of Directors held on 22.11.2024 where it was resolved to forward the names of the top three (3) candidates to the Cabinet Secretary, Ministry of Investment, Trade and Industry being Mr. Mohamed Osman Adan scoring 88.4%; Mr. Bruno O. Obodha scoring 64.00%; and, Dr. Justus Mwangi scoring 63.86%. The minute further stated "The Board noted that as per the Organization Human Resource policy manual, the pass mark for the position of Managing Director is 70% and only one (1) candidate met the required pass mark. The Board of Directors therefore resolved to recommend appointment of Mr. Mohamed O. Adan as the Managing Director of East African Portland Cement Plc."
- c. The petitioner has exhibited the Notification of Presidential Action [II] – 20/12/2024 titled "Presidential Appointments to the Senior Ranks of the Executive". It stated that the President had effected additional appointments to the senior ranks of the Executive including, amongst others, roles in State Corporations. It further stated that the appointments had been made based on recommendations of the Public Service Commission and in line with the laws governing each public office, as applicable. It further stated that the appointments were as annotated below and included thus, "East African Portland Cement Company PLC (EAPCC), Managing Director, Mr. Bruno Oguda Obodha." It was signed by Arthur A. Osiya, CBS, Principal Administrative Secretary, for, Chief of Staff & Head of the Public Service." That was on 20.12.2024.
- d. The petitioner has exhibited a letter dated 27.12.2024 and Ref. No. EAPC/BOD/MD/CS/MITI/24/03 by the 1st respondent addressed to the 2nd interested party whose subject was about the position of the 1st respondent's Managing Director. The letter referred to previous correspondence forwarding the names of the top three candidates and the press release of 20.12.2024 under which the appointment of Mr. Bruno Oguda Obodha Obodha as Managing Director was published. The letter stated that as communication was awaited, some issues had emerged including that the said Mr. Bruno suffered a conflict of interest in that he was a Director of a company transacting with the 2nd respondent in some land transaction as at 22.12.2023 and further that the said Mr. Bruno was a Director of a security company which had submitted to the 2nd respondent a bid including forged tender documents. The letter concluded thus "In view of the foregoing, we bring to your attention the above matters which the Board was not privy to as at the time of submission of the Three (3) names for consideration. The above emerging issues are of integrity and conflict of interest as stipulated in Circular which has implications on the business as a listed (NSE) entity."
- e. The petitioner's case is that by writing the letter dated 27.12.2024 to the 2nd interested party, the 1st respondent acted in an attempt to countermand the decision of His Excellency the President of the Republic of Kenya. The petitioner alleges violation of Articles of *the Constitution* thus: Article 73 on responsibilities of leadership; Article 27 on the rights of equal treatment of all persons including the right to equal protection and equal benefit of the law; article 28 on the rights of inherent human dignity of all persons including the right to not be subjected to psychological hard and inhumane treatment; Article 47(1) and section 4(1) of the Fair Administration Action Act, 2015 which guarantees the petitioner the right to administrative action that is procedurally fair – a fair procedure that is impartial and involves legitimate expectations; and, Article 50 on fair and public hearing before a court or tribunal of competent jurisdiction. It is alleged that there was failure to offer the petitioner a chance to produce relevant documents, call and examine witnesses and to peruse documents that may have been produced.



- f. The petitioner urges that the 1st respondent's actions amounted insubordination of the President and further violated Article 232 value and principle of high standards of professional ethics and accountability for administrative acts.
- g. The petitioner also exhibited an extract of the Mwongozo, the Code of Governance for State Corporations issued jointly by the Public Service Commission and the State Corporations Advisory Committee (SCAC) in January, 2015. Clause 1.2 (k) on the role and functions of the Board it is stated the Board will Hire the CEO on such terms and conditions of service as may be approved by the relevant government organs and approve appointment of senior management staff.
- h. The forwarding of the top three names appears to have been in accordance with clause 15 of circular OP/CAB.9/21/2A/LII/43 dated 23.11.2004 signed by Amb. Francis K. Muthaura, MBS, Permanent Secretary/Secretary to the Cabinet and Head of Public Service on "Competitive Sourcing of Chief Executives". The clause 15 and 16 thereof states:
15. In order to attract persons of sound background with the relevant skills and experience which each State Corporation requires to manage its business efficiently and effectively, Boards are advised that henceforth new appointments of Chief Executive Officers should be competitive. The requirement process should involve a careful preparation of a Job Description and Job Requirements which include job and person specifications. The short listing and interview process should be transparent based on a verifiable Recruitment Procedure approved by the Board.
16. The three best candidates will then be considered for final decision by the appointing authority taking into account interview scoring sheets and the interview panel's recommendation.
- i. The petitioner has exhibited another circular OP/CAB.9/1A dated 03.04.2023 signed by Felix K. Koskei, Chief of Staff and Head of the Public Service and titled "Separation of Roles between Boards of Directors and Management of State Corporations and Agencies." The last paragraph in that circular states "Separately, and with specific reference to Circular Nos. OP/CAB.9/1A dated 25th November 2022 and 1st February 2023 respectively, on the Guidelines for appointment of Chairpersons, Members and Chief Executive Officers of State Corporations (copies attached), Ministries and State Corporations are reminded to strictly adhere to the directive to seek this office's concurrence prior to appointment/re-appointment of Chief Executive Officers. By a copy of this letter, Board Chairpersons are required to take note and secure compliance thereof."
4. The petitioner's case is that the 1st respondent acted in breach of the cited provisions of the circulars and Mwongozo Code.
5. The 5th interested party filed an application dated 10.03.2025 to be enjoined as such and the Court made an order for joinder accordingly. The application had been supported by the 5th interested party's supporting affidavit sworn on 10.03.2025 and filed through Hashim & Lesaigor Associates Advocates. He has exhibited the letter dated 12.02.2025 appointing him as Managing Director of the 2nd respondent for a term of three (3) years effective 12.02.2025. his case is that he was the only qualified candidate per the resolution of the 2nd respondent's Board that having scored at the interviews 88.14% and other two candidates scoring below the pass mark of 70% per the 2nd respondent's Human Resource Manual. He has exhibited an extract of the 2nd respondent's Human Resource Manual and Procedures Manual and clause 3.9 (g) states that candidates shall be scored on similar parameters and



for a candidate to be successful, he or she must attain a score of above 70%.” He has also exhibited a tally sheet dated 22.11.2024 showing how the candidates were scored on the applicable parameters.

6. The respondents filed a notice of preliminary objection dated 12.03.2025 through Adrian Kamotho Njenga & Company Advocates. It was stated that the petition herein be struck out in limine with costs upon the following grounds:
 - a. THAT the jurisdiction of the Honorable Court has been improperly invoked for reasons that:
 - i. By dint of Article 41 as read with Article 162 (2) (a) of *the Constitution*, the Honorable Court cannot determine the Petition as canvassed and/or grant the prayers sought, since no employment or labour relationship subsists between the Petitioner and the Respondents;
 - ii. The Petition herein has been lodged in utter abuse of court process, with an aim to irregularly influence the institutional processes of the 2nd Respondent.
 - b. THAT the Petition is a blatant case of proxy litigation having been instituted on behalf of the 4th Interested Party who has unfettered legal capacity to litigate in his own name, hence its brought in bad faith, with ulterior motives and for collateral purposes.
 - c. THAT the Petition does not in any manner whatsoever disclose with precision and particularity any constitutional or human rights violations, as is legally mandatory, and thus gravely offends the principles laid down in various judicial decisions and principally, in the matter of Anarita Karimi Njeru v Republic [1979] eKLR as affirmed by the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR;
 - d. THAT the Petition herein has been filed in this Honorable Court in clear disregard of the law, is an abuse of the due process of court, hence cannot be countenanced and/or determined by this Honorable Court.
7. The 2nd respondent also filed the replying affidavit of Roselyne Ominde the acting Company Secretary and Head of Legal Services for the 2nd respondent as sworn on 26.03.2025. it was stated and urged as follows:
 - a. The 2nd respondent advertised for the position of Managing Director as pleaded by the petitioner. Various court cases have been filed to challenge the process of recruitment and appointment flowing from that advertisement. By the letter of appointment dated 12.02 2025, the 5th Interested Party was appointed as the Managing Director of the 2nd Respondent. The 5th Interested Party has held the said position and performed the duties of the Managing Director since 12.02.2025.
 - b. Petitioner lacks locus to file the Petition dated 7th March 2025 before this Honourable Court since there is no employer-employee relationship between the Petitioner and the Respondents and/or any other party herein.
 - c. Petition dated 7th March 2025 does not in any manner whatsoever disclose with precision and particularity any constitutional or human rights violations, as is legally mandatory, and thus gravely offends the principles laid down in various judicial decisions and principally, in the matter of Anarita Karimi Njeru v Republic [1979] eKLR as affirmed by the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR.
 - d. Petition dated 7th March 2025 is multifaceted in nature for raising various constitutional issues that is recruitment, countermanding the decision of a president, breach of rights and freedoms



and dishonor to the service. The said issues are beyond the jurisdiction of the Employment and Labour Relations Court.

- e. Petition is a blatant attempt at forum shopping and this Honourable Court lacks the jurisdiction to hear and determine the disputes in question which are a preserve of the High Court.
- f. The 2nd Respondent herein is a state corporation governed by its Articles and Memorandum of association and any decision as to their office holders can only be made in accordance with the said Articles.
- g. The doctrine of *lex specialis derogat legi generali* provides that where there is a specific law, for instance on recruitment/appointment of office holders, as compared to the provision of the general law, the specific law prevails.
- h. Article 89 of the 2nd Respondent's Articles and Memorandum of association provides that the Board of Directors of the 2nd Respondent is the only body that has the exclusive power to vet, hire or appoint the 2nd Respondent's Managing Director.
 - i. Presidential Press Release dated 20.12. 2024, the Office of the President erroneously appointed the 4th Interested Party as the 2nd Respondent's Managing director.
- j. The President is not a member of the Board of directors of the 2nd Respondent and has no capacity to make/confirm appointment on behalf of the Board of directors of the 2nd Respondent.
- k. The 2nd Respondent avers that the purported appointment or confirmation of the 4th Interested Party, who attained 64% of the pass mark and therefore failed to attain the mandatory minimum requirement and who failed to disclose existing conflicts of interest with the 2nd Respondent, is against the 2nd Respondent's Article of association, Human Resource Policy and Procedures Manual, Mwongozo Code of Governance for State Corporation and the spirit of *the Constitution* of Kenya.
- l. In addition, the purported appointment or confirmation was by a party, the President, who is not mandated to appoint the 2nd Respondent's Managing Director and it amounts to the President and Interested Parties usurping the exclusive powers of the Board of Directors of the 2nd Respondent and is therefore ultra vires, illegal and irregular.
- m. In a letter dated 27th December 2024, the 1st Respondent wrote to the 2nd Interested Party seeking to clarify the various conflicts of interest that had come to the attention of the Board of directors and that the 4th Interested Party failed to disclose during his interview with the 2nd Respondent in light of the tenders that the 2nd Respondent had advertised and awarded to third parties where the 4th Interested Party has an interest in.
- n. The 2nd Respondent avers that the 1st Respondent wrote the letter dated 27.12. 2024 in his capacity as the Chairperson of the Board of directors of the 2nd Respondent.
- o. Further, that the 1st Respondent did not in any way usurp/arrogate himself powers and mandate of the Board of directors. He only clarified issues, on behalf of the Board of directors, which the 4th Interested Party ought to have disclosed during his interview with the 2nd Respondent but failed to do so.
- p. The 2nd Respondent avers that the 1st Respondent did not in any way insubordinate/countermand the decision of the President, overturn the recruitment process and appointment



of the 2nd Respondent's Managing director and/or usurp the powers and mandate of the Board of directors. He only made a communication seeking to clarify issues with the 2nd Interested Party.

- q. Vide a letter dated 3rd March 2025 and received by the 2nd Respondent on the same day, the Petitioner wrote to the 2nd Respondent requesting for information and copies of documents. On 8th March 2025, the Petitioner herein filed the Petition herein alleging violation of his right to access to information.
 - r. The 2nd Respondent avers that a period of four (4) days, between the date when the information was requested and when the Petition was filed, was not sufficient for the 2nd Respondent to retrieve, vet and process the information requested by the Petitioner.
 - s. The Petitioner cannot therefore allege violation of a right when he is the one who failed to grant the 2nd Respondent sufficient time to provide the information and documents as requested.
 - t. The Mwongozo code of governance for State Corporation provides that the recruitment process should be competitive and transparent and based on a verifiable recruitment procedure approved by the Board of directors. Further, that the top three (3) candidates should be considered for the final decision taking into account the interview scoring sheets and the interview panel's recommendations.
 - u. The 2nd Respondent avers that it publicly invited applicants for the position of its Managing Director and vetted the applications in light of the required qualifications. Thereafter, the Board of directors of the 2nd Respondent carried out interviews in a transparent manner.
 - v. From the interviews carried out by the Board of Directors of the 2nd Respondent, the 5th Interested Party emerged as the best candidate by scoring a pass mark of 88.14% which is above the required 70%.
 - w. During a meeting held on 22nd November 2024, the Board of directors of the 2nd Respondent resolved to forward the top three (3) names to the 2nd Interested Party and make a recommendation that the 5th Interested Party herein be appointed as the 2nd Respondent's Managing Director. The said decision was informed by the fact that the 5th Interested Party is the only candidate who met the required qualifications and attained the required 70% pass mark.
 - x. The decision of 22nd November 2024 to forward the top three (3) candidates and make a recommendation to have the 5th Interested Party appointed as the 2nd Respondent's Managing Director was made by the Board of directors of the 2nd Respondent in line with the Mwongozo code of governance for State Corporation. The respondents did not violate the Mwongozo Code and applicable circulars as urged for and by the petitioner.
 - y. It is denied that by writing the letter dated 27.12.2024 the 1st respondent violated Article 232 or was insubordinate as alleged. The 1st respondent was performing a formal duty in official capacity to make the clarifications. To the contrary, the actions of the President, in purporting to appoint an unqualified person as the Managing Director of the 2nd respondent, were ultra vires, illegal and against the very spirit of Article 232 of *the Constitution* of Kenya.
8. The Attorney General filed the replying affidavit of Arthur Osiya, Principal Administrative Secretary in the Office of the President and sworn on 23.04.2025. It was stated that by a Notification of Presidential Action (II) of 20.12.2024 the Executive Office of the President communicated the occurrence for



the appointment of the 4th interested party and Managing Director of the 2nd respondent. However, that concurrence was rescinded upon due diligence in terms of Chapter Six of *the Constitution* on Leadership and Integrity and as communicate by the respondents. That the Press Release of 20.12.2024 thereby stands retracted. Accordingly the petition is baseless, misconceived, and devoid of any merits.

9. The Attorney General further filed the further replying affidavit of Peter Thande Kuria, Deputy Chief State Counsel, sworn on 02.05.2025. The affidavit explained that a related High Court Petition No.E006 OF 2025 at Nairobi, Caroline Wambui Mwangi –Versus- Hon. Attorney General and 2 others had been withdrawn on 12.02.2025.
10. Submissions were filed for the parties except for the 4th respondent who supported the petition and aligned with the petitioner’s case and submissions. The parties’ counsel made oral highlights of the submissions. The Court has considered the material on record and the parties’ respective positions and returns as follows:
 - a. While it is true that the 4th respondent aligned with the petitioner’s case and submissions, the respondents have failed to show that indeed the petition was a proxy suit on behalf of and for the benefit of the 4th interested party. The evidence is that the petitioner is an Advocate of the High Court of Kenya and has validly brought the petition in the public interest. The petitioner has invoked Article 258(1) of *the Constitution* which provides that every person has the right to institute court proceedings claiming that *the Constitution* has been contravened or is threatened with contravention. Further the petitioner has submitted that he filed the petition per Article 258(2) (c) which provides that in addition to a person acting in their own interest, court proceedings under Article 258(1) may be instituted by a person acting in the public interest. The petitioner has pleaded that he filed the petition to further Articles 10, Chapter Six on leadership and integrity, and Article 232. While the 4th interested party’s private rights were in issue, the evidence is that the subject matter in issue was about the recruitment and appointment of the 2nd respondent’s Managing Director, a public office. The Notification of Presidential Action (II) of 20.12.2024 by itself was published as a press release and for “immediate release” and in the Court’s view, by itself, the Notification is manifestation of the high public interest involved. It would appear that the infringed rights herein related directly to the 4th interested party. However, *the Constitution* by itself in Article 22(1) declares that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been, violated or infringed, or is threatened. It would appear that even where capacity to sue by persons as enumerated in Article 22 (2) (a), (b) and (d) or Article 258 (a), (b) and (d) exist, such existence does not operate as a bar to a person moving under Article 22(1) or 258(1). That is more so for without such possibility, then public interest or strategic interest litigation would be seriously hampered and as envisaged in Articles 22 (1) and (2) (c) and 258 (1) and (2) (c) of *the Constitution*. The Court finds that the petitioner had due standing.
 - b. As relates to subject matter in dispute, it is obvious that the dispute is about recruitment and appointment of a Managing Director of the 2nd respondent, an employment and labour relations function. There is no principle that there cannot be strategic or public interest litigation in disputes that come to the Court and as may be appropriate. Thus, section 12(2) of the *Employment and Labour Relations Court Act*, 2011 states “(2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer’s organisation, a federation, the Registrar of Trade Unions, the Cabinet



Secretary or any office established under any written law for such purpose.” The petitioner has filed the petition against an employer in the public service, the 2nd respondent.

- c. As for the pleading, it is that the petitioner has stated the provisions of the Bill of Rights and *the Constitution* he alleges to have been violated and further stated the alleged manner of violation such as refusal to provide information, countermanding Presidential Decision and the manner the 4th interested party has not taken up the office of Managing Director despite the public communication notifying his Presidential appointment. The Court finds that the petition meets the threshold expected of pleadings in constitutional petitions for enforcement of the Bill of Rights and other provisions.
- d. By the foregoing findings, the Court returns that preliminary objections are liable to dismissal.

11. Turning to the merits of the petition, the Court returns as follows:

- a. The respondents have established that only the 5th interested party meet the score threshold of 70% as prescribed in the 2nd respondent’s Human Resource and Procedures Manual. The Court finds that the Board’s recommendation that the 5th interested party be appointed the 2nd respondent’s Managing Director cannot be defeated upon the tests in Article 73(2) (a) on selection on the basis of personal integrity, competence, and suitability; and, Article 232 (g) on fair competition and merit as the basis of appointments and promotions. The petitioner has failed to challenge or fault the scoring of the candidates who attended the interviews and the findings of the Board that the 5th interested party was competitively and fairly found to be the only qualified candidate.
- b. The petitioner has failed to show that the President indeed appointed the 4th interested party as the Managing Director of the 2nd respondent. It is not disputed that the Notification of Presidential Action (II) of 20.12.2024 conveyed that the 4th interested party had been appointed. However, as submitted for the petitioner, per Article 135 of *the Constitution*, “A decision by the President in the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President.” There is no exhibited Presidential decision of appointment of the 4th interested party as Managing Director of the 2nd respondent. The case as urged and submitted for the respondents that the President acted unlawfully without authority or was ultra vires in appointing the 4th respondent as Managing Director of the 2nd respondent is found misleading, unfounded and misconceived. It appears to the Court that the Notification of Presidential Action (II) of 20.12.2024 about appointment of the 4th interested party has not been shown to have been about an existing appointment decision by the President per Article 135 of *the Constitution*. The Court considers that the Notification could only have been about an appointment of the 4th interested party by Presidential decision per Article 135 and the notification by itself was not an appointment. The appointment decision per Article 135 not having been exhibited, it is doubtful, on a balance of probability, to find that indeed the President had made an appointment of the 4th interested party as per the Notification.
- c. The Court upholds the submissions and case urged for the respondents that the petitioner filed the petition without allowing sufficient time for the respondents to provide the information that had been requested for.
- d. The Court returns therefore that the petitioner has failed to establish violation of any of the rights, fundamental freedoms and other constitutional provisions as was alleged. Accordingly, the petition is liable to dismissal. The Court has considered the margins of success including



the failed preliminary objection and that the petition was in the public interest and each party to bear own costs of the petition.

- e. While making the findings, the Court has considered the Amended Charge Sheet for the 4th respondent annexed to the 1st, 2nd, and 3rd interested parties' list of documents and filed through learned counsel Ms. Valentine Jepkemei, for Attorney General. The criminal charges appear to relate to the particulars of alleged forged documents and alleged conflict of interest referred to in the 1st respondent's letter to the 2nd interested party dated 27.12.2024. The Court considers that the matter in the Amended Charge Sheet should best be left to the relevant trial Court as the 4th interested party remains innocent until otherwise proven guilty.

12. In conclusion the petition is hereby dismissed and each party to bear own costs of the petition.

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

BYRAM ONGAYA, PRINCIPAL JUDGE

