



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gikenyi B & 2 others v Mwaura & 9 others (Petition E001 of 2025)  
[2025] KEELRC 1321 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1321 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E001 OF 2025**

**B ONGAYA, J**

**MAY 9, 2025**

**(IN THE MATTER OF THE IRREGULAR, ILLEGAL & NON-COMPETITIVE UNCONSTITUTIONAL APPOINTMENT OF CHAIRPERSONS OF STATE CORPORATIONS AND IN THE MATTER OF STATE CORPORATIONS ACT CAP 446 OF THE LAWS OF KENYA AND IN THE MATTER OF KENYA ROADS ACT NO 2 OF 2007, KENYA REVENUE AUTHORITY ACT NO 2 OF 1995, PUBLIC PROCUREMENT AND DISPOSAL ACT NO 33 OF 2015 AND IN THE MATTER OF KENYATTA UNIVERSITY TEACHING, REFERRAL AND RESEARCH HOSPITAL OR 2019 L.N. 4 OF 2019 AND IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS UNDER ARTICLES 27, 28,41,43,47,232 & 235 OF THE CONSTITUTION AND IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 27,28,41,43,52,53,54,55,73,75,129,130,131,232 AND 236 OF THE CONSTITUTION (2010) AND IN THE MATTER OF ARTICLES 1,2,3(1),10,19,20,21,22,23,24,25,27,28,42,43,73,75,129,130,131,232,231,59,162,165,232,236,258,259 AND 260 OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF RULE 4,10,11,13 OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL FREEDOMS) HIGH COURT PRACTICE AND PROCEDIRE RULES 2013) AND IN THE MATTER OF DOCTRINES OF BILL OF RIGHTS, CONSTITUTIONALISM, RULE OF LAW AND LEGITIMATE EXPECTATIONS**

**BETWEEN**

**DR. MAGARE GIKENYI B ..... 1<sup>ST</sup> PETITIONER  
DISHON KEROTI MOGIRE ..... 2<sup>ND</sup> PETITIONER  
PHILEMON ABUGA NYAKUNDI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**ANTONY NG'ANG'A MWAURA ..... 1<sup>ST</sup> RESPONDENT  
KENYA RURAL ROADS AUTHORITY (KERRA) ..... 2<sup>ND</sup> RESPONDENT  
MR. NDIRITU MURIITHI ..... 3<sup>RD</sup> RESPONDENT**



KENYA REVENUE AUTHORITY .....	4 <sup>TH</sup> RESPONDENT
KEMBI GITURA .....	5 <sup>TH</sup> RESPONDENT
KENYATTA UNIVERSITY TEACHING, REFERRAL AND RESEARCH HOSPITAL .....	6 <sup>TH</sup> RESPONDENT
MWANGI WA IRIA .....	7 <sup>TH</sup> RESPONDENT
PUBLIC PROCUREMENT REGULATORY BOARD .....	8 <sup>TH</sup> RESPONDENT
HON ATTORNEY GENERAL .....	9 <sup>TH</sup> RESPONDENT
PUBLIC SERVICE COMMISSION .....	10 <sup>TH</sup> RESPONDENT

## JUDGMENT

1. The petitioners filed the Petition dated 01.01.2025 in person and prayed:
  - a. That a declaration is hereby made that any nominations and/or appointments must at all times adhere to constitutional safeguards as envisaged inter alia in Article 10, 232 and 236 of *the constitution*.
  - b. That a declaration is hereby made that when the statute or any law states that appointment be done by the President/Cabinet Secretary or any other person/entity, that in itself does not contemplate whimsical, headhunting of nominations/appointments but as per Article 232 as read with article 10, 73, 75 of *the Constitution* which includes competitive, merit based appointments.
  - c. That a declaration is hereby made that the appointment of the 1<sup>st</sup> respondent Antony Ng'ang'a Mwaura as Non-executive chairperson of Kenya Rural Roads Authority is illegal, unconstitutional null and void.
  - d. That a declaration the appointment of the 3<sup>rd</sup>, 5<sup>th</sup> and 7<sup>th</sup> respondents as non-executive chairman of 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> respondents state corporations respectively is illegal, unconstitutional null and void.
  - e. That judicial review order of certiorari is hereby issued quashing the gazette notice(s) and or any documents and any appointments of 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 7<sup>th</sup> respondents into 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> respondent state corporations.
  - f. That judicial review order of Certiorari is hereby issued generally quashing all appointments made without adhering with article 232 of *the constitution* especially on merit based competitive appointments.
  - g. That a judicial review order of mandamus is hereby issued compelling the respondents herein or without and/or any other person/entity to conduct a fresh/legal and competitive, merit based appointments of all person(s) in adhering all statutory and constitutional dictates as provided in article 232 of *the constitution*.
  - h. That a judicial review order of prohibition prohibiting respondents herein and/or without and/or any other person entity from appointing/nominating any person in a non-competitive,



non-merit based without except by adhering to all statutory and constitutional dictates as provided in article 232 of *the constitution* (2010).

- i. That any other order or/and modifications of petitioners' prayer(s) which this honourable court may deem fit so as to achieve objects of justice for majority of Kenyans as a whole.
  - j. That this being a public interest petition filed in defence of *the constitution* each party to bear their own costs.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition and sworn on 01.01.2025 as well as the Further Affidavit sworn on..... The petitioner's case is as follows:
- a. Through a press release dated 19.12.2024 the Chief of Staff and Head of Public Service notified the public that the President of the Republic of Kenya, H.E. William Ruto appointed Mr Anthony Mwaura as Chairman Board of Directors of Kenya Rural Roads Authority (KeRRa), Mr Nderitu Muriithi, Kembi Gitura and Mwangi wa Iria as non executive chairman of Kenya Revenue Authority, Kenyatta University Teaching, Referral and Research Hospital and Public Procurement Regulatory Board State Corporations respectively.
  - b. Prior to the appointment of the 1<sup>st</sup> respondent, he was not nominated by any of the groups contemplated in section 8(1)(f) of The *Kenya Roads Act* Cap 408, before he could be appointed as a member then chairman of board of management of Kenya Rural Roads Authority.
  - c. Before the Cabinet Secretary appoints any of the members envisaged at section 8(1)(f), he/she must be nominated from among members nominated by each organization as required in section 8(2) of *Kenya Roads Act* Cap 408 of the laws Kenya.
  - d. That the 1<sup>st</sup> respondent was the immediate Chairman of Kenya Revenue Authority(KRA) and hence it was not possible for him to be nominated by members of any of the organizations contemplated in section 8(1)(f) of *Kenya Roads Act* Cap. 408 of the laws of Kenya.
  - e. There was no annual meeting which met and approved the appointment of Mr. Antony Mwaura, 1<sup>st</sup> respondent as their member.
  - f. That the 1<sup>st</sup> respondent does not have knowledge and experience in fields contemplated in section 8(1)(f) of the of *Kenya Roads Act*. That from his website, Mr. Antony Mwaura was former UDA Chairman and he holds a Bachelor of Education Degree from Kisii University and Diploma in Business Management from Kenya Institute of Management.
  - g. That he has no knowledge and experience in highway engineering, surveying, urban and regional planning, transport economics and farming. He is therefore not qualified to hold this position.
  - h. The 1<sup>st</sup> respondent is a proprietor of Toddy Civil Engineering, a company that specializes in civil engineering and sale of construction material, Supplying construction material, leasing construction equipment, and general construction. He is likely to have conflict of interest in his new role.
  - i. That the 1<sup>st</sup> respondent's integrity is at question since he was implicated in the case of Nairobi Milimani Chief Magistrates Anti-Corruption Case No. 32 of 2019 (Republic Vs. Kioko Mike Sonko Mbuvi Gideon, Anthony Ng'ang'a Mwaura and 16 others.)



- j. In the matter of Dr. Magare-*Gikenyi B v. Antony Mwaura & 2 others; Ethics and Anti-corruption commission & 2 others (interested parties)(Petition E009 of 2023)*[2024] KEHC 8456(KLR)(Anti-Corruption and Economic Crimes)(15 July 2024)(Judgment), the Court quashed his appointment as chairman of KRA due to his integrity issues. The court of appeal stay order temporarily stopped his ouster pursuant to rule 5(2)(b) of the court of appeal rules.
  - k. The appointment of Mr. Nderitu Muriithi as a non-executive chairperson of the board of directors of Kenya Revenue Authority KRA vide gazette Notice 16751 dated 20.12.2024 by the President was done without any competitive recruitment contrary to Article 232 as read with Article 10,73,75 of *the Constitution*.
  - l. Appointment of Mr. Kemu Gitura as a non-executive chairperson of board of directors of Kenyatta University Teaching, referral and research Hospital vide gazette notice 16752 dated 20.12.2014 by the President was done without a competitive recruitment, contrary to article 232 as read with article 10,73,75 of *the constitution*.
  - m. Appointment of Mr. Mwangi wa Iria as a non-executive chairperson of Board of Directors of Public Procurement Regulatory Board vide gazette notice 16753 dated 20.12.2024 by the President was done without any competitive recruitment contrary to article 232 as read with article 10, 73, 75 of *the constitution*.
  - n. That appointing a person with integrity issues is against legitimate expectation of Kenyans and contrary to chapter six of *the Constitution*.
  - o. Kenyans have legitimate expectations that any positions in the public service ought to have competitive, merit based recruitment, and not head hunting. Failure to conduct competitive recruitment is discriminative, in dignifying and against good labour practices and economic empowerment of youth, PWD & minority.
  - p. That appointing people without requisite knowledge, skills and merit is against article 232 and 236 of *the constitution*.
3. The 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents filed a Notice of Preliminary Objection dated 15.01.2025, drawn by the office of the Attorney General and made on the following grounds:
- a. That this court lacks jurisdiction to hear and grant the orders sought both in the application and petition under section 12(1) of the *Employment and Labour Relations Court Act*.
  - b. The court lacks jurisdiction to hear and determine matters on the appointment of state corporations board chairpersons and members done under the *State Corporations Act*.
  - c. The petitioners are not an employee of the respondents herein and do not fall in the category of employees hence this honourable court has no jurisdiction to hear and determine the issues raised. This position is set out in the Court of Appeal Civil Appeal no 61 of 2015, Rift Valley Water services board & 3 others vs. Geoffrey Asanyo & 2 others [2022].
4. Additionally, the 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents filed a Grounds of Opposition dated 15.01.2025, drawn by the office of the Attorney General and made on the following grounds:
- a. That the Honourable Court lacks jurisdiction to hear and grant the orders sought both in the application and petition under Section 12(1) of the Employment and Labour Relations Court Act as:



- I. The court lacks jurisdiction to hear and determine matters on the appointment of State Corporations Board Chairpersons and members done under the *State Corporations Act* as they are not employees of state corporations.
  - II. The Petitioners are not employees of the Respondents herein and do not fall in the category of employees hence this Honorable Court has no Jurisdiction to hear and determine the issues raised herein. This position is set out in the Court of Appeal Civil Appeal No. 61 of 2015, Rift Valley Water Services Board & 3 others Vs Geoffrey Asanyo & 2 Others [2022] eKLR.
- b. That the Honourable Court lacks jurisdiction to hear and determine the petition and application as the same do not meet the threshold for grant of declaratory orders as set out by the Singapore Court of Appeal in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another* [2006] 1 SLR (R) 112 that:
- i. The court must have jurisdiction and power to award the remedy, there is no remedy to be awarded in the instance.
  - ii. The matter must be justiciable in the court, there is no cause of action or labour dispute for determination as against the Respondents.
  - iii. As a declaration is a discretionary remedy, it must be justified by the circumstances of the case, there is no justification in the instant case.
  - iv. The plaintiff must have locus standi to bring the suit and there must be a real controversy for the court to resolve. The Petitioners clearly have no locus standi to commence the proceedings herein as they have not demonstrated their interest in the issues before court, the public interest they are defending or that they are representing the public officers interests.
  - v. Any person whose interests might be affected by the declaration should be before the court; and
  - vi. There must be some ambiguity about the issue in respect of which the declaration is asked for so that the court's determination would have the effects of laying such doubts to rest, the same has not been demonstrated.
- d. THAT the Petitioners lack locus standi to commence these proceedings as has been clearly set out by the Court of Appeal in Civil Appeal No. 119 of 2017, *Public Service Commission and 2 others Vs Eric Cheruiyot & Others* and in that regard the Court lacks the jurisdiction to hear and determine the issues raised herein.
- e. THAT the petition has not met the threshold set out in *Anarita Karimi Njeru-vs- The Republic (1979)* eKLR case as it has not been pleaded with precision; it does not provide adequate particulars of the claim relating to any alleged violations of *the Constitution* by the Respondents, does not raise any Constitutional issues for deliberation as enshrined under the cited Articles, the Petitioners have equally failed to demonstrate the harm occasioned to them as a result of the alleged violation and as such should be dismissed with costs.
- f. THAT the petition lacks any legal foundation as the Court has not been served with substantive issues of constitutional law requiring its intervention, a constitutional petition must set out issues for determination substantively by the Court.



- g. THAT the application and petition do not disclose any constitutional violation by the Respondents and the allegations made are unfounded hence no justifiable cause and the same should be dismissed.
  - h. THAT the application and petition should be dismissed with costs as the same are geared towards embarrassing the Court, brought in bad faith and wasting precious judicial time.
  - i. THAT the great public interest touching on the issues raised in this matter outweighs the undefined, unidentified and undisclosed personal interests of the Petitioners as there is no prejudice the Petitioners are going to suffer if the conservatory orders are not granted or the petition dismissed.
5. Further, the 2<sup>nd</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents filed the Replying Affidavit of Arthur Osiya, CBS, Principal Administrative Secretary in the Office of the Chief of Staff and Head of the Public Service, sworn on 11.03.2025 and drawn by the office of the Attorney General. It was urged as follows:
- a. The appointments of the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 7<sup>th</sup> respondents were made in accordance with Article 132 of *the Constitution* of Kenya, section 6(1) of the *State Corporations Act* and the respective enabling statutes governing the institutions to which they were appointed.
  - b. The role of the chairperson of the board of KeRRA is non-executive and is not involved in daily management and operations of the institution and has no role in procurement processes, thereby negating any conflict of interest as alleged.
  - c. The petitioners have failed to meet the test of conflict of interest as set out by the Court of appeal in *Delphis Bank Ltd Vs. Channan Sing Chatthe & 6 others* [2005] Eklr which underscored that the test for conflict of interest is whether real mischief or real prejudice would likely result.
  - d. The petitioners' allegations that the appointments were made through political patronage or ethnic favouritism are unsubstantiated, speculative and lacking in evidentiary basis.
  - e. The respective laws leading to the appointments of the said respondents have set out clear procedure of appointment and the same was adhered to, the petitioners have not demonstrated any evidence to the contrary neither have they challenged the qualifications or competence of the appointees.
  - f. The appointments in question were undertaken in the interest of efficient and effective governance and in accordance with the law.
  - g. The petition lacks any legal foundations as the court has not been served with substantive issues of constitutional law requiring its intervention, a constitutional petition must set out issues for determination substantively by the court.
  - h. The petition did not disclose any constitutional violation by the respondents and the allegations made are unfounded hence no justifiable cause and the same should be dismissed.
6. The 7<sup>th</sup> Respondent filed a Notice of Preliminary Objection dated 15.01.2025 and drawn by Mbugua Ng'ang'a & Co Advocates, and made on the following grounds:
- a. This court lacks jurisdiction to determine the issues raised and/or grant the orders sought in the instant application and petition in view of Article 162 of *the Constitution* as read with section 12 of the *Employment and Labour Relations Court Act*.



7. The 1<sup>st</sup> respondent filed his Replying Affidavit sworn on 14.01.2025 and drawn by Mutua Nyongesa Muthoka Advocates. He urged and stated thus:
- a. That the petition calls for judicial activism, populist, callous, mischievous, bad in law, unnecessarily vexatious, an abuse of the court process, misconceived and as such ought to be struck out and/or dismissed with costs to the 1<sup>st</sup> respondent.
  - b. The 1<sup>st</sup> petitioner is a frivolous and vexatious litigant who files unnecessary suits, not for public interest, but with the sole intention of blackmailing innocent Kenyans for selfish gains.
  - c. Article 35(1) of *the Constitution* guarantees every citizen to access of information from public offices/officers. That if the petitioners were indeed genuine in their intentions they ought to have sought for information from the ministry of Roads and transport concerning his appointment.
  - d. The 1<sup>st</sup> respondent is a large scale farmer with vast knowledge and experience in both crops and animal husbandry and hence a member of the Kenya Farmer's association limited.
  - e. Through a letter dated 16.12.2024 the Kenya farmers association limited forwarded his name alongside two other names to the cabinet secretary, ministry of roads and transport for consideration for appointment as the association's representative member of the board of management of the 2<sup>nd</sup> respondent for a period of three years in terms of section 8(1)(f)(v) of the *Kenya Roads Act* following the association's resolution in its annual general's meeting.
  - f. Through a letter dated 18.12.2024 to the chief of staff and head of public service, the cabinet secretary, ministry of roads and transport conveyed his decision to appoint the 1<sup>st</sup> respondent as the representative member of the Kenya farmers association to the 2<sup>nd</sup> respondent's board of management upon review of all the nominees, to which the chief of staff and head of public service did not object to.
  - g. Consequently, the 1<sup>st</sup> respondent was appointed a member of the board of directors of the 2<sup>nd</sup> respondent for a period of three years in terms of section 8(1)(f)(v) of the Kenya Road Act through a gazette notice no 16746 dated 18.12.2024 by the Cabinet secretary, Ministry of Roads and Transport.
  - h. Subsequently, in exercise of his statutory powers under section 8(1)(a) of the *Kenya Roads Act*, the President of the Republic of Kenya Dr William Samoei Ruto appointed the 1<sup>st</sup> respondent as the chairman of the board of directors of the 2<sup>nd</sup> respondent through a gazette notice number 16750 dated 20.12.2024.
  - i. The 1<sup>st</sup> respondent is a separate legal entity from Toddy Civil engineering limited and no evidence has been adduced by the petitioners to demonstrate that the company has done or has the intention to conduct business with the 2<sup>nd</sup> respondent. That the allegations of conflict of interest are merely speculative and made in bad faith and are not supported by any evidence.
  - j. The assets and recovery agency filed an application for forfeiture order under section 90 and 92 of POCAMLA dated 05.06.2020 in Nairobi High Court ACEC Civil Application No 17 of 2020. Upon further investigation the agency established that the 1<sup>st</sup> respondent's assets previously preserved and seized under section 82 of PCAMLA and which were subject of the forfeiture order under section 90 of POCAMLA were either acquired through loans or legitimate business and therefore not proceeds of crime. The agency thus withdrew the said



application for forfeiture order through consent by parties dated 19.10.2022, recorded and adopted as an order of the court on 01.11.2022 and the file effectively closed.

- k. The trial in Milimani Chief Magistrate Anti-corruption case no. 32 of 2019 was conducted and in a Ruling dated 07.02. 2024 the trial court acquitted all the accused persons including the 1<sup>st</sup> respondent on all charges pursuant to section 210 of the [Criminal Procedure Code](#).
  - l. The petitioners' allegations casting aspersions on the 1<sup>st</sup> respondent's integrity are unfounded and malicious. There has not been a determination by any court of competent jurisdiction that the 1<sup>st</sup> respondent lacks integrity.
  - m. That the petition lacks merit, basis, discloses no reasonable cause of action in law, it is an abuse of court process.
8. The 10<sup>th</sup> respondent filed a Grounds of Opposition dated 10.02.2025 drawn by the Public Service Commission and made on the following grounds:
- a. The 10<sup>th</sup> respondent is improperly enjoined in the proceedings.
  - b. The petitioners have not disclosed any cause of action and/or sought any adverse orders against the 10<sup>th</sup> respondent.
  - c. The 10<sup>th</sup> respondent's mandate under Article 234 of [the constitution](#) and relevant national legislation does not extend into appointments of chairpersons into boards of state corporations.
  - d. The 10<sup>th</sup> respondent prays that it be expunged from the proceedings and/or in the alternative that no adverse orders/reliefs are issued against it.
9. The 7<sup>th</sup> respondent filed a Replying affidavit sworn on 07.03.2025 and drawn by Mbugua Ng'ang'a & Co Advocates. It was stated and urged as follows:
- a. The 7<sup>th</sup> respondent's appointment was in exercise of presidential authority granted by section 10 of the [public procurement and asset disposal act](#).
  - b. The 7<sup>th</sup> respondent meets the criteria set out under section 11 of the [public procurement and asset disposal act](#) for appointment to the position of non-executive chairperson of the public procurement regulatory board as he has the requisite knowledge, skills and experience to effectively discharge his mandate.
  - c. The 7<sup>th</sup> respondent's appointment did not deny, violate and/or infringe on anyone's constitutional rights or threaten denial, violation and/or infringement of the same to warrant the petitioner to approach this court under the guise of article 22 and 23 of [the constitution](#).
  - d. The petition makes heavy weather of various constitutional provisions, generalising the same without setting out specific violations of the rights as alleged.
  - e. The gazette notice does not constitute the President's instrument for the 7<sup>th</sup> respondent's appointment and essentially that means that there is no material before the court to be considered towards a finding on whether such instrument of appointment complied or failed to comply with [the constitution](#).
  - f. The 7<sup>th</sup> respondent's appointment was made in the public interest through the exercise of executive power under section 7(3) of the [State corporations act](#) and section 11 of the [public procurement and asset disposal act](#).



- g. The petitioners' invitation for this court to interfere with the 7<sup>th</sup> respondent's appointment should be declined as it would constitute an encroachment on executive authority and a violation of the principle of separation of powers.
10. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed the Replying affidavit of Paul Matuku, EBS, the Corporation secretary and Commissioner for Legal services & Board coordination department of the 4<sup>th</sup> respondent, sworn on 16.04.2025 and drawn by Carol Mburugu Advocate. It was stated and urged as follows:
- a. The appointment of the 3<sup>rd</sup> respondent adhered to principles of inclusiveness, accountability and meritocracy.
  - b. The 3<sup>rd</sup> respondent is qualified, experienced and satisfies the requirements for leadership in public service.
  - c. The appointment process considered principles of good governance, integrity, transparency and accountability.
  - d. The appointee, 3<sup>rd</sup> respondent, meets the threshold of competence, impartiality and integrity as demonstrated by their track record in public service and leadership.
  - e. The petition lacks substantive evidence to support the alleged constitutional violations, making it speculative and vexatious.
  - f. It sensationalizes the appointment to undermine the constitutional mandate of the president and is brought in bad faith.
  - g. The KRA plays a critical role in revenue collection and national economic management. Delaying or annulling the appointment would disrupt operations at the KRA and undermine public interest, especially during economic recovery.
  - h. Public appointments are presumed to have been made regularly and in good faith unless proven otherwise. The burden of proof lies with the petitioners.
11. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows:
- a. The Court returns that on the perennial preliminary objection that the Court lacks jurisdiction on account of lack of employer and employee relationship, the Court finds that board members of state corporations being public or state officers, they are servants of the people and therefore employees drawing wages, salaries, allowances or other remuneration from the public funds. In that regard the recent judgement citing many cases about that jurisdictional issue is *Kinyili & another v Government of Makueni County; Ethics and AntCorruption Commission (Interested Party) (Constitutional Petition E003 of 2025) [2025] KEELRC 750 (KLR) (13 March 2025) (Judgment) Neutral citation: [2025] KEELRC 750 (KLR)*.
  - b. As submitted for the respondents, while the petitioners allege lack of competitive, meritorious and open recruitment they appears not to provide material evidence in that respect. It is not shown that the petitioners asked the respondent to provide the necessary information about the impugned recruitment and appointments. The respondents' submission that the allegations are not substantiated is upheld. It is that the petitioners should have obtained relevant information from the appointing authority and if the same was not forthcoming then an inference would accrue that the allegations are valid. The Court finds that the petitioners



have therefor not shown by evidence the circumstances of the impugned appointments to establish the violations of *the Constitution* as was alleged.

- c. The Court finds that the petitioners had *locus standi* to file the petition in terms of Article 258 in this matter of public interest. The Court finds accordingly.
- d. As relates to the declarations on procedure applicable to appointments to state Corporations, while the same apply generally as pleaded and per prayers (a), and (b), the reliefs are worded as applying to future and unstated cases for which the declarations may not apply taking into account the relevant and applicable constitutional and statutory provisions on case by case basis.
- e. Accordingly, in view of the foregoing findings the petition will fail for want of sufficient material evidence to establish the allegation and for unlimited scope of the two declaratory reliefs that would apply to unknown future cases.

12. In conclusion the petition is dismissed with no orders on costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 9<sup>TH</sup> MAY, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

