



**Sheikh (Deputy County Commissioner) v Ministry of Interior & National Administration & 3 others (Petition E182 of 2024) [2025] KEELRC 1319 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1319 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E182 OF 2024**

**B ONGAYA, J**

**MAY 9, 2025**

**IN THE MATTER OF THE ALLEGED VIOLATION ARTICLES 2(1) AND (2), 3(1), 10(1) AND (2), 19, 20(1) AND (2), 21(1), 22, 23, 27, 28, 41, 47, 232(1)(E) AND (2), 258 AND 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE ADVERTISEMENT OF VACANCIES IN THE POSITION OF CHIEF II IN KHOROF HARAR SUB-COUNTY, RIBA LOCATION**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, NO 4 OF 2015**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT, 2007**

**BETWEEN**

**ABDULLAHI ABDI SHEIKH ..... PETITIONER  
DEPUTY COUNTY COMMISSIONER**

**AND**

**MINISTRY OF INTERIOR & NATIONAL ADMINISTRATION .... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY COMMISSIONER WAJIR COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER ..... 3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**



## JUDGMENT

1. The petitioner filed the Petition dated 19.11.2024 through B.V.Francis & Associates Advocates. The petitioner prayed for:
  - a. A declaration be and is hereby issued that the petitioner's right to fair administrative action and fair labour practices have been violated.
  - b. . A declaration that the Petitioner is the legally appointed and duly employed Chief II of Riba location.
  - c. A declaration that the respondent cannot advertise for the position of Chief II of Riba location while the petitioner is still legally holding the office.
  - d. A declaration that the advertisement of vacancy in the position of Chief II, Riba location dated 18.11.2024 is illegal and therefore null and void.
  - e. A declaration that the apparent and implied termination of the petitioner's employment and appointment as Chief II of Riba location is unfair, and therefore illegal, null and void.
  - f. An order do issue to remove to this court and quash the advertisement dated 18.11.2024 advertising vacancy in the post of Chief Grace II of Khorof Harar Sub-Location, Riba Location, Wajir Bor Division, Wajir County.
  - g. That a permanent mandatory order do issue directing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to allow the petitioner to fulfil his mandate in the position of the Chief Grade II of Khorof Harar Sub-location, Riba Location, Wajir Bor Division, Wajir County.
  - h. That the costs of and incidental to, this petition be awarded to the petitioners against the respondents.
    - i. That this Honourable Court be pleased to grant such further order as may be just and appropriate.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition and sworn on 19.11.2024 as well as the Further Affidavit sworn on 05. 03.2025. The petitioner's case is as follows:
  - a. On 04.09.2023 the 3<sup>rd</sup> respondent advertised vacancies for the post of Chief II Riba location.
  - b. . The petitioner applied and successfully interviewed for the position and his name forwarded for appointment as Chief II Riba location by the 1<sup>st</sup> respondent.
  - c. On 30.07.2024 vide a letter, the 1<sup>st</sup> respondent through the 3<sup>rd</sup> respondent offered the petitioner the appointment to the position of Chief II Riba location asking that he indicates his acceptance in writing and that he reports to the office of the County Human Resource Management and development for necessary documentation.
  - d. The petitioner accepted the offer of appointment in writing vide a letter dated 31.07.2024 addressed to the 3<sup>rd</sup> respondent.



- e. Upon verification and authentication of the petitioner's certificates, the 1<sup>st</sup> respondent in a letter dated 31.07.2024 and addressed to the 3<sup>rd</sup> respondent, cleared the petitioner for the appointment.
  - f. Subsequently, the petitioner reported for his duties as confirmed via a letter dated 02.08.2024 and has been discharging his duties.
  - g. On or about 30.07.2024, Nairobi ELRC Petition Number E119 of 2024 was filed in a bid to challenge the petitioner's appointment and employment.
  - h. The petitioners in said suit indicated to the court that they were not aware of the said petition, and that the same had been filed in their names, without their instruction and knowledge.
  - i. On 07.11.2024 the court dismissed the frivolous petition for want of instructions.
  - j. Subsequently, the petitioner received another letter of appointment dated 12.11.2024 from the 1<sup>st</sup> respondent through the office of the 3<sup>rd</sup> respondent confirming his previous appointment to the post of Chief II of Riba Location.
  - k. Soon thereafter, on 18.11.2024 the 1<sup>st</sup> respondent advertised a vacancy in the post of Chief II in Khorof Hara Sub-county Riba location.
  - l. The petitioner states that he never received a termination letter, neither has he ever been the subject of any process for the termination of employment.
  - m. That the advertisement implies the termination of his employment, in an unprocedural and unfair manner.
3. The 1<sup>st</sup> respondent filed the replying affidavit of John O. Otieno, Regional Commissioner of North Eastern Region in Kenya, sworn on 31.01.2025 and drawn by the office of the Attorney General. It was stated and urged as follows:
- a. The 1<sup>st</sup> respondent issued an advertisement on 03.10.2022 and 04.09.2023 for the vacancy of Chief II Riba location for Job group H which requires that the candidates to be not less than 35 years of age.
  - b. Following the advertisements, the petitioner and other applicants applied and attached the required the documents.
  - c. Following the successful interview process, the Principal Secretary of the Ministry of Interior and National Administration via a letter dated 28.03.2024 addressed to the Regional Commissioner confirmed the appointment of the petitioner as the Chief II Riba location.
  - d. Upon receipt of the above-mentioned letter the Regional Commissioner via a letter dated 26.07.2024 wrote to the County Commissioner informing them that the office was authorized to effect various appointments including the appointment of the petitioner to the office of the Chief II Riba location, subject to verification of the appointee's documents. Subsequently, a letter dated 30.07.2024 was sent to the petitioner who responded through a letter dated 31.07.2024.
  - e. In July, 2024 the Regional Commissioner received complaints from the area residents of Khorof Harar Sub County regarding the petitioner and Mr. Jibril Mohamed Ismail wherein it was alleged that the two had forged their birth certificates and ID cards to falsify their



age. The Regional Commissioner wrote a letter dated 31.07.2024 addressed to the County Commissioner Wajir, requesting for investigation into the allegations.

- f. In response, the National Police Service via the Directorate of Criminal Investigation Wajir, issued a report into the allegations via a report dated 24.09.2024 which stated that the record dates of birth of both Jibril Mohamed Ismail and the petitioner were altered.
  - g. By letter dated 09.10.2024 from Regional Commissioner North Eastern addressed to the Principal Secretary Internal Security and National Administration, informed the Ministry of the findings by the DCI and recommended that fresh interviews be conducted to fill the position of Chief Riba location as the petitioner did not meet the requirement as per the job advert and the scheme of service.
  - h. In response the Principal Secretary Internal Security and National Administration via a letter dated 12.11.2024 authorized the Regional Commissioner North Eastern Region to re-advertise the position of Chief Riba location.
  - i. On 26.11.2024 via a letter from the Principal Secretary Internal Security and National Administration addressed to the petitioner, the petitioner was informed that his appointment was cancelled and the contents withdrawn on the basis that upon investigations being conducted by the DCI it was confirmed that the petitioner fraudulently changed his date of birth on his identity card contrary to the [registration of persons act](#), Cap 107 subsection 140(1) (d).
4. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows:
- a. The petition is based on the petitioner's case that the impugned advertisement could not issue whereas he is validly in office and there is no vacancy.
  - b. However, the evidence is that by letter dated 26.11.2024, the 1<sup>st</sup> respondent informed the petitioner his appointment had been cancelled.
  - c. It therefore appears to the Court that a vacancy accrued by reason of the cancellation of the appointment and the petition is found not merited.
  - d. In any event this petition has not related the challenge of the cancellation of the appointment.
  - e. The Court has considered all circumstances including the lapses in the recruitment process that may have occasioned cancellation of the appointment and each party to bear own costs.

In conclusion the petition is hereby dismissed and each party to bear own 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**

