



REPUBLIC OF KENYA



**Nyangweso & 2 others v DCC East Wanga Division & 2 others; Shiliebo (Interested Party)
(Constitutional Petition E004 of 2025) [2025] KEELRC 1322 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1322 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CONSTITUTIONAL PETITION E004 OF 2025**

DN NDERITU, J

MAY 8, 2025

**IN THE MATTER OF ARTICLES 3(1), 10,21,22,23 SEC
35(1)41, 47,73,165,232 OF THE CONSTITUTION AND
IN THE MATTER OF VIOLATION OF ARTICLES 1,2(3)(4)
10,4(1) 47,73 75 AND 232, 259(8) OF THE CONSTITUTION**

BETWEEN

**BONVENTURE KWEYU NYANGWESO 1ST PETITIONER
GEOFFREY WANGA ORANGA 2ND PETITIONER
PHILIP NELIMA OMUKONO 3RD PETITIONER**

AND

**DCC EAST WANGA DIVISION 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT
THE PUBLIC SERVICE COMMISSION 3RD RESPONDENT**

AND

WINSTON OHOLA SHILIEBO INTERESTED PARTY

RULING

I. Introduction

1. In a petition dated 27th January, 2025 (the petition) filed through Marisio Luchivya & Co. Advocates, the petitioners are seeking for the following reliefs –
 - a. a declaration that process leading to the appointment of the interested party was in contravention of Articles 10,35,47 (2), 232 and 249 of *the constitution* hence unconstitutional.



- b. a declaration that the manner of appointment of the interested party by the 1st and 3rd Respondents was in breach of the objects commission and independent offices hence unlawful.
 - c. an order of certiorari do issue and bring in the court decision of the 3rd respondent appointing the interested party as chief East Wanga Location and quash the appointment.
 - d. an order of mandamus directing the 1st and 3rd respondents to conduct a recruitment process that is in conformity with sec 37 of the PSC Act, Articles 10,27,35,47,73 (2) 232 & 249 of the constitution.
 - e. Costs of the petition.
2. Contemporaneously, the petitioners filed a notice of motion (the application) of even date seeking for the following orders –
1. Spent.
 2. Spent.
 3. That a conservatory order of injunction do issue restraining the 1st and 3rd respondents from conducting interviews in respect of appointment of assistant chief Bumini sub location upon declaring it vacant vide notice dated 13/1/2025 pending the interpartes hearing of this application.
 4. That pending the hearing of this petition conservatory order of injunction do issue restraining the 1st and 3rd respondents from appointing, inaugurating or in any other manner conferring to the interested party instruments of power to perform the functions of chief East Wanga Location.
 5. That a conservatory order of injunction do issue restraining the 1st and 3rd respondents from conducting interviews in respect of appointment of assistant chief Bumini sub location upon declaring it vacant vide notice dated 13/1/2025 pending the interpartes hearing of this application.
 6. That costs be provided for.
3. The application is expressed to be brought under Rule 20, 21, 22, & 23 of the Constitution of Kenya (Protection of Rights and fundamental Freedoms) Practice Rules & Procedure 2013 and based on the grounds stated on the face of it. It supported with the affidavit of the 1st petitioner sworn on even date with several annexures attached.
4. Though duly served and even having a counsel, Mr. Nyauma, appear in court for them, the respondents did not respond to the application. Likewise, as at the time of authoring this ruling the respondents have not responded to the petition.
5. On 6th March, 2025 the court issued interim orders in terms of prayers 1 and 2 of the application.
6. Although counsel for the petitioners, Miss Namenge, promised to file written submissions in support of the application and furnish the court with a hard copy thereof, as required by Rule 24 of the Employment and Labour Relations Rules 2024, this was not complied with. As at the time of writing this ruling there is no such hard copy of the submissions in the file.



II. The Evidence

7. In the supporting affidavit sworn by the 1st petitioner for and on behalf of all the petitioners it is deposed that vide a notice or advert dated 5th February, 2024 the 1st respondent, acting on instructions from the 3rd respondent, declared a vacancy for the chief East Wanga Location.
8. The 1st petitioner applied for the position and attended the interview on 14th March, 2024 as did the interested party who was by then the assistant chief of Bumini sub-location. It is deposed that the results of the said interviews have not been declared or made public to this day and that numerous visits by the 1st petitioner to the office of the 1st respondent yielded no response.
9. It is further deposed that on 14th January, 2025 the 1st petitioner came across an advert declaring a vacancy in the position of assistant chief Bumini sub-location, a position held by the interested party and immediately thereafter, through the social media, the interested party invited his friends to a party to witness his inauguration as the chief of East Wanga Location.
10. It is deposed that the opaque and irregular manner of the alleged appointment of the interested party violated Articles 2, 3, 10, 32, 41, 47, 73, 232, and 259 of *the Constitution* and Section 27(4) of the *Public Service Commission Act*.
11. It is further deposed that the interested party was to be unlawfully and irregularly inaugurated on 29th January, 2025 as per the notice annexed. It is further deposed that the applicants who were short-listed and interviewed were not informed of the outcome of the interviews yet they were by law entitled to that information.
12. It is thus deposed that the purported appointment of the interested part as the chief of East Wanga Location is unlawful and unconstitutional and the court is thus urged to stop the process ostensibly awaiting quashing of the same as prayed in the petition.
13. It is further deposed that the declaration of the vacancy in the office of the sub-chief Bumini Sub-Location, a position held by the interested party, is intended to further complicate the equation and enable the elevation and promotion of the interested party without due process.
14. The court is thus urged to issue the interim orders sought for pending the hearing and determination of the petition.

III. Issues for Determination

15. In the considered view of the court there is only one main issue for determination in this application – Should the court allow the application as prayed and hence maintain the status quo pending the hearing and determination of the petition?
16. In my considered view, the facts as stated in the supporting affidavit and summarized above disclose prima facie case with a high probability of success. The court is convinced that there is need for a serious and detailed examination, analysis, and interrogation of the process that culminated in the purported nomination and appointment of the interested party as the chief of East Wanga Location.
17. It is sad that the respondents and the interested party did not respond to the application and this far there is no response to the petition on record. This has denied the court the advantage of having a vantage view of the other side of this petition and the application.



18. In my considered view, therefore, considering the facts as stated by the petitioners, which are so far not contested by the respondents, the court finds in favour of the petitioners in granting the interim orders as prayed pending the hearing and determination of the petition.

IV. Orders

19. The court makes the following orders –

- a. The notice of motion dated 27th January, 2025 is hereby allowed in terms of prayer 4 of the application.
- b. For avoidance of doubts, pending the hearing and determination of the petition a conservatory order of injunction be and is hereby issued restraining the 1st and 3rd respondents from appointing, inaugurating, or in any other manner conferring to the interested party instruments of power to perform the functions of the chief East Wanga Location, Kakamega County.
- c. This petition shall be fixed for hearing on priority basis.
- d. Costs in the cause.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 8TH DAY OF MAY 2025.

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DAVID NDERITU

JUDGE

