



Leonard & 3 others v Ministry of Interior and Coordiantion of National Government & 5 others (Employment and Labour Relations Petition E001 of 2025) [2025] KEELRC 1705 (KLR) (13 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1705 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
EMPLOYMENT AND LABOUR RELATIONS PETITION E001 OF 2025
AN MWAURE, J
JUNE 13, 2025

BETWEEN

KIPLANGAT LEONARD 1ST PETITIONER
MICAH TANGUS 2ND PETITIONER
MARSELLA BOSUBON 3RD PETITIONER
KIPRONO RONALD 4TH PETITIONER

AND

MINISTRY OF INTERIOR AND COORDIANTION OF NATIONAL GOVERNMENT 1ST RESPONDENT
COUNTY COMMISSIONER, BOMET 2ND RESPONDENT
DEPUTY COMMISSIONER, BOMET 3RD RESPONDENT
PUBLIC SERVICE COMMISSION 4TH RESPONDENT
THE ATTORNEY GENERAL 5TH RESPONDENT
DOROTHY CHEROTICH SANG ALIAS DOROTHY KIRUI 6TH RESPONDENT

JUDGMENT

1. The Petitioners filed a Petition dated 6th February, 2025.

Petitioners’ case.

2. The Petition is supported by the affidavit sworn by Kiplangat Leonard dated on the same date as the Petition and given authority to swear the said affidavit on behalf of his co-Petitioners.



3. The Petitioners aver that, through an advertisement dated 16th September 2024, a vacancy in the office of the Assistant Chief in Kiplabotwa sub-location was advertised.
4. The Petitioners aver that the 2nd Respondent conducted interviews for the said position of Assistant Chief in Kiplabotwa sub-location on 30th October 2024, after which the 1st Respondent unlawfully approved the 6th Respondent as the most qualified candidate.
5. The Petitioners aver that the recruitment process was irregular and failed to meet the stipulated advertisement requirements, as the 6th respondent was an outsider residing in a different location.
6. The Petitioners aver that the appointment disregarded fourteen more qualified local applicants, leading to claims of discrimination.
7. The Petitioners aver that the process was marred by illegalities, violating Articles 10, 27, 54, 73, 174 and 232 of *the Constitution* and sections 36(1) (a), 2 and 3 (a) the *Public Service Commission Act*, which mandates merit-based and non-discriminatory appointments.
8. The Petitioners aver that by approving the 6th Respondent's appointment, the responsible authorities ignored the lawful criteria, allowing an individual with only three (3) months of residency to secure the position, contrary to established guidelines.
9. The Petitioners pray for:
 - a. A declaration that the 1st, 2nd, 3rd and 4th Respondents have violated the Petitioners' constitutional rights under Articles 27(1) and 27(2) to equality before law, equality protection and equal benefit before the law and to equality including full and equal enjoyment of all rights and fundamental freedoms, Article 47 to fair administrative action and Article 48 on their access to justice.
 - b. A declaration under Articles 47 and 232 of *the Constitution* on fair administrative action and values and principles of the public service and section 4 of the Fair Administrative Act on administrative action to be taken expeditiously, efficiently and lawfully and section 36 (1) (a), 2 and 3 (a) of the *Public Service Commission Act* that the 1st, 2nd, 3rd and 4th Respondents are under a duty to have regard to competence and suitability, experience and qualities, merit and ability in appointing the 6th Respondent as the Assistant Chief II Kiplabotwo sub-location, Kiplabotwa location, Bomet County.
 - c. A declaration that the 1st, 2nd, 3rd and 4th Respondents have failed to have regard to competence and suitability, experience and qualities, merit and ability in appointing the 6th Respondent as the assistant chief II Kiplabotwo sub-location, Kiplabotwa location, Bomet County.
 - d. A declaration that the 1st, 2nd, 3rd and 4th Respondents' failure and omission to have regard to competence and suitability, experience and qualities; merit and ability in appointing the 6th Respondent as the Assistant chief II Kiplabotwo sub-location, Kiplabotwo location, Bomet County, is illegal and unconstitutional.
 - e. A declaration that the approval and appointment of the 6th Respondent to the position of Assistant Chief II Kiplabotwo sublocation, Kiplabotwo location, Bomet County is therefore null and void ab initio.
 - f. An order of certiorari quashing the decision of the 1st, 2nd, 3rd and 4th Respondents to appoint the 6th Respondent, as the Assistant Chief II, Kiplabotwo sub-location, Kiplabotwo location, Bomet County.



- g. An order of mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to comply with the constitution and initiate a recruitment process for the position of the assistant chief II Kiplabotwo sub-location, Kiplabotwo location, Bomet County in a procedural, transparent and legal manner as provided for by the law.
- h. That the Respondents bear the costs of this petition.
 - i. Any other or further relief that this honourable court considers appropriate and just to grant.

1st, 2nd, 3rd and 5th Respondents' grounds of opposition and replying affidavit

- 10. In opposition to the Petition, there are grounds of opposition dated 25th February, 2025 and replying affidavit sworn by Reuben Mogusu Ratemo, Deputy County Commissioner Bomet East Sub county dated 20th February 2025.
- 11. In the grounds of opposition, the 5th Respondent is seeking dismissal based on the orders of prohibition are overtaken by events. The 6th Respondent assumed office on February 3, 2025, following a successful interview, and has since exercised her duties. In *Makupa Transit Shade Ltd v Kenya Ports Authority* (2015) eKLR to assert that prohibition cannot undo an already completed appointment. The Petitioners have not demonstrated irreparable harm or prejudice. Given judicial resource limitations, the Respondents request the court to dismiss the application as moot and an abuse of the process, and to award costs.
- 12. In the replying affidavit, 1st, 2nd, 3rd and 5th Respondents aver that the position of Assistant Chief II for Kiplabotwa Sub-location became vacant following the promotion of Mr. Samwel Kibet Tesot.
- 13. The 1st, 2nd, 3rd and 5th Respondents aver that the Regional Commissioner authorized the advertisement on 29th August 2024, with applications open from 16th September to 8th October 2024. By the closing date, 27 applicants had submitted applications.
- 14. The 1st, 2nd, 3rd and 5th Respondents aver that shortlisting took place on 16th October 2024, with the panel ensuring applicants met the requirements outlined in the Scheme of Service for Administrative Officers. 14 candidates were shortlisted, while 13 were disqualified based on eligibility criteria.
- 15. The 1st, 2nd, 3rd and 5th Respondents aver that following shortlisting, the Bomet East Sub-County NIS Officer conducted vetting and background checks, with an intelligence report submitted before the interview date.
- 16. The 1st, 2nd, 3rd and 5th Respondents aver that allegations by the Petitioners are false, baseless, misguided and therefore should be dismissed.

Petitioners' further affidavit.

- 17. The Petitioners filed a further affidavit in response to the Respondents' replying affidavit dated 4th March 2025.
- 18. The Petitioners aver the advertisement required applicants to be residents of Kiplabotwo sub-location, making it a mandatory condition for eligibility.
- 19. The Petitioners aver that non-residents were disqualified based on this requirement, as evidenced by shortlisting minutes.



20. However, the Petitioners aver that the 6th Respondent, who is from Olokyin sub-location, was selected despite not meeting the residency requirement.
21. The Petitioners aver the National Intelligence Service (N.I.S.) report contradicts other recruitment documents, suggesting inconsistencies and possible collusion.
22. The Petitioners aver that the recruitment process violated the [Public Service Commission Act](#), as the 6th Respondent was unsuitable due to unfamiliarity with the community.
23. The Petitioners argue that the process was tainted by nepotism, political influence, and corruption, and requests the court to nullify the appointment.
24. The 4th and 6th Respondents did not enter appearance nor put in their response to the Petition.
25. The Petition herein was canvassed by way of written submissions.

Petitioners' submissions.

26. The Petitioners submitted that the 6th Respondent, as a non-resident of Kiplabotwa sub-location, was unqualified for the Assistant Chief II position. The Petitioners contend that the 1st to 4th Respondents unlawfully appointed her while overlooking more qualified candidates. The Petitioners assert that the proven fact of her residency in Olokyin sub-location disqualified her from holding the office and request the court to nullify her appointment. The Petitioners submitted that the 6th Respondent's appointment was unlawful due to her non-residency in Kiplabotwa sub-location.
27. The Petitioners relied on the cases of *Ali V Ministry of Interior & Coordination of National Government & Others* [2022] KEELRC 1460 (KLR) and *Abajillo V Principal Secretary, Ministry of Interior & Others* [2024] KEELRC 2761 (KLR), both of which found appointments invalid when candidates failed to meet advertised residency requirements. The Petitioners contend that these precedents apply to the present case, demonstrating that the Respondents violated public service principles by appointing an ineligible candidate.
28. The Petitioners submitted that the recruitment process leading to the 6th Respondent's appointment was unprocedural and violated constitutional provisions. The Petitioner relied on the case of *Abajillo V Principal Secretary, Ministry of Interior & Others* [2024] KEELRC 2761 (KLR), where Justice O. N. Makau held that a flawed recruitment process violated constitutional rights, public service regulations, and principles of fairness. The Petitioners urge the court to apply this precedent, asserting that the 1st to 4th Respondents unlawfully disregarded legal requirements, thereby infringing their constitutional rights under Articles 27, 28, and 47 of [the Constitution](#).
29. For the reliefs sought, the Petitioners submitted that the same should be granted as prayed.
30. For costs, the Petitioners relied on section 27 of the [Civil Procedure Act](#) that costs follow the event and it is upon the discretion of the court to grant costs.

1st, 2nd, 3rd and 5th Respondents' submissions.

31. The 1st, 2nd, 3rd and 5th Respondents submitted that the Public Service Commission (PSC) holds the constitutional authority to establish, abolish, and appoint individuals to public service offices in Kenya, as outlined in Article 234 of [the Constitution](#). This authority may be delegated to other public bodies when necessary under section 33 of the [Public Service Commission Act](#).



32. The 1st, 2nd, 3rd and 5th Respondents submitted that in response to a recruitment matter, they assert that the hiring and appointment process for the position of Assistant Chief IT in Kiplabotwa sub-location, Bomet County, adhered to legal requirements. According to section 36 of the PSC, candidate selection for appointments or promotions must consider merit, equity, aptitude, suitability, prescribed qualifications, public service efficiency, relevant experience and achievements, and personal integrity.
33. The 1st, 2nd, 3rd and 5th Respondents submitted that the Regional Commissioner authorized the advertisement for the Assistant Chief II position in Kiplabotwa sub-location, Bomet County, vide letter Ref No. SR.ST.1/3/78/VOL.1/96 and after a competitive selection process, the 6th Respondent emerged as the highest scorer with 74%. The recruitment considered gender parity, aligning with section 36(3)(b) of the PSC, which mandates balanced representation. The 1st, 2nd, 3rd and 5th Respondents submitted that the Petitioners challenged the appointment, citing residency concerns, but the Respondents countered with verification from the Area Chief and an NIS report affirming the 6th Respondent's residency and strong community ties. Section 6 of the Chief's Act, Cap 128 provides the Chief is mandated to exercise the jurisdiction and powers by this Act conferred upon the Chief over persons residing or being within such area.
34. The 1st, 2nd, 3rd and 5th Respondents emphasized that the requirement was residency, not place of birth, and relied on the case of Mohammed Abduba Dida v Debate Media Limited & another (2018) KECA 642 (KLR) the Court of Appeal held that the burden of proof lies on the party alleging a violation.
35. The 1st, 2nd, 3rd and 5th Respondents submitted that the Petitioners failed to prove that the 6th Respondent was not a resident or that the recruitment process was unlawful, rendering the Petition meritless and warranting dismissal.
36. The 1st, 2nd, 3rd and 5th Respondents argued that the Petitioners were not entitled to reliefs, citing case law, including Annarita Karimi Njeru V Attorney General [1979] KLR and Trusted Society of Human Rights Alliance V AG & others [2012] eKLR, which emphasize that constitutional petitions must clearly outline alleged violations. The 1st, 2nd, 3rd and 5th Respondents submitted that the Petitioners did not sufficiently demonstrate how the recruitment violated their rights.
37. The 1st, 2nd, 3rd and 5th Respondents submitted that the Court's test for declaratory relief, as stated in Attorney General V Bala [2023] KECA 117 (KLR), was not met, as all applicants underwent the same vetting and interview process. Judicial review orders of Certiorari, in the case of Kenya National Examination Council V Republic: Ex Parte Geoffrey Kathenji Njoroge and Others (1997) eKLR, require a decision to be made beyond jurisdiction, which was not the case here.
38. The 1st, 2nd, 3rd and 5th Respondents submitted that costs should follow the event, as held in Jasbir Singh Rai & Others V Tarlochan Singh Rai & Others [2014] eKLR, meaning the Petitioners should bear the costs since the suit lacks merit and led to unnecessary public expenditure.
39. The 1st, 2nd, 3rd and 5th Respondents urged the Court to dismiss the Petition with costs.

Analysis and determination.

40. The court has considered the Petition, grounds of opposition, replying affidavits and rival submissions by both counsels; the issue for determination is whether the Petition is merited.
41. Sections 107, 108 and 109 of the [Evidence Act](#) provides as follows:

“



“ 107. Whoever desires any court to give judgement as to any legal right or liability depending on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of Burden

The burden of proof in a suit or proceedings lie on that person who would fail if no evidence at all were given on either side

109. Proof of Particular Fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

42. The 1st Petitioner describes himself as a resident of Bomet who has filed this Petition under articles 22 and 258 of the 2010 Constitution of Kenya.

43. Their case is that the 6th Respondent was appointed as the Assistant chief in Kiplabotwa Sub location after an advertisement was put on 16th September 2024. The Petitioners aver the 6th Respondent was appointed after interviews were carried out by the 2nd Respondent County Commissioner Bomet.

44. The Petitioner allege the 6th Respondent was a total stranger in that area and is a resident of Ndubai Sub-location.

45. The requirements for the position are however not clear. The advertisement document dated 16th September 2024 is quite illegible. The court can see vaguely in the section referred as requirement that the Applicant should be a resident of the sub-location.

46. There are no further details as to what being a resident requires and the Petitioners did not provide further evidence that the 6th Respondent is not a resident of that area. The allegation is that she is an outsider having bought land there recently and resided there for only three months. This allegation is not substantiated and so according to the advertisement there is no specific requirement or definition of the resident.

47. The allegation in the Petition that the Respondents disregarded fourteen other more qualified Applicants is also not backed by evidence and facts. As clearly provided in the *Evidence Act* once again the court retaliates that he who alleges must prove.

Mere statements cannot be relied on to prove in the absence of concrete evidence.

48. The affidavit deponed by Reuben Mogusu Ratemo the Deputy County Commissioner Bomet East Sub County the deponent states the 6th Respondent Cherotich Dorothy Sang had the highest score being 74%. The 1st Petitioner was said to have been on 5th position.

The deponent further says the NIS report and area chiefs letter recommended the 6th Respondent and her sublocation is indicated to be Kiplabotwa.

49. The Petitioners allege the Respondents contravened articles 27, 28, 35, 47 and 48 of *the Constitution*. The trite law is that he who claims infringement of Constitutional provisions must specify the particulars that are infringed.



50. In the case of Trusted Society of Human Rights Alliance -VS-Attorney General and Others (2012) eKLR the court held-

“We do not purport to overrule Anarita Karimi Njeru as we think it lays down an important rule of constitutional adjudication; a person claiming constitutional infringement must give sufficient notice of the violations to allow her adversary to adequately prepare her case and to save the court from embarrassment on issues that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new Constitution is whether a Petition as stated raises issues which are too insubstantial and so attenuated that a court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged.”

51. The court does not find there is evidence of discrimination or any other infringement of the Petitioners’ constitutional rights.

52. In view of the ongoing the court finds no merits in the Petition dated 6th February 2025 and hence is dismissed accordingly.

53. Each party will meet their costs of the Petition
Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 13TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

