



**Abdille & another v Deputy County Commissioner Wajir South Sub-County & 3 others;
Ethics and Anti-Corruption Commission & 3 others (Interested Parties) (Employment and
Labour Relations Petition E028 of 2025) [2025] KEELRC 1684 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1684 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E028 OF 2025**

**HS WASILWA, J
JUNE 9, 2025**

BETWEEN

FARAH BISHAR ABDILLE 1ST PETITIONER

MOHAMUD ISAAK OMAR 2ND PETITIONER

AND

DEPUTY COUNTY COMMISSIONER WAJIR SOUTH SUB-COUNTY 1ST RESPONDENT

MINISTRY OF INTERIOR & NATIONAL ADMINISTRATION 2ND RESPONDENT

THE PUBLIC SERVICE COMMISSION 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

THE ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

MOHAMMED BARE MOHAMUD INTERESTED PARTY

HAFSA BILLE ABDI INTERESTED PARTY

IBRAHIM MUKRTAR ALI INTERESTED PARTY

RULING

1. The Petitioners/Applicants filed a Notice of Motion dated 9th October 2024 seeking orders that: -
 1. Spent.



2. in the interim pending the hearing and determination of this application, this Honourable Court be and is hereby pleased to issue a conservatory order staying and/or suspending the Respondents' decision as communicated through the letter referenced ESTAB 12/3 Vol. II/ (147) dated 5th February, 2025, or any prior or subsequent correspondence conveying the appointment of the 2nd Interested Party as Chief II Burder Location, Diif Sub-County Wajir County.
3. in the interim pending the hearing and determination of this petition, this Honourable Court be and is hereby pleased to issue a conservatory order staying and/or suspending the Respondents' decision as communicated through the letter referenced ESTAB 12/3 Vol. II/ (147) dated 5th February, 2025, or any prior or subsequent correspondence conveying the appointment of the 2nd Interested Party as Chief II Burder Location, Diif Sub-County Wajir County.
4. as an alternative to prayer 2 above, in the interim and pending the hearing and determination of this application, this Honourable Court be and is hereby pleased to issue a conservatory order restraining and prohibiting the 2nd Interested Party from assuming office, carrying on or in any way discharging the mandate as Chief II Burder Location, Diif Sub-County Wajir County.
5. as an alternative to prayer 3 above, in the interim and pending the hearing and determination of the Petition filed herewith, this Honourable Court be and is hereby pleased to issue a conservatory order restraining and prohibiting the 2nd Interested Party from assuming office, carrying on or in any way discharging the mandate as Chief II Burder Location, Diif Sub-County Wajir County.
6. pending the hearing and determination of this application, an order be issued directing the respondents, jointly and severally, to furnish the following records: copies of identification documents for all interviewees, their applications, the full register of applicants, the list of shortlisted and interviewed candidates, the grading methodology used, and the individual scores awarded to each interviewed candidate.
7. costs of this Application be provided for.
8. this Honourable Court do grant any other relief it deems just and fit in the circumstances.

Petitioners/Applicants' Case

2. The Applicants avers that the position of Chief II Burder Location was advertised on 14th October 2021 and one Abdisalan Muktar Ali was appointed and admitted into permanent and pensionable scheme vide confirmation letter dated 28th March 2023 by the Principal Secretary of the 2nd Respondent.
3. The Applicants avers that the said appointment was challenged at the Employment and Labour Relations Court in ELRC Petition No. E040 of 2022 wherein the 2nd Interested Party was one of the Petitioners and vide a judgment delivered on 25th November 2022, the Court held that the appointment of the said Abdisalan Muktar Ali was unconstitutional, null and void for not attaining the required age limit of 35 years as per the advertisement for the position of Chief dated 14th October 2021 and ordered a repeat of the recruitment exercise in tandem with *the constitution* and relevant statutory instruments.
4. The Applicants avers that upon revocation of the appointment, the 3rd Respondent re-advertised the position inviting qualified and interested candidates to submit their applications. the candidates were required to have the following qualifications:



- i. Have a Kenya Certificate of Secondary Education (KCSE) mean grade C (Plain) or its equivalent from a recognized examining body;
 - ii. Have a Diploma in any of the following disciplines: Public Administration, Management, Social Work, Community Development, Education, Governance, Conflict Management or its equivalent qualification from a recognized institution;
 - iii. Be a resident of Burder–Location, Diif Sub-County, Wajir County;
 - iv. Have a Certificate of Good Conduct;
 - v. Have good communication skills.
5. The Applicants avers that various candidates were shortlisted including the 3rd and 4th Interested Parties. the 4th Interested Party was never called for the interview whereas the 3rd Interested Party attended the interview and waited the outcome with legitimate expectation, however, the results revealed she was unsuccessful and the 2nd Interested Party was recommended for appointment.
 6. It is the Applicants' case that together with the residents of Burder location, they had legitimate expectation that the Respondents would undertake a transparent and fair recruitment exercise and they would appoint a qualified candidate as their chief.
 7. The 1st Respondent together with the 3rd Respondent's officers recommended an unqualified candidate Mohamud Bare, the 2nd Interested Party for appointment which raised concerns on the integrity of the selection process; as shortlisted candidates who met and exceed the required qualifications were overlooked in favour of an individual who failed to meet the basic eligibility being residency and academic qualifications.
 8. The Applicants avers that the 2nd Interested Party is not a resident of Burder location and he should have been disqualified on this ground. His appointment is unlawful and unconstitutional as it resulted in the imposition of a foreigner upon the residents of Burder location, thereby undermining their right to proper representation and effective public service delivery by a chief.
 9. The Applicants avers that the 2nd Interested Party's ID card No. 24906912 issued on 17th January 2023 indicated his place of residence as Hodhan Location, Hodhan Sub-location. He subsequently obtained a new ID on 8th January 2024 which falsely and conveniently altered his residence details to indicate he is from Burder Location with the intent to gain unfair advantage over other qualified Applicants knowing well that he did not come from Burder Location.
 10. It is the Applicants' case that the 2nd Interested Party did not meet the academic qualifications set out in the advertisement. he provided an unrecognised diploma certificate in community development from Alison Education Company (Alison) which is an Irish free online education platform that offers free online course which takes 8 to 10 hours to complete.
 11. The Applicants aver that vide a letter dated 18th February 2025, their advocates wrote to the Technical and Vocational Education and Training Authority (TVETA) a body established under the TVET Act requesting for information on whether Alison Free Online Course/Online program is accredited to offer diploma courses within our jurisdiction and whether the diplomas issued are equivalent to the diploma courses offered by accredited institutions in Kenya.
 12. TVETA responded vide a letter dated 20th January 2025 through its Director General confirmed that Alison which is based in Ireland is not listed in the Register of Irish Government recognised qualifications awarding institutions. Further, the qualifications awarded by Alison through its online



- platform do not meet the minimum requirements for recognition as equivalent to locally accredited diploma programs under the Kenya National Qualifications Framework (KNQF)
13. It is the Applicants' case that despite the lack of fundamental requirements, the Respondents still recommended the 2nd Interested Party's appointment. The law enjoins the Respondents to adhere strictly to the terms of the advertisement, any deviation from the originally stated criteria constitutes a breach of fairness, transparency and due process. By failing to select a candidate in accordance with the advertised requirements, the Respondents acted in bad faith undermining public trust and rendered the recruitment process null and void.
 14. The Applicants aver that the Respondents decision ignited widespread protests and public outcry as the residents struggle to understand how such an appointment could have been made in disregard of clear legal and procedural requirements. They had a legitimate expectation that the position of Chief of Burder Location would be filled by a competent and qualified individual, someone deeply rooted in the community, and with a demonstrated understanding of the residents needs and concerns.
 15. The Applicants aver that the 3rd Interested Party being dissatisfied with the 2nd Interested Party wrote to the 3rd Respondent vide a letter dated 14th February 2025 requesting for information regarding the recruitment process precisely a list of shortlisted candidates and scores of each of the interviewees. The letter has not elicited any response which is a violation of the 3rd Interested Party's right to access of information guaranteed under Article 35 of *the Constitution*.
 16. It is the Applicants' case that the 2nd Respondent's appointment was contrary to the requirements in the advertisement, *the Constitution* and the Public Service laws and is an indication of bias, improper motives and irrationality in the recruitment process thus falling short of the national values set out under Article 10 of *the Constitution*.
 17. The Applicants aver that if an unqualified person is appointed to the position, he will unjustly benefit from salary funded by public money contrary to the principles of public finance under Article 201(d) of *the Constitution* which requires prudent and responsible use of public money.
 18. The Applicants aver that it is in the interest of justice and fairness that the application is allowed as prayed.

Respondents' Case

19. In response to the Application, the 1st Respondent filed a replying affidavit dated 12th March 2025 sworn by the current Deputy County Commissioner of Diff Sub-County, Evans Nyaberi.
20. The 1st Respondent avers that the office of the Chief Burder location became vacant in the year 2021, the Deputy County Commissioner undertook a recruitment exercise and one Abdisalan Muktar Ali was appointed.
21. Subsequently, the 2nd Interested Party filed ELRC Petition No. E040 of 2022 seeking revocation of the said appointment on grounds that he did not meet the requirement of age 35 years as per the advertisement. The court thereby ordered a repeat of the recruitment exercise in tandem with *the constitution* and the relevant statutory instruments.
22. The 1st Respondent avers that subsequently, the 3rd Respondent took over the recruitment exercise and vide an advertisement dated 9th April 2024, advertised the vacant position of Chief II Burder Location.
23. On 12th February 2025, the 2nd Interested Party submitted a letter of appointment dated 5th February 2025 from the 3rd Respondent to his office confirming his appointment. The letter had other terms



and conditions of appointment being: authentication of the 2nd Interested Party's academic and professional certificates from the issuing body; and certification of his fitness by a government medical practitioner. in compliance with these conditions, the 1st Respondent requested him to submit his academic and professional certificates for verification.

24. The 1st Respondent avers that the 2nd Interested Party submitted a Diploma certificate issued by Alison; National Identification Card with particulars from Hodhan Location; and National Identification Card with particulars from Burder Location.
25. The 1st Respondent avers that while verifying the 2nd Interested Party's documents they realised that he still an employee of the National Police Service Commission and has not resigned, his force number is 89606; and the change of particulars in his National Identification Card was not proper.
26. The 1st Respondent further found that the diploma certificate submitted did not meet the threshold of a recognised Diploma in this country as the said institute only offer international CPD certification services and supports industry specific capacity building for professionals. The qualifications awarded by Alison are recognised solely for CPD points intended for already qualifies professionals hence the Diploma from Alison including those awarded through its online platform do not meet the minimum requirements for recognition as equivalent to locally accredited diploma programs under KNQF.
27. It is the 1st Respondent's case that the 2nd Interested Party's recruitment failed to meet the terms and conditions of appointment hence his appointment cannot stand.

2nd Interested Party's Case

28. In opposition to the application, the 2nd Interested Party filed a replying affidavit sworn on 5th March 2025.
29. It is the 2nd Interested Party's case that the application has been overtaken by events as it seeks to stop his appointment whereas he assumed office on the 12th February 2025, 14 days prior to the filing of the instant suit. Therefore, the conservatory orders sought cannot be issued as the application is defeated by his assumption of office.
30. The 2nd Interested Party avers that the orders sought are final in nature and can only be granted upon hearing of all parties to the suit and upon exhaustive review of the evidence and the relevant material placed before this Court.
31. It is the 2nd Interested Party's case that he is duly qualified to hold the office of chief in Burder Location having participated in a competitive recruitment exercise conducted by the Public Service Commission.
32. The 2nd Interested Party avers that he is a resident of Burder Location and possesses the relevant experience and academic qualifications which he will demonstrate by way of evidence at the hearing of the Petition.

Petitioners/Applicants Submissions

33. The Applicants relied on the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, in which the Court set out the principles governing grant of injunctive relief as being;
 - a. Demonstration of a prima facie case with a probability of success.
 - b. The applicant will suffer irreparable harm that cannot be compensated by damages.



- c. That the balance of convenience favors the grant of the injunction.
34. On establishment of a prima facie case, the Applicants submitted that the 2nd Interested Party as recruited by the 3rd Respondent fails to meet the terms and conditions of appointment hence his appointment as Chief II, Burder Location cannot stand.
35. The Petitioners/Applicants submitted that the 2nd Interested Party's ID card No. 24906912 issued on 17th January, 2023 indicated his place of residence as Hodhan Location Hodhan Sub-location. Subsequently, he obtained a new ID on 8th January 2024, wherein he falsely and conveniently altered his residence details to indicate that he is from Burder Location, clearly with the intent to gain an unfair advantage over other qualified applicants knowing that he did not come from Burder Location.
36. To further prove that the 2nd Interested Party is not a resident of Burder Location, the Petitioners submitted that prior to his appointment, he was still serving and is still employed as a police officer having been recruited in 2007 from Hodhan Location of Wajir East Sub-County and therefore could not have been a resident of Burder Location at any time before his appointment.
37. The Applicants submitted that the 2nd Interested Party did not also meet the academic qualifications set out in the advertisement for appointment of Chief Burder Location by the 3rd Respondent. He provided an unrecognized Diploma Certificate in Community Development from Alison Education Company. TVETA through its Director General confirmed that Alison which is based in Ireland is not listed in the Register of Irish Government-recognized qualifications awarding institutions; And Diploma qualifications from Alison including those awarded through its online platform do not meet the minimum requirements for recognition as equivalent to locally accredited diploma programs under the Kenya National Qualifications Framework (KNQF).
38. It is the Applicants' submission that they have established a prima facie case with a probability of success that warrants the granting of the interim orders sought.
39. On irreparable harm, it is the Applicants' submission that the office of a Chief is a public office which serves a critical function to the people of Burder. The repercussions of having an unqualified individual commence assumption of office will likely erode public confidence to such a critical office which cannot be compensated by damages. By allowing the appointment of the 2nd Interested party, the residents of Burder location stand to suffer irreparable harm that cannot be compensated by way of damages.
40. On balance of convenience, the Applicant submitted that given the widespread opposition to the appointment of the 2nd Interested Party, it is imperative for this Court to intervene by halting the appointment process and conducting a thorough examination of the Petitioners'/Applicant's concerns to uphold the principles of fairness, legitimacy, and public interest.
41. The Applicants submitted that the 2nd Interested Party's appointment is yet to be confirmed as he is still serving as a Police Officer and that he is to be on probation and as such granting the injunctive orders sought herein cannot prejudice him in any way as he is still receiving a salary as a police officer which fact he has not denied.

1st Interested Party's Submissions

42. The 1st Interested Party submitted that it is worth noting that the 2nd Interested Party has not controverted the issues raised by the Petitioners, therefore, the Petitioners/Applicants have demonstrated that they have a prima facie case which discloses arguable issues



43. The 1st Interested Party submitted that any selection process that lacks transparency, is unfair and/or is not merit based is tantamount to the discrimination of the residents on Burder Location in violation of their constitutionally guaranteed rights against discrimination under Article 27 of *the Constitution*.
44. The 1st Interested Party submitted that as demonstrated in the instant Application and the 1st Respondent's Replying Affidavit, unless this Court grants the conservatory orders there is real danger that the Petitioners/Applicants and the residents of Burder Location will suffer prejudice as a result of the violation of *the Constitution*.
45. The 1st Interested Party submitted that granting the orders sought shall facilitate ordered functioning within the public sector and uphold the adjudicatory authority of the Court in the public interest.

2nd Interested Party's Submissions

46. The 2nd Interested Party submitted that the Petitioner's Application cannot be sustained at this juncture. The injunctive orders sought are in the nature of conservatory orders aimed to preserve and maintain the vacancy in the office of chief pending the hearing and determination of their petition, which vacancy no longer exists as the 2nd Interested Party has already assumed office.
47. The 2nd Interested Party submitted that grant of conservatory orders are not automatic and applicant seeking conservatory orders must meet the principles set out in *Gatirau Peter Munya v Dickson Mwenda Kithinki & 2 Others* 2014, eKLR and in *Wilson Kaberia Nkunja v The Magistrate and Judges Vetting Board & Others*, [2016] eKLR. The Supreme Court has held as follows in *Gatirau Peter Munya v Dickson Mwenda Kithinki & 2 Others* (supra):-“Conservatory orders bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of “irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant's case for orders of stay. Conservatory orders, consequently should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes and priority levels attributable to the relevant causes.”
48. The 2nd Interested Party submitted that the orders sought have public law connotations and the impact of the orders, if granted, would transcend beyond the parties herein. They would impede and forestall delivery of government services to the public and in particular, to the residents of Burder location, who have had no chief since November 2022 when the Court nullified the appointment of the former chief.
49. The 2nd Interested Party submitted that the orders sought are final in nature and if granted, would predetermine and prejudice the main petition. The 2nd Interested Party has already assumed office as per the deployment letter dated 12th February 2025. Therefore, granting orders preventing his assumption of office would mean he has to vacate office and immediately stop rendering government services to the public.
50. It is the 2nd Interested Party's case that if the court declines to grant the conservatory orders at the interim stage, the main petition would not be rendered nugatory. The Petition can still be tried and determined on merit and the court's final judgment and orders can still be enforced against the Respondents and the 2nd Interested Party. As such, the petitioners would not suffer any prejudice if the orders sought are not granted.
51. On public interest, the 2nd Interested Party submitted that the residents of Burder location have had no chief since the nullification of the appointment of the former chief vide the judgment in ELRC



- Petition E040 of 2022 in November of 2022; and they had to travel wide and far distances to seek government services and assistance. The 2nd Interested Party's appointment gave them some form of relief.
52. Therefore, if the court grants the orders sought, it would then undo the gains and the benefits recently realized by a large community of residents in Burder location, subjecting them again to hardships and untold inconveniences. Hence, it is of great public importance that delivery of government service continues seamlessly and is not delayed as the court determines the petition on merit.
53. It is the 2nd Interested Party's submission that the issue as to whether he presented two different sets of ID cards to the 1st Respondent is an issue of fact that would be tried exhaustively at the hearing of the main petition. The same applies to his academic qualifications. These are the main issues which the court has to determine in the petition before it. It would be premature and inconclusive for the court to make determination of these alleged facts at this moment absent substantive response from all parties. The same would also prejudice the main petition.
54. I have examined all the averments and submissions of the parties herein. The applicants seek court's orders to stay the respondent's decision conveying the application of the 2nd interested party as Chief II Burder Location, Diif Sub- County Wajir county. They also seek interim orders restraining and prohibiting the 2nd interested party from assuming office and carrying on or in any way discharging the mandate as Chief II Burder Location, Diif sub County Wajir County. They also sought issuance of certain records and documents pending the hearing of the petition.
55. From the averments of 1st respondents the appointment of the 2nd interested party as chief was riddled with impropriety and they are in support of the petition. The 2nd interested party, the applicant aver that the application has been overtaken by events as he assumed office on 12th February 2025.
56. It is indeed true that the orders the applicant seeks to be injuncted have already taken place and so are incapable of being stayed. It is also true that the issuance of the orders in the interim would preempt final orders of this court. In order to avoid a miscarriage of justice and for this court not to grant stay orders which have been implemented, I will decline to grant interim orders in the interim. I will however allow the prayer for submissions of documents sought in prayer 6 of the application to be supplied within 30 days from the date of this ruling. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

