



Enow v Kenya Film Classification Board & 2 others (Employment and Labour Relations Constitutional Petition E199 of 2024) [2025] KEELRC 1665 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1665 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CONSTITUTIONAL PETITION E199 OF 2024**

HS WASILWA, J

JUNE 5, 2025

BETWEEN

ADAN OMAR ENOW PETITIONER

AND

KENYA FILM CLASSIFICATION BOARD 1ST RESPONDENT

**THE CABINET SECRETARY, MINISTRY OF YOUTH AFFAIRS, CREATIVE
ECONOMY AND SPORTS 2ND RESPONDENT**

THE HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The Petitioner/Applicant filed an Amended Notice of Motion dated 10th December 2024 seeking orders that: -
 1. spent
 2. pending the hearing and determination of this application inter parties, an interim order be and is hereby issued restraining and prohibiting the Respondents from conducting and/or appointing anyone else other than the Petitioner to the position of Chief Executive Officer of the 1st Respondent.
 3. pending the hearing and determination of this application an interim order be and is hereby issued restraining and prohibiting the Respondents from conducting and/or appointing anyone else other than the Petitioner to the position of Chief Executive Officer of the 1st Respondent.
 4. pending the hearing and determination of this petition, an order be and is hereby issued restraining and prohibiting the Respondents from conducting and/or appointing anyone else other than the Petitioner to the position of Chief Executive Officer of the 1st Respondent.



5. This court be pleased to order the Respondents to give access and avail to the Applicant/Petitioner all information regarding the following: -
 - a. The results of the interviews conducted that the Petitioner attended on 14th May 2024 which were for the appointment of officer of the 1st Respondent.
 - b. Reasons for failing to appoint the Petitioner and/or any other persons interviewed during that time.

Petitioner/Applicant's Case

2. The Applicant avers that in March/April 2024, the 1st Respondent advertised a vacancy for the position of Chief Executive Officer of which he applied and was shortlisted and invited for an interview on 14th May 2024.
3. The Applicant avers that he attended the interview on 14th May 2024 and was subsequently informed by the 1st Respondent that he was among the top three candidates and his name was forwarded together with the other two to the 2nd Respondent for consideration of appointment.
4. The Applicant avers that to confirm whether they satisfied the requirements of Chapter Six of *the Constitution*, he was reliably informed that the three candidates were subjected to scrutiny through the relevant government agencies such as Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI) among others and he was the only candidate who was cleared for appointment and his name recommended to the 2nd Respondent.
5. It is the Applicant's case that before he could be appointed as the 1st Respondent's Chief Executive Officer, the holder of the office of the 2nd Respondent was changed to the current one who has not appointed him or give any explanations why.
6. The Applicant avers that the position was re-advertised on the local dailies requiring applications be made by close of business on or before 25th November 2024 and no reason has been given why he should not be appointed having passed the interview and satisfied the criteria for the appointment.
7. It is the Applicant's case that he feels discriminated against and unjustly denied an opportunity to serve the people of Kenya in the capacity of Chief Executive Officer of the 1st Respondent.
8. The Applicant avers that the Respondents intend to violate his constitutional rights under Articles 27 and 47 of *the Constitution* and he needs protection by this court by granting the prayers sought.
9. He further avers that unless the Respondents show concise reasons for repeating the exercise of filling in the position of the 1st Respondent's Chief Executive Officer, the same is unjustified wastage of public resources which this court ought to safeguard jealously.

1st Respondent's Case

10. In opposition to the application, the 1st Respondent filed a replying affidavit dated 27th February 2025 sworn by its Acting Chief Executive Officer, Paskal M. Opiyo.
11. The 1st Respondent avers that on 11th December 2023, the Board published an advertisement for the position of the Chief Executive Officer and 3 managers, inviting application for a period of 21 days. The deadline of receiving applications was on 25th December 2024 to which the total number of applicants including the Petitioner, were 36 in number.



12. The prospective candidates were invited to attend the interviews conducted by the Board which were scheduled on 13th and 14th May 2024; the Petitioner attending on 14th May 2024.
13. The 1st Respondent avers that the Board of Directors in the minutes of the 4th Special Board Meeting of the Financial Year 2023/2024 held on 13th – 17th May 2024 ascertained that the Petitioner was the second-best candidate in his category after garnering 77.3 points.
14. Subsequently, the Board held another meeting on 28th May 2024 where it was agreed that further due diligence through background checks be conducted on the shortlisted candidates by obtaining reports from various government institutions as well as academic institutions the respective candidates attended and their previous work places.
15. It is the 1st Respondent's case that vide letters dated 30th May 2024, the Board requested integrity reports for the top three candidates for the CEO position from the Directorate of Criminal Investigations (DCI), National Intelligence Service (NIS) of Kenya and the Ethics and Anti-Corruption Commission (EACC). They further informed, Hon. Ababu Namwamba the then Cabinet Secretary (CS) for the Ministry of Youth Affairs, Creative Economy, and Sports of their resolutions.
16. The 1st Respondent avers that EACC responded to vide a letter dated 11th June 2024 and indicated that it had not undertaken any investigations on the Petitioner. Additionally, the Petitioner's previous employer, the County Government of Wajir through the County Public Service Board sent a confidential report dated 19th June 2024 where his previous employment details were noted.
17. The 1st Respondent avers that the Board sent a letter dated 18th June 2024 to Hon. Ababu Namwamba forwarding the profiles of the top three candidates for the CEO position. Further vide its letter dated 3rd July 2024, the Board forwarded the candidates' confidential reports received from EACC and their previous employers and informed the CS it was yet to receive the report from DCI.
18. It is the 1st Respondent's case that owing to ministerial changes by the government of Kenya in July 2024, Hon. Kipchumba Murkomen was then appointed as the CS for the Ministry of Youth Affairs, Creative Economy, and Sports.
19. The 1st Respondent avers that the Board vide its letter dated 23rd August 2024, the Board informed Hon. Kipchumba Murkomen of its ongoing vetting of the Board's Chief Executive Officer. Further, vide its letter dated 26th August 2024, the Board highlighted the 2nd Respondent's role in appointment of the 1st Respondent's CEO and informed him they are yet to receive the confidential reports from the DCI.
20. The 1st Respondent avers that the 2nd Respondent vide a letter dated 23rd September 2024, declined the Board's concurrence of approval for the appointment of the proposed candidates noting that various documents needed for the same had not been availed at the time and under powers conferred to him, directed the Board to re-advertise the position.
21. It is the 1st Respondent's case that pursuant to Regulations 2 and 17 of the Public Service Commission Regulations, 2020, the Board neither received communication verifying the candidates' academic credentials as well as their qualifications nor the reports on the Petitioner requested from the DCI and EACC. These reports were critical in ascertaining the candidates' leadership and integrity eligibility as provided under Chapter Six of *the Constitution* and as such appointment of the CEO could not proceed.



22. It is the 1st Respondent's case that the without the reports and verified documents, the 2nd Respondent could not approve any of the candidates' details forwarded.
23. The 1st Respondent avers that the Petitioner could not have had knowledge that he emerged as the successful candidate for the CEO position as during the recruitment process and verification period, none of the candidates were informed of the interview scores, suitability or the Board's decision regarding the position.
24. The 1st Respondent avers that it is strange the Petitioner had knowledge of the Board's resolution and/or background activities thus making it apparent the Petitioner engaged in collusion to obtain confidential information with the intention to influence the appointment thereby prejudicing the integrity of the recruitment process.
25. It is the 1st Respondent's case that the Petitioner never wrote to the Board demanding and/or requesting for information on the recruitment process before instituting this Petition as well as the application, thus, the prayers sought are premature and violates Section 9 of the *Fair Administrative Action Act*.
26. The 1st Respondent avers that the Board never recommended or resolved to appoint the Petitioner as the CEO and the petition is based on speculations and unverified information and is in breach of the *Public Officer Ethics Act* since it is founded on illegally and fraudulently obtained confidential information.
27. The 1st Respondent avers that the cancellation of the initial recruitment process was done to ensure due process and compliance with statutory requirements.
28. Further, halting the recruitment of a substantive CEO which is essential for decision making, policy implementation and overall operational efficiency of the 1st Respondent and as such public interest and policy demands that the process is repeated and concluded.
29. The 1st Respondent avers that the Petitioner has not demonstrated any violation of his constitutional rights or any procedural irregularities to warrant the orders sought and the contention that he was the best candidate for the CEO position is a lie as evidenced by the interview reports.

2nd and 3rd Respondent's Case

30. In opposition to the amended application, the Respondents filed grounds of opposition dated 12th February 2025 on grounds THAT:
 1. the petition does not satisfy the threshold of what constitutes a constitutional petition as per the principle in the case of Anarita Karimi Njeru v The Republic (1979) eKLR. The well-established principle provides that the Petitioner ought to demonstrate how the Respondents' conduct and actions amount to a violation and contravention of fundamental rights and freedoms. The principle is enunciated as thus: The violations must be pleaded with a reasonable degree of precision. The violations must be particularised in a precise manner The manner in which the alleged violations were committed and to what extent.
 2. it is indisputable for a constitutional petition to be sustainable as such, it must at a minimum satisfy a basic threshold. It must with some degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of violation.



3. the above principle was restated by the Court of Appeal in the case of *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Others* (2013) eKLR. The Court at paragraph 44 of the judgment stated as follows:
 - (44) We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru* (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply.
4. the Petitioner has not demonstrated before the Honourable Court how the Respondents have violated his constitutional rights. The Petitioner herein ought to illustrate that the Respondents actions were unreasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
5. the Petitioner cannot invite the invocation of violation of constitutional provisions requiring enforcement by way of a petition whereas there exists sufficient statutory legal provisions.
6. the conduct of the Respondents does not constitute any violation of fundamental rights and freedoms.
7. the petition is not sustainable and constitutes an abuse of the process of the Court and should be accordingly ordered struck out as there exists proper forums and avenues in law that ought to be explored and exhausted by the Petitioner.
8. constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation and the first port of call should always be suitable statutory underpinned forums for the resolution of such disputed.
9. it is not sufficient to merely site constitutional violations as it was observed in the case of *Grays Jepkemoi Kiplagat v Zakayo Chepkonga Cheruiyot* where the court upheld that the Respondent's Preliminary Objection. In the aforementioned matter it was held that there was no infringement of any constitutional provisions under the Bill of Rights to justify the Petitioner to invoke the Constitutional jurisdiction of the Court and that the petition was not sustainable.
10. the amended petition is misconceived, incompetent and an abuse of the court process and the same ought to be struck out.
11. On the foregoing the amended application is misconceived, a non-starter and is devoid of any merits and a proper candidate for dismissal.

Petitioner/Applicant's Submissions

31. The Petitioner/Applicant submitted on two issues: whether this matter constitutes a constitutional petition; and whether the orders sought should be granted.
32. On the first issue, the instant petition contains sufficient grounds to supports the Petitioner's claim that his constitutional rights have been violated by the Respondents. Further, the petition specifically provides the specific constitutional rights that the Respondents is alleged to have violated.
33. The Applicant submitted that the petition has complied with Rule 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules and as such the ground of opposition that the petition does not meet the threshold of a constitutional petition is



unmerited and short of meeting the threshold of a point of law. A point of law does not require the court to interrogate the petition for merits. The Applicant prays the Respondents grounds of opposition be dismissed with costs as certain facts therein need to be ascertained.

34. The Applicant submitted that this court has jurisdiction to entertain this matter pursuant to *the Constitution* and he has a legitimate expectation that he would be appointed to the advertised position of the 1st Respondent's CEO in light of his emergence as the successful candidate and his recommendation by the 1st Respondent as he presumed such appointment is on merit. The right to fair labour practices requires that the most successful candidate for a position be offered the said position which right has been breached by the Respondents by failing to appoint him to the position.
35. It is the Applicant's submission that the Respondents have not adhered to the values and principles of public service set out under Article 232 of *the Constitution*. The 2nd Respondent's failure to appoint the Applicant is not lawful, reasonable, procedurally fair and/or transparent and accountable.
36. The Applicant submitted that the failure to appoint him is a deliberated and premeditated scheme to deny him his meritorious position and propagate corruption, impunity, arbitrariness and wastage of public resources.

1st Respondent's Submissions

37. The 1st Respondent submitted on two issues: whether the petition is merited; and whether the petitioner is entitled to the orders sought.
38. On the first issue, the 1st Respondent submitted that the petition has failed the test of specificity established in *Anarita Karimi Njeru v The Republic (No. 1)(1979) 1 KLR 154* and therefore should be struck out in limine.
39. The 1st Respondent submitted that it is trite law that a petition must be pleaded with accuracy that is the particulars of the violation must be pleaded with a reasonable degree of precision, the petition must particularise what right or fundamental freedom under the Bill of Rights was denied and the manner of the alleged denial.
40. The 1st Respondent submitted that the petition and the application are fatally defective since the Petitioner's pleadings do not disclose adequate particulars as relates the alleged cause of action or claim necessary to enable this Court to legally adjudicate the petition or grant the reliefs sought.
41. It is the 1st Respondent's submissions that the Petitioner has not demonstrated any real complaint that contravened his constitutional right as the evidence brought forth not only refutes his claims that he was the best candidate but also reveals that the recruitment process was cancelled to enable the initiation of another process that was not tainted by the Petitioner's unethical collusion and to enable statutory compliance.
42. The 1st Respondent submitted that Petitioner's alleged grievances are not only vague but his petition lacks concrete details or specific particulars.
43. It is the 1st Respondent's submission that it is evident that the Petitioner has relied on speculations to institute this petition claiming that his constitutional rights were violated but he has also failed to show the manner in which the Respondents infringed the same alleged contravened rights and that this petition which is fatally and fundamentally defective ought to be dismissed.



44. The 1st Respondent submitted that the petition fails to disclose any indication that a legitimate expectation of appointment could have arisen and the deficiencies in the petition are so material that they render it legally untenable.
45. It is the 1st Respondent's submissions that neither the Board nor the 2nd Respondent promised or issued a clear and uncontroverted statement to the Petitioner that he would be appointed as the 1st Respondent's CEO. Additionally, attending an interview is not reasonable grounds to legitimately expect that the same would guarantee automatic appointment, especially as a public officer as the Petitioner claims.
46. On the second issue, the 1st Respondent submitted that the Petitioner's assertions resulted from his collusion which enabled him to have prior confidential information with the intent of influencing the appointment of the Board's CEO and he instituted this petition to seek judicial intervention to uphold and give effect to his falsehoods and unethical and professional misconduct.
47. The 1st Respondent submitted that this petition not only failed to demonstrate the Respondents' acts or omissions which caused the alleged constitutional contraventions. Further, the petition is founded by the Petitioner's unethical conduct of colluding for unauthorised access to the Board's confidential and insider information and premised on deceptive, misleading and baseless accusations which lack substantiation.
48. The 1st Respondent submitted that prior to the institution of the petition, the Petitioner never requested the 1st Respondent any information regarding the recruitment process and simply rushed to this court seeking orders to endorse his unfounded claims.
49. It is the 1st Respondent's submission that the petition is legally untenable as it was instituted with the sole intention of legitimizing the Petitioner's falsehoods and seeking to influence the recruitment of a substantive CEO of the 1st Respondent in favour of a dishonest and unethical petitioner thus the same should be struck out.
50. I have considered the averments and submissions of the parties herein. I notice that the orders being sought in this application if granted will consequently determine the entire petition at an interlocutory state.
51. I therefore decline to grant any orders at this stage and direct the parties to continue and complete the petition in its entirety. The interim orders are in the meantime confirmed. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

