



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Ngunju & 16 others v Kenya Forest Service & another (Employment and Labour Relations Petition E003 of 2024) [2025] KEELRC 2058 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2058 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**

**EMPLOYMENT AND LABOUR RELATIONS PETITION E003 OF 2024**

**ON MAKAU, J**

**JULY 11, 2025**

**IN THE MATTER OF: ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 27,  
41, 47, 232, 258, 259 THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: SECTION 3 AND 5 OF THE EMPLOYMENT ACT, 2007.**

**AND**

**IN THE MATTER OF: SECTIONS 4, 7, 8, 9, 10 AND 11  
OF THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015.**

**AND**

**IN THE MATTER OF: RULES 4, 10, 11, 22, 23 AND 24 OF THE  
CONSTITUTION OF KENYA, 2010 (PROTECTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013.**

**AND**

**IN THE MATTER OF: RULE 7 OF THE EMPLOYMENT AND  
LABOUR RELATIONS COURT (PROCEDURE) RULES, 2016**

**BETWEEN**

**JOHN WARURU NGUNJU ..... 1<sup>ST</sup> PETITIONER**  
**DOUGLAS MURIUKI NJAGI ..... 2<sup>ND</sup> PETITIONER**  
**DANISH OUMA AIRO ..... 3<sup>RD</sup> PETITIONER**  
**SILAS KIPLAGAT KURUI ..... 4<sup>TH</sup> PETITIONER**  
**ALICE GAKII NTHIGA ..... 5<sup>TH</sup> PETITIONER**



PRISCILLA AKINYI ODUOR .....	6 <sup>TH</sup> PETITIONER
SAMUEL OOKO KWANYA .....	7 <sup>TH</sup> PETITIONER
JOSEPH ANYONA TOMBE .....	8 <sup>TH</sup> PETITIONER
MAURINE AKEYO ODERO .....	9 <sup>TH</sup> PETITIONER
DICKSON ACHOLA OJIAMBO .....	10 <sup>TH</sup> PETITIONER
DANIEL MAIKURI .....	11 <sup>TH</sup> PETITIONER
DANIEL BOLLEI .....	12 <sup>TH</sup> PETITIONER
KIPKETER KIPCHIRCHIR .....	13 <sup>TH</sup> PETITIONER
STEPHEN MACHARIA .....	14 <sup>TH</sup> PETITIONER
GEOFFREY MUHOLELA .....	15 <sup>TH</sup> PETITIONER
CECILIA GERALD .....	16 <sup>TH</sup> PETITIONER
RONALD AUGO .....	17 <sup>TH</sup> PETITIONER

**AND**

KENYA FOREST SERVICE .....	1 <sup>ST</sup> RESPONDENT
THE HON ATTORNEY GENERAL .....	2 <sup>ND</sup> RESPONDENT

**JUDGMENT**

**Introduction**

1. The petitioners are employed by the 1<sup>st</sup> respondent. By a petition dated 23<sup>rd</sup> January 2024, they alleged that their constitutional rights have been violated by the respondents and prayed for the following reliefs: -
  - a. A declaration that the 1<sup>st</sup> Respondent’s advertisement for recruitment dated 28<sup>th</sup> February, 2023 was unlawful, unfair, unjust discriminative and it infringed the rights of the Petitioners and was unconstitutional.
  - b. A declaration be and is hereby made that, the Respondents violated the Petitioners’ rights to fair administrative action under Article 47, right to fair labour practices under Article 41(1), freedom from discrimination under Article 27, of further tramples on the national values and principles of governance guaranteed by Article 10 of *the Constitution* of Kenya, 2010 as well as rules of natural justice by failing to promote the Petitioners despite their academic qualifications and lack of upward mobility in the workplace.
  - c. An order for compensation consequential upon the declarations of violations of the fundamental rights and freedoms of the petitioners in prayer (b) above as shall be assessed by the Honourable court.
  - d. A mandatory injunction compelling the 1<sup>st</sup> Respondent or anybody whosoever acting through to promote the Petitioners directly to inspector cadets unconditionally pursuant to section 21



(5) C (III) of KFS Career Progression and the section 2.16 KFS Human Resource Policy and Procedures Manual.

- e. Exemplary/vindictory, aggravated and/or punitive damages for arbitrary, highhanded and oppressive conduct of the Respondents towards the Petitioners.
  - f. General damages.
  - g. Any other or further relief that this Honourable Court may deem fit to grant.
2. The respondents opposed the petition by a Replying Affidavit sworn on 22<sup>nd</sup> July 2024 by one Patrick Leshoo Tialal, 1<sup>st</sup> respondent's Human Resource Officer.

## **Background**

3. The petitioners' case is that the petitioners were employed by the 1<sup>st</sup> respondent on diverse dates in the position of Constable Forest Guards Grade 12. Currently, they are in the ranks of Range Constables and Corporals and they have remained in the said positions for 15 years without any promotions despite doing their best in studies and obtaining Bachelors degrees and even Masters degree in various relevant fields.
4. They averred that section 21(5) C (III) of Kenya Forest Service Career Progression as well section 2.16 of the KFS Human Resources Policy Recruitment Guidelines provides that the 1<sup>st</sup> respondents should not recruit externally without considering existing staff who are qualified for the positions. They averred that on 28<sup>th</sup> February 2023 the 1<sup>st</sup> respondent advertised in the main Daily newspapers the recruitment of Cadet Inspector position in the Forest sector without considering section 21(5) C (III) of KFS Career Progression and section 2.16 KFS HR Policy on Recruitment Guidelines.
5. They further averred that the said advertisement completely barred and/or discriminated against them on account of age despite that they all had the requisite qualifications and university degrees. They averred that the cadet Inspectors have since been recruited to fill the positions after passing out from the college and undertaking a two-weeks training.
6. The petitioners averred that the 1<sup>st</sup> respondent has violated *the Constitution* and the said KFS Career Progression and KFS HR Policy on Recruitment Guidelines. They averred that the employer violated the national values and principles of governance under Article 10 of *the Constitution* including the rule of law, equity, inclusiveness, human rights, non-discrimination, good governance, transparency and accountability. Tied to the foregoing is the allegation that the respondent violated Article 73 (1) and (2) of *the Constitution* which requires that state authority shall be exercised Constitutionally.
7. They averred that the employer further violated their right to equality and freedom from discrimination, right to fair Labour practices including right to reasonable working conditions, and right to fair administrative action under Article 27, 41 and 47 respectively. They maintained that excluding the existing and qualified staff from the recruitment vide the advertisement rendered the recruitment exercise process discriminatory and unconstitutional. Therefore, they urged the court to grant the reliefs sought.
8. The respondents contended that the process of advertising and recruitment of the Inspector Cadets was in line with the Public Service and KFS Rules, Policies and Procedures. Before advertising the positions in the dailies, the 1<sup>st</sup> respondent had exhausted the internal recruitment process as guided by the Kenya Forest Service HR Policy and Procedures Manual. That they did internal advert for promotion of Corporals, Sergeants and Inspectors in April 2022 followed by shortlisting, interviews and then promotions.



9. The respondents denied that the advertisement discriminated and violated the rights of the petitioners. They averred that the advertisement was lawful, fair and just and prayed for the petition to be dismissed with costs.
10. The petition was disposed of by written submissions. I have considered the pleadings, evidence and submissions filed by both sides. It is a fact that the petitioners are employees of the 1<sup>st</sup> respondent. It is also a fact that on 28<sup>th</sup> January 2023, the 1<sup>st</sup> respondent advertised in the dailies Newspapers, vacancies in the position of Inspector Cadet among others. The issues of determination are: -
  - a. Whether the advertisement violated the respondent's HR Policy and Procedure Manual and the KFS Career Progression.
  - b. Whether the advertisement discriminated against the petitioners on account of age or at all.
  - c. Whether the 1<sup>st</sup> respondent violated *the Constitution* and the petitioners' rights to fair labour practices and fair administrative action.
  - d. Whether the petitioners are entitled to the reliefs sought.

### **Violation of HR Policy Manual and the Career Progression Guide**

11. The petitioners alleged that by advertising to recruit externally the 1<sup>st</sup> respondent violated section 21(5) of the KFS Career Progression Guidelines and section 2.16 of the KFS HR Policy Manual. The petitioners did not produce the complete KFS Career Progression Guidelines and the KFS HR Policy Manual or at least the relevant Chapters of the said documents. They produced page 1 and 18 of the HR Manual which does not contain section 2.16 and therefore the court is unable to verify what the said section says. Likewise, the petitioners produced page 170 of the Career Progression Guidelines, 2020 which does not indicate section 21(5) (III) although the page starts with (ii) and continues to (iii). Therefore, the court finds that the petitioners have failed to prove the existence of section 2.16 of the KFS HR Policy Manual and section 21(5) (III) of the KFS Career Progression Guidelines.
12. I have however noted section 2.34 of the HR Policy Manual that states as follows: -
  - “ a) It is desirable to achieve a healthy mix between promotions from within and external recruitment.
  - (b) Serving candidate who meet job requirements with satisfactory performance and have potential for development shall be given priority when filling high vacant positions.”
13. The above section is clear that whenever there is a vacancy in the service internal recruitment will be given priority through promotion. It is also clear that filling of vacancies by promotion shall be through internal advertisement. The respondents alleged that the 1<sup>st</sup> respondent, first exhausted internal recruitment in April 2022 before advertising to recruit externally. However, the petitioners denied that allegation and averred that no evidence has been tendered to support the same.
14. Having considered the evidence on record, I find that the 1<sup>st</sup> respondent has not proved that it conducted internal recruitment as required in section 2.34 of the HR Policy Manual before advertising to recruit externally. If the same had been done, nothing was easier than filing such evidence before the court. Consequently, I hold that the petitioners have proved on a balance of probability that the 1<sup>st</sup> respondent violated its own HR Policy and Procedures Manual, 2020.



## Whether the advert discriminated the petitioners

15. The petitioners alleged that the advert for Inspector Cadet completely excluded them from applying on account of age although they held the necessary qualification and degrees. The advert for Inspector is duplicated below: -
- a. “Job Specification  
The officer at this level shall report to Chief Inspector.
  - b. Duties and responsibilities
    - i. Coordination of Security at the Forest Station
    - ii. Participating in National Security related events
    - iii. Conducting forest crime investigation and intelligence activities.
    - iv. Conducting firearms Inspection within the station.
    - v. Administering discipline and attend to welfare of staff.
    - vi. Lead forest protection and security operations
    - vii. Receiving and compiling daily, weekly, monthly, annual station reports and management of Forest crime reporting systems (FCRS).
    - viii. Inculcating pride and confidence in junior officers
    - ix. Supervising training and capacity building of subordinates.
    - x. Maintaining a database of all security stores and equipment including uniforms
    - xi. Ensuring safety of exhibits and stores within the station.
    - xii. Coaching and mentoring
    - xiii. Promoting public service values and principles.
  - c. Persons specification
    - i. Diploma in security studies or relevant social science from recognised institution
    - ii. Have successfully completed a platoon Commanders’ Development Course.
    - iii. Conversant with the *Forest Conservation and Management Act*, KFS Procedures, Disciplinary Code of Conduct and Service Standing Orders.
    - iv. Must have served in the rank of Sergeant or Senior Sergeant or Sergeant Major for a minimum period of three (3) years.
    - v. Must have demonstrated exemplary administrative and leadership qualities.
    - vi. No disciplinary conviction or adverse report for the last six (6) months.
    - vii. Proficiency in computer applications.”
16. I have carefully considered the above advert and I have not seen any age limit for the candidates as alleged. Therefore, the alleged discrimination has not been proved on a balance of probability since there is no evidence that the petitioners were excluded from applying on account of age or at all.



### **Violation of right to fair labour practices**

17. The petitioners averred that the 1<sup>st</sup> respondent violated their right to fair labour practices by failure to exhaust internal recruitment before seeking to advertise externally. I have already made a finding of fact that indeed section 2.34 of the HR Policy and Procedures Manual provides that whenever there is a higher position to be filled, priority ought to be given to internal recruitment through promotion of the qualified officers. The procedure for carrying out such promotions is through internal advertisement of which, the respondent did not prove that it did so.
18. In my view, where the employer has expressly provided for the procedure to be followed in filling up vacancies, that procedure ought to be strictly followed. Where the employer breaches the express procedure in its HR Policy and Procedure Manual, that amounts to unfair labour practices and the victims of such violation can sue the employer for declaration that their right to fair labour practices has been violated. In this case, I find and hold that the petitioners have proved on a balance of probability that the respondent has violated the right to fair labour practices by failing to give them priority as provided under section 2.34 of its HR Policy and Procedure Manual, 2020.

### **Reliefs sought**

19. In view of the foregoing conclusion, I find that the petitioners are entitled to declaration that the 1<sup>st</sup> respondent has violated their rights to fair labour practices as enshrined under Article 41 of *the Constitution*. Since there is no evidence that petitioners would have been automatically promoted upon internal recruitment, I will not award them damages or even award mandatory injunction to compel the 1<sup>st</sup> respondent to promote them to Inspector Cadet as prayed. Under section 2.34 of the HR Manual, there are other factors for promoting an officer other than academic qualifications and the length of service. Finally, the claim for exemplary/vindictory, aggravated and/or punitive damages are not merited as there is no evidence to support the alleged highhanded, arbitrary and oppressive conduct of the respondents towards the petitioners.

### **Disposition**

20. In view of the conclusions made above, I enter judgment for the petitioners against the 1<sup>st</sup> respondent as follows: -
  - a. A declaration that the 1<sup>st</sup> respondent has violated petitioners' rights to fair labour practices under Article 41(1) of *the Constitution* by failing to advertise the position of Inspector Cadet internally before seeking to recruit externally.
  - b. The 1<sup>st</sup> respondent is condemned to pay the petitioners costs of the suit plus interests.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This Judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

