



**Mohammed v Ministry of Interior and Coordination of National Government & 3 others
(Petition E157 of 2024) [2024] KEELRC 13248 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13248 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E157 OF 2024**

B ONGAYA, J

NOVEMBER 27, 2024

**IN THE MATTER ARTICLES 2(1), 3(1), 19, 20(1) AND (2), 21 (1), 2, 23,
27(1) AND (2), 41, 47, 232, 258 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE OF THE APPOINTMENT OF MAHDI ABDI MOHAMMED AS
ASSISTANT CHIEF GRADE II OF GETWAB SUB-LOCATION, HABASWEIN SUB-COUNTY**

AND

IN THE MATTER OF THE ADMINISTRATIVE ACTION ACT NO.4 OF 2015

BETWEEN

MAHDI ABDI MOHAMMED PETITIONER

AND

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT**

COUNTY COMMISSIONER WAJIR 2ND RESPONDENT

**DEPUTY COUNTY COMMISSIONER HABASWEIN SUB-COUNTY 3RD
RESPONDENT**

HON ATTORNEY GENERAL 4TH RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday 27th November 2024)

JUDGMENT

1. The petitioner filed the petition dated 03.10.2024 through Abdirazak & Company Advocates. The relief prayed for was as follows:



- a. A declaration that the 2nd and 3rd respondent's acts to forward unqualified person for the post of Assistant Chief II in Habaswein Sub-County Wajir County was in contravention of the Constitution 2010.
 - b. A declaration that the petitioner being the only qualified candidate in the interviews conducted in November 2023 for the post of Assistant Chief Grade II in Habaswein Sub County of Wajir County is the right person for appointment.
 - c. A declaration that in breach of (a) and (b) above the petitioner has a right to be the Assistant Chief in Habaswein Sub County.
 - d. Any further other reliefs the Honourable Court deems fit in the interests of justice to grant.
2. The petitioner alleges as follows:
- a. That Gabwab is located between Diif to the south and Dajabula to the north, under Dajabula Division in Habaswein Sub-County, Wajir County. The area was first settled in 2010 by the Hurre family from the Jibrail sub-clan, which is part of the Bahgari clan.
 - b. That In 2012, a borehole was drilled, and a water pan was excavated through the efforts of Hon. Mohamud Sarat, the area's MP at the time, who also belongs to the Bahgari clan. Once these water projects were completed, a significant number of people from the Haglale sub-clan, also part of the Bahgari clan, moved to settle in Gabwab.
 - c. That they claimed ownership of the water project, asserting that it was meant for them since the MP belonged to their sub-clan. They took over the management and control of all government resources, including the water pan and borehole, refusing to share them with their brothers from the Jibrail sub-clan.
 - d. That tensions rose when the Haglale sub-clan attempted to evict the Jibrail clan by burning and taking over plots owned by the Jibrails. Through mediation involving other Bahgari sub-clans and government agencies, an agreement was reached for peaceful coexistence.
 - e. That It was decided that one sub-clan would have the position of chief, while the other would hold the assistant chief position. With the support of the MP, the Haglale sub-clan secured the chief position, and the Jibrails had to settle for the assistant chief role.
 - f. That despite the arrangement, the Haglale sub-clan refused to share control over water and other resources. In late 2012, chiefs were appointed, but the Haglale chief was dismissed for theft and other misconducts.
 - g. That the position of chief was advertised again in 2020, the Jibrail sub-clan did not support their assistant chief's promotion, out of respect for the prior agreement. This led to the assistant chief leaving his position, resulting in a vacancy for the assistant chief in Gabwab.
 - h. That the Haglale sub-clan seeks to take over the assistant chief position and marginalize the Jibrails, denying them essential government services such as national ID cards. They are attempting to achieve this by corrupting and manipulating government officials to recruit unqualified candidates at the expense of those who worked hard to meet the requirements.
 - i. That a clear example of these efforts can be seen in the recent advertisement for the Gabwab assistant chief position. The position was first advertised on August 11, 2023, with interviews scheduled for September 2023. However, none of the applicants met the required criteria of



being at least 30 years old and having a minimum grade of C- in the KCSE exams. This led to the government re-advertising the position.

- j. That when the position was re-advertised on October 11, 2023, only one applicant, who was 30 years old with the required C- grade, joined the previous group of applicants and the interview took place on November 22, 2023. However, irregularities occurred during the process.
 - k. That the Deputy County Commissioner of Habaswein and the Wajir County Commissioner were reportedly compromised and forwarded the name of an unqualified applicant, who was only 29 years old at the time of the interview. His name was sent to Nairobi six months later, after he had turned 30.
 - l. That the fraudulent nature of the exercise was uncovered, and the process was nullified. The government re-advertised the position instead of appointing the only qualified candidate from the earlier interview.
 - m. That in the latest re-advertisement, applications are due by October 7, 2024. However, concerns remain about the fairness of the process, given that the same compromised officials are still involved.
 - n. That the applicant prays that he be appointed as the assistant chief for the post since he was the only qualified candidate.
 - o. That it is imperative that this Honorable Court intervenes and declares the said actions of the 2nd and 3rd respondents are illegal, null and void and further be pleased to issue conservatory orders preventing the 3rd respondent from receiving new application and conducting interviews for that post.
3. The petitioner has further pleaded as follows:
- a. The 1st, 2nd and 3rd Respondents have breached Article 19 of *the Constitution* which cements the Bill of Rights as an integral part of Kenya's democratic state and provides that it is the framework for social, economic and cultural policies; created to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
 - b. The respondents clearly have turned a blind eye to one clan in the area and the norm which has been followed for years in the area towards any appointments.
 - c. That Article 41(1) provides that every person has the right to fair labour practices.
 - d. The petitioner had a legitimate expectation that he would be appointed to the advertised position in light of his emergence as the qualified candidate as he presumed such appointments were to be based on merit. The right to fair labour practices requires that the most qualified candidate for a position be offered the said position. Unfortunately, the respondents have breached the constitutional right of the petitioner by failing to appoint him to the position.
 - e. The Respondents have breached Article 47 which states that, every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action. Further, Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall, provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and promote efficient administration.



- f. It is the petitioner's averment that the administrative action taken by the respondents to forward unqualified candidate to the advertised position was not lawful, reasonable, procedurally fair, and/or transparent or accountable. This is owing to the fact that the procedures that were put in place for the said appointment, including interview before the Sub-County Selection Panel who would then recommend a candidate for appointment, were evidently not complied with.
 - g. The petitioner avers that Article 232 of *the Constitution* sets out the values and principles of public service as including: high standards of professional ethics, involvement of the people in the process of policy making, accountability and transparency, fair competition and merit as the basis of appointments and promotions and affording adequate and equal opportunities for appointment, training and advancement at all levels of public service.
 - h. That the values and principles of public service shall apply to public service in all state organs in both levels of government and in all state corporations.
 - i. The respondents did not adhere to the values and principles of public services. This is so because, the Respondents in forwarding a name of unqualified person who does not have the requisite qualifications for the advertised position was driven by extraneous factors and acted contrary to fair competition and merit which ought to be the basis of appointments and promotions.
 - j. That the fronting of unqualified person was unethical, a deliberate and pre-meditated scheme to deny the petitioner his meritorious position and as well propagate corruption, impunity and arbitrariness
4. The respondents appointed the learned Chief State Counsel Mr. Oscar Eredi to appear in the matter and subsequently, they filed submissions through the learned State Counsel E.S Karbolo. The respondents filed the replying affidavit of Hillary Koech also being the 3rd respondent and sworn on 06.11.2024. it was urged and stated as follows:
- a. A vacancy of Assistant Chief for Getwab Sub-location was declared on 11.04.2023 by the 3rd respondent to the County Commissioner and it accrued following the dismissal of the office holder effective 21.06.2021. Authority to advertise the vacancy was applied for by the 3rd respondent on 29.05.2023 and the County Commissioner granted the authority on 16.06.2023. The advertisement was dated 11.08.2023 and applicants were required to hold KCSE mean grade C- or equivalent; a certificate in public administration, management, social work, community development, education, governance, conflict management or or its equivalent from a recognized institution; not less than 30-years of age; be a resident of the sub-location; have a certificate of good conduct; have good communication skills; and, have a certificate in computer application skills from a recognized institution.
 - b. Nine applications were received.
 - c. On 22.11.2023, interviews were conducted and the shortlisted candidates attended. Four out of seven candidates attended the interview. The petitioner was one of the candidates.
 - d. The candidates sat for written examination and took oral interviews. The record per minutes of the interview show and state, "All papers were marked by the panelists and marks awarded and recorded . Compilation was then done and the best three candidates picked for onward submission to the County Commissioner."



- e. In a turn of events not explained in the replying affidavit, the County Commissioner directed that the position be re-advertised per the letter ref No. Adm/2/6 Vol. 1 dated 17.09.2024. The letter directed the re-advertisement of the post of Getwab Sub-Location of Habaswein Sub-County. Without a ward on the fate of the concluded recruitment selection and interviews, the letter stated the vacancy be re-advertised and further “Ensure that you take into account the issues of clan dynamics and inclusiveness and the provisions of the scheme of service for Chiefs and Assistant are adhered to in the recruitment and selection process.
 - f. While being economical with the list of the qualified candidates that was forwarded to the County Commissioner which is not exhibited, the replying affidavit alleges that investigations revealed that the petitioner was not qualified because he is not a resident of Getwab Sub-location which disqualified him from the advertised position.
 - g. It alleged that the petitioner urges his case based on documents that are confidential and without stating bthe source or the mode of access.
5. The petitioner has exhibited on his supporting affidavit sworn on 03.10.2024 his national identification card No. 30986352 and serial No. 230641545 stating he born in 1993 and was issued in Wajir District. He has also exhibited his degree certificate of 03.08.2018 by Mount Kenya University for Bachelor of Science in Environmental Health with 2nd Class Honours – Upper Division with relevant transcripts. He also exhibited Diploma in Nutrition and Dietetics dated 12.06.2015 by Thika School of Medical and Health Sciences. His KCSE certificate shows he scored mean grade C- in the exams of November/December 2011
6. The petitioner also filed his further affidavit sworn on 12.11.2024. He stated as follows:
- a. The re-advertisement is delaying tactic to allow unqualified candidates to attain the age of 30 years and to favour a desired candidate.
 - b. The alleged clan dynamics should favour his appointment.
 - c. At the time he applied for his national identification card, the locality had not been established. Further, thus “11.....I am the son of Abdi Mohamed Hurre and my father is the pioneer of the locality who championed the creation of Gabwab under Dajabula Division in Habaswein Sub County, Wajir County a fact the respondents ought to be aware of.”
7. Final submissions were filed for the parties. The Court has considered all material on record and returns as follows:
- a. The petitioner has established that the respondents have not been transparent and accountable in the manner they undertook the interviews, recruitment and selection of the stated three candidates that were found suitable and forwarded to the County Commissioner. While there is no evidence on record to show that the petitioner was the most suitable and only qualified candidate, adversity must be inferred from the respondents’ failure to disclose the performance scores and the list that was forwarded. The petitioner has established the violations of Articles 10, 232 on transparency and accountability, economical use of resources, fairness in public service recruitment and appointment; and, Article 41 on fair labour practices as alleged.
 - b. The Court finds that while purporting to direct a re-advertisement of the vacancy, there is no evidence of the cancellation of the process that had concluded. It is not explained why the re-advertisement had to take place and the challenge to the otherwise neat and concluded process. The authority to direct a re-advertisement without a valid cancellation of the concluded



recruitment and selection process and without making the expected appointment as was expected is not only suspect but also it is free from exercise of known constitutional, statutory or other valid authority. It appears to the Court that the Country Commissioner was acting capriciously, unreasonably and without vested discretion to so act. It would appear to the Court to amount to imprudent use of public resources to repeat a process in which the respondents had become functus officio and it was contrary to reasonableness envisaged in Article 47 of *the Constitution* and Articles 10 and 232 principles and values. The submission or concern as urged for the petitioner is upheld and a fit remedy, in the circumstances, would be to declare the re-advertisement decision unconstitutional, null and void.

- c. The Court has considered that the results of the interview have not been disclosed. The petitioner prays for such other fit remedy in the best interest of justice. The Court considers that Article 234 of *the Constitution* vests in the Public Service Commission the original power, inter alia, to appoint public officers, to exercise disciplinary control, and to evaluate and report on the extent to which the values and principles in Articles 10 and 232 are complied with in the public service. Article 252 (1) (a) and (b) provides that the Commission may conduct investigations on its own initiative or on a complaint made by a member of the public; and, has the power necessary for conciliation, mediation, and negotiation. To that extent and in that view, the Court considers that the Commission should intervene in the instant case in towards determining the fate of the concluded interviews, recruitment and selection and if found that the petitioner was indeed the best suited or only qualified candidate, he be appointed to the vacancy accordingly and if not, the Commission may direct as appropriate with respect of filling the vacancy.
 - d. There is no evidence that unqualified person was forwarded for appointment and that prayer will collapse.
 - e. The 1st and 4th respondents to jointly or severally pay the petitioner's costs of the petition.
- In conclusion, the petition is hereby determined with orders:
1. The Public Service Commission in exercise of its constitutional powers and functions, or any of them, as found herein as under Articles 234 and 252 (1) (a) and (b), the Commission should intervene in the instant case and within the Commission's regulatory or audit systems, towards determining the fate of the concluded interviews, recruitment and selection and if found that the petitioner was indeed the best suited or only qualified candidate, he be appointed to the vacancy accordingly and if not, the Commission may direct as appropriate with respect to filling of the vacancy.
 2. The declaration that the directive conveyed by the County Commissioner for Wajir by letter Ref. No. ADM2/6. VOL.1 dated 17.09.2024 titled "Re: Authority To Re-advertise Vacant Post Of Assistant Chief II" was unreasonable as unconstitutional as found herein and null and void ab-intio.
 3. The 1st and 4th respondents to jointly or severally pay the petitioner's costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 27TH NOVEMBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

