



**Hussein & 4 others (Suing on their behalf and all other aggrieved Employees)
v Garissa County Public Service Board & 4 others (Constitutional Petition
E205 of 2022) [2023] KEELRC 3266 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3266 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E205 OF 2022**

**B ONGAYA, J
DECEMBER 7, 2023**

BETWEEN

**AHMED ABDI HUSSEIN 1ST PETITIONER
ABDI HIRSI FARAH 2ND PETITIONER
HUSSEIN ABDI AHMED 3RD PETITIONER
HASSAN RASHID AHMED 4TH PETITIONER
AHMEDRASHID KARIYOW ABDI 5TH PETITIONER
SUING ON THEIR BEHALF AND ALL OTHER AGGRIEVED EMPLOYEES**

AND

**THE GARISSA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT
THE COUNTY GOVERNMENT OF GARISSA 2ND RESPONDENT
THE GOVERNOR, COUNTY OF GARISSA 3RD RESPONDENT
THE COUNTY SECRETARY, GARISSA COUNTY 4TH RESPONDENT
THE CONTROLLER OF BUDGET 5TH RESPONDENT**

RULING

1. The ruling is on three applications being the petitioner's applications dated 24.11.2022 and 12.10.2023 and the 1st respondent's application dated 24.11.2023.
2. The application of 24.11.2022 was under Articles 2, 3, 10, 20, 21, 28, 35, 41, 43, & 47 of *the Constitution* of Kenya 2010, the *Employment Act*, sections 4, 7, 10(1), 11 & that 12 of the *Fair Administrative Action Act*, section 1A, 1B, 3A, of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil



Procedure Rules and filed through Muma & Kanjama Advocates. The petitioners prayed for orders as follows:

- a. (spent).
 - b. (spent).
 - c. That pending hearing and determination of the petition conservatory orders do issue directing the respondents to reinstate the petitioners together with the aggrieved employees to payroll and pay the petitioners and other aggrieved employees their salaries for the months of September and October, 2022 and subsequent months without any unlawful deductions whatsoever and without any further delay.
 - d. (spent).
 - e. That pending the hearing and determination of the petition, conservatory orders do issue suspending and or restraining the taskforce established by gazette notice No. 13820 dated 08.11.2022 from vetting employees, conducting hearings and or compiling and submitting reports on the issue of the human resource audit at Garissa County.
 - f. (spent).
 - g. That pending the hearing and determination of the petition a conservatory order be issued restraining the respondent whether themselves, their servants, or agents or whomsoever is acting on their behalf from implementing the report or recommendations of the special taskforce gazetted under gazette notice No. 13820 dated 08.11.2022.
 - h. That pending the hearing and determination of the application conservatory orders do issue restraining the respondents, their agents, servants or any other person acting for and on behalf from taking any action against the applicant in interfering with their duties in the employ by the 1st respondent or advancement or as retaliation, threats, reprisal, or victimization on account of filing the application and instant petition.
 - i. That the Honourable Court be pleased to grant any further orders as it may deem fit to further ends of justice.
3. In support of that application the petitioners urged that they are employed by the 1st respondent on permanent and pensionable basis in various cadres and at varying remuneration. They further urge as follows. They have continued to discharge the assigned duties with diligence until when they missed salaries for the months of September and October 2022. They were informed that they were no longer on the payroll of the respondents' county government. Further, a taskforce had been established by the county government to undertake a process of vetting and reinstating some of the employees as it deemed fit. The petitioners stated that the taskforce usurped the authority of the County Public Service Board as the legally constituted and authorised body to facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties and to advise the County Government on human resource management and development. The County Governor Nathif J. Adan signed Gazette Notice No. 13821 dated 11.11.2022 confirming appointment of a special taskforce relating to County Human Resource Issues whose terms of reference were to hear any concerns that may be raised by staff who may have been affected by the recommendations of the recent Human Resource Audit and to compile and submit a comprehensive report with clear recommendations of actions taken by the County Government relating to issues stemming from the concerns raised. The petitioners' case is that the said decision was carried out contrary to Articles 10(2) and 47 of *the Constitution* and section 4 of the *Fair Administrative Action Act*, 2015



which requires administrative decisions to be taken lawfully and fairly. Section 4 (1) of the [Fair Administrative Action Act](#) provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable, and, procedurally fair. The petitioners urge that the decision breached their legitimate expectation because the petitioners and other aggrieved employees' rights to administrative action that is inter alia efficient, lawful, reasonable, and procedurally fair per Article 47 of [the Constitution](#) as read with the [Fair Administrative Action Act](#), 2015 has been and continues to be gravely infringed upon by the respondents. The arbitrary stoppage of salaries for more than 3500 employees is unlawful and illegal and the Court should grant the orders as prayed for. The application was supported with the affidavit of Ahmed Abdi Hussein.

4. The 1st respondent filed the replying affidavit of Ebla Sahal, the Chairperson of the 1st respondent, sworn on 06.12.2022 and filed through Bashir & Company Advocates. The 1st respondent urged as follows. It is established per Chapter 11 of [the Constitution](#) of Kenya providing for public service and as read with sections 57 and 58 of the [County Governments Act](#) No.17 of 2012. The functions of the 1st respondent includes to establish and abolish offices in the county government public service, to appoint persons to hold or act in offices of the county public service and to confirm appointments, to exercise disciplinary control over and remove persons holding or acting in those offices and, advises the county government on human resource management and development. In undertaking the functions, the 1st respondent observes and promotes in the county public service the values and principles of governance and the public service per Articles 10 and 232 respectively. In performance of the functions the 1st respondent shall be independent and shall not be subject to the direction or control of any other person or authority and shall only adhere to- [the Constitution](#), the [County Governments Act](#), and, other relevant laws. The 3rd respondent has removed thousands of employees from the payroll and without justifiable reason and the employees have not earned their salaries for September, October, and November 2023. The special taskforce appointed by the 3rd respondent about county human resource issues per gazette notice no.13821 of 08.11.2022 is calculated to usurp the 1st respondent's powers. It is subject of ELRCPET. No. E002 of 2022, Halima Mohamed Kassim -Versus- The Governor, County Government of Garissa & Another. The Court has issued orders in that petition suspending the special taskforce. The 3rd respondent's attempts to usurp the powers of the 1st respondent as conferred per sections 59 and 75 of the Act should not be allowed. The impugned human resource audit report has lead to removal of thousands of employees from the county payroll. The aim is to purge all employees who had been working under the 3rd respondent's predecessor. The actions of the 3rd respondent threaten Constitutional and statutory legitimate expectations of the affected employees. The human resource audit report in issue and the special task force to undertake staff concerns about the impugned report are both unlawful, null and void as not based upon [the Constitution](#) and law. Further the actions by the 3rd respondent had no basis because no reports of irregularity or fraud in the 1st respondent's delivery of mandate had been reported. Further the 3rd respondent had not sought and obtained advisory from the 1st respondent. The 3rd respondent has outstepped mandate by initiating the audit report and the special taskforce. In essence, the 1st respondent supported the application.
5. The 2nd, 3rd and 4th respondents appointed Musyoki, Mogaka & Company Advocates to in the matter. To oppose the application, they filed on 13.12.2022 an undated notice of motion seeking to set aside ad interim orders that had been issued reinstating the employees to the payroll and staying the work of the special taskforce. The application was supported by the affidavit of Mohamud Hassan Mursal sworn on 08.12.2022. It was stated as follows. By the letter dated 17.05.2022 the 5th respondent, Controller of Budget, pointed out that allocation of Kshs.4,666.00 billion on personnel emoluments out of the total of Kshs.9.16 billion county budget amounted to 50.8% of the total budget way above the set ceiling of 35% per regulation 25(1) (b) of the Public Finance Management for County Governments



Regulations, 2015 on wages and benefits. The core services of health and fighting impacts of drought could not be adequately addressed. The 2nd respondent wrote to State Department for Public Service on 23.09.2022 seeking technical assistance to undertake human resource audit and payroll analysis for the county in order to address the concerns. The State Department replied by letter dated 28.09.2022 accepting to undertake the human resource audit for the period 2017 to 2022 aimed at streamlining the ballooned wage bill by analysing the payroll culminating in a report dated October, 2022. The report found that between 2017 to 2022 there were irregular appointments, service beyond retirement age and irregular recruitments and appointments. It was reported that Garissa County had 6,717 employees out of whom 3,500 employees were irregularly employed, 1,239 did not have personnel files as no records were found including ID cards and testimonials at the registry and the rest were treated as casuals. It was recommended that the 1st respondent be held accountable and responsible for the anomalies as the due statutory authority; the irregularly appointed employees be removed from the payroll pending resolution of issues by the County Human Resource Advisory Committee (CHRAC) and determination by the 1st respondent. As County Chief Officers who constitute the CHRAC had not been appointed, the 3rd respondent consulted the State Department for Public Service and appointed the impugned special task force. Notices to show cause were issued to the petitioners to explain on account that they had been irregularly added on the payroll. The special taskforce had interviewed 800 of the petitioners then a court order was given stopping the process. The petitioners had not been relieved from duty arbitrarily but on account of determining whether they had got on the payroll arbitrarily. Section 65 of the [County Governments Act](#) was to apply. The petitioners are authors of their own predicament. Reinstating the petitioners to the payroll will result in unfair enrichment. The 2nd respondent appointed Abdiaziz and Company Advocates to act in place of the earlier advocates

6. The application for the 2nd, 3rd and 4th respondents was heard together with the petitioners' two applications for contempt of the ad interim orders, and, 4th respondent's preliminary objection. In a ruling delivered on 22.06.2023 the Court ordered thus:

The 4th Respondent's Preliminary Objection Is Hereby Dismissed.

1. The two contempt applications for the petitioners are hereby dismissed but subject to order (3) as follows.
2. That pending the hearing and determination of the petition or further orders by the Court, the staff verification report 2023 herein with subsequent reviews thereto returning a total of 1054 employees verified as due for payment is struck out and the Court order adopting the same set aside upon the following conditions:
 - a. The petitioners and the other aggrieved employees be subjected to an independent verification or audit process undertaken by the Public Service Commission in exercise of its Constitutional and Statutory powers and functions at the instance and cost of the 2nd respondent as enabled by the 3rd and 4th respondents.
 - b. The verification or audit in (a) above be commenced forthwith to be completed by 01.08.2023 and all petitioners and the other aggrieved employees verified as valid employees of the 2nd respondent be paid all due outstanding monthly salary and allowances by 01.09.2023 failing interest to be payable thereon at court rates from 01.09.2023 till full payment.
 - c. Until the verification or audit herein is completed and the report filed and served upon all the parties, the 1st, 2nd, 3rd and 4th respondents by themselves or by their agents are hereby prohibited from recruiting, appointing, or promoting any other persons to positions or cadres held by petitioners as employees.



- d. All parties herein shall cooperate by way of providing relevant documents or information and attending when called upon so as to enable the Commission undertake the verification and audit expeditiously and accordingly.
3. That each party shall bear own costs of the attendant proceedings for the two contempt applications for the petitioners, the preliminary objection for the 4th respondent, and the application dated 17.04.2023 for the 2nd and 3rd respondents.
7. On 13.07.2023 the Court's direction clarified the role of the Public Service Commission in the verification and audit exercise thus, "2. That it is clarified that the ruling delivered on 22.06.2022 instituted a Court supervised process outside the Commission's appellate powers and functions in Article 234(2) (i) and it is further clarified that the Commission will undertake the verification exercise within the finding by Court of a dysfunctional human resource management surrounding the petitioners' dispute herein and in particular within the Commission objects and authority to protect the sovereignty of the people, secure the observance by all State Organs of democratic values and principles, and promote constitutionalism as per Article 249(1) (a), (b) and (c) of *the Constitution* and further, the Commission's general powers and functions in Article 252 (1) to conduct investigations on its own initiative or on a complaint made by a member of the public, and, the powers necessary for conciliation, mediation, and, negotiation."
8. The Commission undertook the verification and audit of the aggrieved employees of the County Government of Garissa and filed in Court the report dated 25.09.2023. The Commission instituted a data collection tool thus, "The Commission developed a tool for collection of data which included name of officer; national identification number; personal number; designation on first appointment; Job Group on first appointment; department; existence of a date of advertisement; whether there was an application letter or application form by the officer; whether the officer was qualified as the per advertisement; whether the officer was on the long list of applicants; whether the officer was shortlisted; the shortlisting report from the CPSB; minutes of shortlisting committee; date of interview of each officer; interview report from the CPSB; minutes of the interview committee; minutes of the CPSB meeting appointing the officer; letter of offer of appointment; letter of appointment; letter indicating the date the officer reported for duty on first appointment; letter of confirmation in appointment; whether an officer was promoted; the current designation; origin of the verified file; and whether the officer was originally from the national government."
9. By letters dated 06.07.2023, 24.07.2023 and 27.07.2023 the Commission requested for information from the County Secretary and the Chairperson of the 1st respondent, the County Public Service Board (CPSB). By the letter dated 03.08.2023 the Commission wrote to the former Secretary to the CPSB requesting for further information. The information sought in the letters included staff establishment for the county; human resource manual; budgetary approvals for the advertised positions; requests from the county government for filling the vacant positions that are the subject of the court petition; approval of recruitment by CPSB; excerpts of the advertisements for the various positions; long list of applicants for all positions; shortlist of applicants; reports of shortlisting committees; minutes of shortlisting committees; reports of interview committees; minutes of shortlisting committees; minutes of CPSB meeting appointing the various officers who are subject to the petition; regulatory procedures on recruitment (if any); and other relevant documents.
10. Further, on 04.08.2023 the Commission sent an e-mail to the Clerk of the County Assembly requesting for copies of the annual reports presented to the Assembly by the CPSB. On the same date the Commission sent an e-mail to the petitioners' counsel Muma and Kanjama Advocates requesting them to have their client meet the Commission team with relevant documents in their possession.



11. On 01.08.2023, the Commission led by the Chairperson met the County Executive led by the Governor. The county government explained that the recruitment process ought to involve a departmental request; confirmation of approved budget; availability of position; an advertisement; receipt- of applications; shortlisting, interview, and issuance of a letter of appointment signed by the secretary to the CPSB. In the former administration, the secretary to the CPSB had not been involved in the recruitment process which explained why the chairperson of CPSB was signing the appointment letters.
12. On 01.08.2023, the Commission met the CPSB chairperson, the vice-chairperson and one other member. The chairperson handed in a written presentation dated 01.08.2023. The Commission was informed that the secretary to the CPSB had resigned in May, 2023 and the staff whose salaries had been stopped included 19 technical staff of the CPSB and thus the CPSB had skeleton staff. The CPSB explained that recruitment was governed by the human resource manual based on staff establishment in a process entailing request from relevant department; confirmation of the budget by the Chief Officer Finance; advertisement placed in government offices; applications; longlist; shortlisting; interview and selection; and, issuance of interview letter. After resignation in May 2022, the secretary to the CPSB had not handed over and the board was not therefore in possession of the board minutes; reports and files as they were still in the custody of the former board secretary. The last recruitment by the board had been in May, 2022. The Commission was informed that the appointment letters ought to be signed by the secretary to the CPSB and not the chairperson.
13. The members of the CPSB had been recruited and appointed as follows:
 - a. Mrs. Sahal Ebla Chairperson 23.02.2018.
 - b. Mr. Keinan Abdullahi Vice – Chairperson 12.11.2019.
 - c. Mr. Shafat Abdirizak - Member 12.11.2019.
 - d. Mr. Ahmed Abdi - Member 12.11.2019.
 - e. Mrs. Kheir Ibrahim - Member 22.06.2022.
 - f. Mr. Mohamed Ismail - Member 22.06.2022.
 - g. Mr. Abdi Mohamed - Member 23.02.2018.
14. The Commission met the chairperson and members of the CPSB separately between 06.08.2023 and 10.08.2023. On 10.08.2023, the Commission met the chairperson and again she had no records on account the former secretary who had resigned in May, 2022 had not handed over the office but he had surrendered the office keys to her and she was trying her best to have the secretariat search for relevant documents despite challenges such as lack of electricity and stationery, the county executive having failed to facilitate the CPSB.
15. The Commission met the petitioners’ representatives on 04.08.2023. They stated that they had been regularly employed responding to advertisement for jobs, being on long and short lists, attending interviews by CPSB and being offered appointments.
16. The Commission analysed files provided by the 1st respondent the CPSB and the 2nd respondent, the county executive. The payroll data and Auditor General’s report for 30.06.2019 to 30.06.2022 were also considered. The clerk to county assembly provided 1st respondent’s annual reports to the assembly for years 2017; 2018; 2021 and 2022.



17. In undertaking its analysis, the Commission understood its mandate thus, “The Commission’s understanding of the Court order was that the Court expected the Commission to confirm whether the 1054 aggrieved employees were procedurally recruited. The Commission obtained a list of the aggrieved employees from the firm of Muma & Kanjama Advocates on behalf of the petitioners which had 1054 names.” It was discovered that Shamsa Kassim Yussuf P/No. 20180072851 had been listed twice at County Affairs Department as female employee designated as Tea Girl and in Trade Affairs Department as male employee designated as Tea Girl. Thus, the employees were actually 1053 per the list. Of the 1088 files availed from the 1st and 2nd respondents, only 920 related to the petitioners. 91 petitioners had been paid salaries after September 2022; 138 files had application letters or forms while 782 had none; 873 files had letters of offer of appointment out of which 4 were undated, 4 were not signed and 47 had no letters of appointment; and the 873 letters of appointment had been issued between 2014 and 2022. They had been signed by various officers or officials:

- a. 393 chairperson CPSB.
- b. 60 secretary CPSB.
- c. 1 County Executive Committee member.
- d. 333 by county secretary, 4th respondent.
- e. 76 by chief officers.
- f. 5 by directors.
- g. 1 by sub-county administrator.
- h. 4 no signatory indicated.

355 files had letters of confirmation in appointment and 565 did not have the same. One employee Mohamed Hussein Gabbow of ID. No. 9847918 personal No. 2007133309 was seconded from national government and absorbed in the county government service per section 138 of the [County Governments Act](#).

18. The [County Governments Act](#) and Garissa County Human Resource Policy provided for matters about establishment of offices; preparation of annual recruitment plans by departments; reporting of vacancies to 1st respondent; advertisement of vacancies; application manually or online; selection based on fair competition and merit, representation of diverse communities to all gender, youth, members of all ethnic groups, persons with disabilities and minority; considerations during appointment; appointment in writing; and issuance of letters of appointment.

19. The Commission analysed the materials before it and noted as follows:

- a. Optimal staffing levels were proposed in the County Public Service Staffing Rationalization Report of Nov/Dec 2014 but there was no evidence that the 1st respondent had adopted and approved it. By letter dated 31.07.2023, the 1st respondent had been informed by the county secretary, the 4th respondent, that there existed no current approved staff establishment.
- b. Contrary to clause 2.1 of the human resource policy the 1st respondent confirmed there was no annual recruitment plan.
- c. There were no declared vacancies contrary to section 63(2) of the Act and clause 2.2.1 of the policy. By letter dated 31.07.2023 the 4th respondent informed the 1st respondent that there



were no indents or budget approvals from the relevant departments or requests to fill vacant positions by departments with respect of the petitioners or aggrieved employees.

- d. Contrary to section 66 of the Act and clause 2.3 of the policy there were no advertisements submitted with respect to positions held by the petitioners or aggrieved employees.
 - e. There were no or no validly filled job application forms or letters.
 - f. Contrary to section 68 of the Act there were no long and shortlists, and, reports about the same.
 - g. There were no records on interviews and relevant interview reports per section 65 of the Act and clause 2.5 of the policy. It was difficult to tell compliance with Articles 10, 27(4), 56(c) and 232(1) on recruitment, selection and appointments in public service.
 - h. Only 60 letters of offer had been signed by 1st respondent's secretary as expected and required.
 - i. 893 of 920 reviewed files had no letters of appointment contrary to section 67 of the Act and clause 2.10 of the policy.
 - j. Only 355 out of 920 files had letters of confirmation in appointment.
 - k. Some files had resignation letters but which had not been approved by the 1st respondent per section 69(2) of the Act and clause 2.21 of the policy.
20. The Commission observed as follows:
- a. General poor human resource management in the County.
 - b. The county government to recruit professional officers to manage human resource and maintain proper personnel records.
 - c. The 1st respondent to recruit its own professional staff at appropriate levels to assist it efficiently execute its statutory mandate.
 - d. The working relationship between the 1st respondent and county executive is strained and adversely affects county human resource management.
 - e. The aggrieved employees are unfortunate victims of an apparent systemic problem in the county human resource management.
 - f. The county executive and the 1st respondent poorly maintain human resource records.
 - g. There is lack of unity and there is poor communication amongst members of the 1st respondent.
 - h. The absence of 1st respondent's secretary has adversely affected the 1st respondent's operations and recruitment of a secretary is a priority.
 - i. The need to sensitize members of county executive committee, chief officers, directors, and senior staff of the county government and 1st respondent's members on human resource management and the applicable legal regime.
 - j. There is heavy clan influence in management of human resource in the county and interventions are a priority.
21. The Commission concluded thus, "4.1 Conclusion: It is the opinion of the Commission that apart from Mohamud Hussein Gabbow of ID No. 9847918 and personal number 2007133309 who may



have been seconded from the national government to the county on 6/5/2014 and subsequently transferred to the county government with effect from 1/7/2016, all other persons whose files were reviewed by the Commission were not lawfully employed into the county government as there as no documents to support their alleged appointment as required by the County Government Act and the Garissa County Human Resource Manual.” The report was signed by Amb. Antony M. Muchiri, Chairperson of the Commission.

22. The petitioners filed an application dated 12.10.2023 brought under Article 22 and 47 of *the Constitution*, section 12 and 13 of the *Employment and Labour Relations Court Act*, section 4,5,6,7 of the Fair Administrative Actions Act and all enabling provisions of the law. The petitioners prayed for orders:
- a. (spent).
 - b. That the Honourable Court be pleased to quash and strike out the report dated 25.09.2023 by the Public Service Commission and the recommendations contained in the report.
 - c. The Honourable Court be pleased to issue an order of prohibition against the implementation of the report dated 25.09.2023 by the Public Service Commission by the respondents, their servants, agents, third parties, or any other party.
 - d. That pending the hearing and determination of the petition the Honourable Court be pleased to issue an order directing the respondents to reinstate the 1st to 4th petitioners together with the aggrieved employees to the payroll and pay the 1st to 4th petitioners together with the aggrieved employees their salaries for the month of October 2022 and subsequent months without any unlawful deductions whatsoever and without further delay.
 - e. That the Honourable Court be pleased to issue an order directing the respondents, their servants and or agents that any termination or process of termination that is to be done against the petitioners and aggrieved employees should be done in compliance with the law.
 - f. (spent).
 - g. That the Court issue any other or further orders necessary to safeguard its authority, enforce its jurisdiction and advance the interests of justice.
 - h. That the costs of the application be provided for.
23. The application was based upon the attached affidavit of Ahmed Abdi Hussein and the following grounds:
- a. The report by the Commission amounts to unfair administrative decision and is unfair, unreasonable, irregular and contrary to sections 3, 5, 9, 26, 27, 28, 29, 30, of the *Employment Act* and in breach of sections 63, 65, and 67 of the *County Governments Act*.
 - b. The Commission did not conduct interview with every and affected employee. They were not heard prior to the report being concluded as per sections 4(3) (4) (a), 5 and 7 of the *Fair Administrative Action Act* and Article 47 of *the Constitution*.
 - c. The implementation of the report means over 1000 employees be terminated without being heard. The commission only interviewed 4 employees.
 - d. The personal views of the employees were not considered. the report was not proportionate as per the petitioners’ expectations.



- e. Some employees had been released to the county government by the Teachers Service Commission per the exhibited letters.
 - f. The report did not consider the meaning of an employee under the [Employment Act](#). The Commission ignored the employees' views.
 - g. There is a lot of discrimination and witch hunt against certain staff within the 1054 since only a handful were reinstated illegally. That was based on the political affiliation.
 - h. The orders sought be granted.
24. The 1st respondent similarly filed the application dated 16.10.2023 seeking striking out of the report by the Public Service Commission dated 25.09.2023 on the verification and audit of the aggrieved employees of the county government of Garissa together with its findings thereof. The 1st respondent's case is that the Commission concluded the report in a hurry. The 1st respondent's case like that of the petitioners is that only 5 aggrieved employees were interviewed by the Commission. The resources provided by the county government for the verification and audit exercise therefore appear not prudently applied as envisaged in Article 232 (1) of [the Constitution](#) on efficient, effective and economic use of resources. The records held by the 1st respondent ought to have been supplementary to the personal verification of the aggrieved employees. The 1st respondent had written several letters to the Commission on the difficulties the 1st respondent had making it difficult to provide the documents the Commission had asked for. The report should therefore be struck out.
25. The 4th respondent opposed the applications one by the petitioner and one by the 1st respondent challenging the Commission's report by filing grounds of opposition dated 02.11.2023 through Manyonge Wanyama & Associates LLP. It was urged as follows:
- a. The Commission executed the Court order on audit and verification properly and gave the 1st respondent opportunity to provide documents and to make oral and written representation. The 1st respondent has not disputed clause 2.3.2.6 of the report that all the personal files submitted to the Commission by the 1st respondent were created by the 1st respondent from documents that were submitted by individual officers during the verification exercise undertaken by the 1st respondent following the consent that was earlier reached between the 1st respondent and the county executive. Thus, it was unreasonable to expect the Commission to meet all the 1053 employees while the 1st respondent had availed to the Commission all the files it had received from the employees during the 1st respondent's verification exercise.
 - b. The report cannot be vitiated on the ground that the Commission did not meet all the 1053 employees yet their respective employers submitted to the Commission the employees' records.
 - c. The report at page 39 exhibits the email correspondence between the Director Legal Services and petitioner's Counsel and parties agreed for the Commission to meet only 5 petitioners on 04.08.2023. Counsel for petitioners is not urging that the Commission was requested to meet all the aggrieved employees and it refused to do so.
 - d. No evidence of illegalities or irregularities has been adduced against the Commission.
 - e. The report by the Commission dated 25.09.2023 should be adopted for implementation and the applications dated 12.10.2023 and 16.10.2023 dismissed with costs.
26. The 2nd and 3rd respondents filed the grounds of opposition dated 06.11.2023 through Abdiaziz & Company Advocates. The 2nd and 3rd respondents urged that the 1st respondent's unwillingness to



submit information on the nature of recruitment of the aggrieved employees has been raised in Court severally. The 1st respondent's members in their representation to the Commission were unable to vouch for any proper and lawful recruitment and appointment. The chairperson of 1st respondent had issued letters of appointment to some of the aggrieved employees without delegated 1st respondent's authority. Staff of the Teachers Service Commission that may have been released to the county government obtained appointment to the county government service irregularly. The report by the Commission is the factual and true picture of the finding of the Court of a dysfunctional human resource management as was as well protested by the county executive against the 1st respondent. There is no good reason established to strike out the Commission's report. The Commission undertook the audit and verification within the timelines set by the Court. The employees are ghost workers with no work stations. The applications are afterthoughts to suggest non-employees were not verified by the Commission and to delay wheels of justice.

27. The applicants and the respondents filed submissions on the applications. The 5th respondent did not participate. The Court has considered the material on record and the parties' respective positions. The Court returns as follows.
28. To answer the 1st issue, there is no established good reason to justify the striking out of the report by the Public Service Commission. The 1053 aggrieved employees had opportunity to make representations before the Commission in circumstances that they had counsel who was representing them. It is only after the report was concluded not in their favour that they appear not to be happy with it. The procedure adopted by the Commission to execute the Court order on audit and verification was both scientifically sound and fair because all the affected parties had an opportunity to state their respective cases and to provide relevant documents or information. The 1st respondent has miserably failed to show that it effectively performed its duties in accordance with [the Constitution](#), the [County Governments Act](#) and the County of Garissa Human Resource Policies and, with respect to the recruitment, selection, and appointment of the aggrieved petitioners and employees. There is nothing on record to defeat the Commission's finding that the recruitment, selection and appointment or purported decisions in that regard were irregular as unlawful, and that, the aggrieved employees were victims of the failures on the part of the 1st, 2nd, 3rd and 4th respondents to undertake proper human resource management. It is said that the the Commission should have heard all the 1053 employees. The evidence was that they were given the opportunity through their Counsel and they opted to avail their representatives. There was no request that each and every one of them is heard individually. In any event, the petitioners have had enough chance to file in Court all the material, for each of the aggrieved employees, showing the process through which they each became the county government employees. Such evidence has not been provided by the employees or by the 1st respondent. The 1st respondent obviously does not have the required information. In particular, while the 1st respondent's chairperson had the key to the office of the secretary said to have resigned in 2022, she failed to show steps taken to retrieve the documents about the dispute. The Court has therefore concluded that the documents do not exist at all and the evidence of non-existence is nothingness. The petitioners have not exhibited one or two documents say about confirmation of appointment or appointment or release to serve in the county but without a procedural explanation suggesting that the exhibits are actually the manifestation of the irregular or unlawful engagement in the county government service.
29. To answer the 2nd issue, the Court returns that the Commission report and finding is not that each and every petitioner and aggrieved employees stand removed from the service automatically and, if at all, they are actually in the service. The Commission finding is that the recruitment, selection and appointment was irregular as unlawful and not that the petitioners and aggrieved employees stand removed. The Court considers that in view of the Commission's findings, the fate of the petitioners



and the aggrieved employees now lies in the hands of the 1st, 2nd, 3rd and 4th respondents determined in accordance with the law. Orders will issue accordingly.

30. To answer the 3rd issue, the 2nd, 3rd and 4th respondents have confirmed that the audit by the special taskforce had been appointed because the County Human Resource Advisory Committee had not been in place. It appears that the Committee is now in place. It also appears that the audit report by the department of national public service has been overtaken by the audit and verification report by the Commission.
31. To answer the 4th issue, in view of the report by the Commission and the Court's findings thereon, the Court considers that an order to release salaries pending the hearing and determination of the petition will not issue. It is not known as of this stage the effect of the irregular or unlawful appointments and whether some of the petitioners and aggrieved employees are ghost workers and really working as deployed or not. Their fate in that regard and as already found is in the hands of the 1st, 2nd, 3rd and 4th respondents. A balancing of interests will have to be made in every aggrieved employee's case as the 1st, 2nd, 3rd and 4th respondents will determine in exercise of their respective lawful authority and functions. The prayer for interim payment of salaries is in the nature of a mandatory injunction and in view of the findings and conclusion of the Commission's report and the material on record particularly about the petitioners' employment, stations of work, nature of work and all of which are missing, it cannot be returned that the petitioners have established a prima facie case with a near obvious probability or likely chance of success. The order will be declined.
32. The Court has considered the circumstances of the applications and costs will be in the cause.

In conclusion, the three applications are hereby determined with orders:

- a. That pending the hearing and determination of the petition, an order is hereby issued suspending and or restraining the taskforce established by gazette notice No. 13820 dated 08.11.2022 from vetting employees, conducting hearings and or compiling and submitting reports on the issue- of the human resource audit at Garissa County as the role of the taskforce is in any event overtaken by the audit and verification exercise and report by the Public Service Commission dated 25.09.2023.
- b. That pending the hearing and determination of the petition an order is hereby issued restraining the respondent whether themselves, their servants, or agents or whomsoever is acting on their behalf from implementing the report or recommendations of the special taskforce gazetted under gazette notice No. 13820 dated 08.11.2022 whose role is in any event overtaken by the audit and verification exercise and report by the Public Service Commission dated 25.09.2023.
- c. That pending the hearing and determination of the petition, the 1st, 2nd, 3rd and 4th respondents are at liberty to implement and take consequential measures in accordance with the law and in view of the observations and conclusion of the Public Service Commission Report of the Verification and Audit of the Aggrieved Employees of Garissa dated 25.09.2022 now adopted by the Court.
- d. That pending the hearing and determination of the petition, in view of the Commission's findings, the fate of the petitioners and the other aggrieved employees now lies in the hands of the 1st, 2nd, 3rd and 4th respondents determined in accordance with the law.



- e. That in view of the orders in this ruling and the adopted Commission's report, parties to seek to compromise the petition or to take steps for directions for the expeditious determination of the petition and the suit as consolidated.
- f. The orders in this ruling to apply to cause No. 819 of 2023 (formerly Nyeri ELRC Cause No. E013 of 2023) with necessary modifications and per report by the Commission on the audit and verification of the concerned claimants therein and per orders already made in that regard.
- g. That costs of the applications in the cause.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

