



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

**PETITION NO. 89 OF 2020**

*(Before Hon. Lady Justice Maureen Onyango)*

**IN THE MATTER OF ADVERTISEMENT OF VACANCIES FOR THE POSITION OF COMMUNITY HEALTH EXTENSION WORKERS BY THE PUBLIC**

**SERVICE COMMISSION**

**AND**

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 10, 19, 20, 21, 22, 23, 27, 30, 41, 47, 73, 174, 175(a), (b), 176, and 232 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT, NO, 1A OF 2015, PUBLIC SERVICE CODE AND PUBLIC SERVICE SCHEME OF SERVICE, LAWS OF KENYA**

**AND**

**IN THE MATTER OF PUBLIC HEALTH OFFICERS SCHEME OF SERVICE**

**AND**

**IN THE MATTER OF THE SCHEME OF SERVICE FOR COMMUNITY HEALTH SERVICES PERSONNEL**

***BETWEEN***

**ALICE NYOKABI NJOROGE..... 1<sup>ST</sup> PETITIONER**

**ERICK ONYANGO OGACHI..... 2<sup>ND</sup> PETITIONER**

**DANCAN MONDA MANKONE..... 3<sup>RD</sup> PETITIONER**

**JAMES KINGORI MURIBI..... 4<sup>TH</sup> PETITIONER**

**ESTHER JEPCHUMBA SANG..... 5<sup>TH</sup> PETITIONER**

**MUNGAI KEVIN KIMANI..... 6<sup>TH</sup> PETITIONER**

***VERSUS***

**PUBLIC SERVICE COMMISSION..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL..... 2<sup>ND</sup> RESPONDENT**

## RULING

The Petitioners filed a Notice of Motion application dated 19<sup>th</sup> May 2020 seeking to be heard for orders: -

1. Spent.
2. *That pending the interpartes hearing and determination of this Application the 1<sup>st</sup> Respondent be restrained and barred from in any manner carrying out any further interviews, short listing of candidates and/or recruiting any person to the positions of Community Health Extension Worker referenced as CGS 13 V/NO.102/2020 250 posts and CGS 13 V/NO.GG/8/2020 1770 posts as communicated by the 1<sup>st</sup> Respondent vide advertisement posted on its website in as far as it excludes Public Health and Environmental Health as a recognized qualification for recruitment of a Community Health Extension worker.*
3. *THAT pending the interpartes hearing and determination of this Petition the 1<sup>st</sup> Respondent be restrained and barred from in any manner carrying out any further interviews, shortlisting of candidates and/or recruiting any person to the positions of Community Health Extension Worker referenced as CGS 13 V/NO.102/2020 250 posts and CGS 13 V/NO.GG/8/2020 1770 posts as communicated by the 1<sup>st</sup> Respondent vide advertisement posted on its website in as far as it excludes Public Health and Environmental Health as a recognized qualification for recruitment of a Community Health Extension worker.*
4. *THAT this court be pleased to order the stay of the results of the short listing exercise for the positions of Community Health Extension Worker referenced as CGS 13 V/NO.102/2020 250 posts and CGS 13 V/NO.GG/8/2020 1770 posts as communicated by the 1<sup>st</sup> Respondent vide advertisement posted on its website in as far as it excludes Public Health and Environmental Health as a recognized qualification for recruitment of a Community Health Extension worker pending the inter partes hearing of this application.*
5. *That this court be pleased to order the stay of the results of the short listing exercise for the positions of Community Health Extension Worker referenced as CGS 13 V/NO.102/2020 250 posts and CGS 13 V/NO.GG/8/2020 1770 posts as communicated by the 1<sup>st</sup> Respondent vide advertisement posted on its website in as far as it excludes Public Health and Environmental Health as a recognized qualification for recruitment of a Community Health Extension worker pending the inter partes hearing of the main Petition.*
6. *That this court be pleased to grant the Petitioner(s) an order in the nature of a specific performance directing the 1<sup>st</sup> Respondents to include the discipline of Public Health and Environmental Health as one of the recognized qualifications for the subsequent recruitment for the positions of Community Health Extension Worker referenced as CGS 13 V/NO 102/2020 250 posts CGS 13 V/NO.GG/8/2020 1770 posts.*
7. *THAT the cost of this application be provided for.*

The Application is based on the grounds that the Petitioners are Kenyan Public Health Officers licenced by the Public Health Officers and Technicians Council (the Council). The 1<sup>st</sup> Respondent advertised in its website vacancies in the Ministry of Health, Universal Health programme for various health care personnel drawn from various health cadres and based on identified needs. Among the positions advertised was Community Health Extension with two different references. The advertisement stipulated that for appointment to the aforementioned positions, a candidate must have a certificate in the disciplines of Community Health, or Community Health and Development.

The Petitioners, who hold certificates of Diploma in Environmental Health Sciences contend that the said advert was against the Scheme of Service for Community Health Personnel and that they were deliberately excluded from applying for the said positions of Community Health Extension Worker. That this is notwithstanding the fact that the discipline of Public Health and Environmental Health is a recognized qualification under the Scheme of Service for Community Health Personnel, but which discipline was excluded in the aforementioned advertisement. That the 1<sup>st</sup> Respondent ought to have exercised its discretion in the recruitment process within the parameters of fair competition and merit set by the Constitution of Kenya and the Public Service Human Resource Manual.

The Petitioners state that they have exerted both formal and informal efforts to have their grievances addressed through their Association, The Association of Public Health Officers of Kenya but the same have been rendered futile hence the commencement of this suit. They are apprehensive that there is imminent risk they will be locked out from the recruitment exercise without justification or merit and that it is therefore in the best interest of administration of justice that the prayers sought in the Application herein be allowed. They state that the Respondents will suffer no prejudice if the recruitment exercise is halted to enable the Court query the constitutionality thereof. That this court's intervention is also meant to avoid further violation of their constitutional rights by the Respondents.

The Application is supported by the affidavit sworn by the Petitioners who aver that they hold certificates and diplomas in Environmental Health Sciences from the Kenya Medical Training College and which qualification documents are recognised under the Scheme of Service for Community Health Assistants. That consequently, their qualifications can be used interchangeably with the discipline of Community Health as the Scheme recognizes "*its equivalent from a recognized institution*". They aver that they believe the job specification for the advertised position of Community Health Extension Worker was based on a Senate Bill; the **Community Health Services Bill, 2020** which is yet to be enacted into law.

The Petitioners analyse the functions of community health and public health as stipulated under the scheme of service for Community Health Assistants and the Public Health Officers and Technicians scheme of service respectively. They aver that the public health function under the Public Health Officers Scheme of Service as well as the Public Health Act espouse that the functions as contemplated by the application requirements of a community health extension worker can also be met by a certified Public Health practitioner and Public Technician

licensed by the Council. Further, that the **Public Health and Officers and Technicians Scope of Practice** as published by the Council, recognizes the role of Public Health Officers and Technicians to also deliver as Community Health Extension workers.

That the scope for Public Health Officers and Technicians establishes that the role of public health officers and technicians is in tandem with the roles and responsibilities of Community Health Extension workers as advertised by the 1<sup>st</sup> Respondent. That there was therefore a legitimate expectation that candidates from the environmental health discipline would not be locked out from the recruitment exercise. That the Petitioners feel disenfranchised by the 1<sup>st</sup> Respondent's actions. The Petitioners further aver that the Public Service Human Resource Manual places a sacrosanct obligation on the 1<sup>st</sup> Respondent to ensure that the job advertisement reaches the widest pool of applicants and the clear alienation of the job description as well as the person specification.

That in all circumstances, failure to treat them equally where no reasonable distinction can be found between persons from the community health and development discipline and those from the environmental discipline amounts to indirect discrimination and unfair labour practice, and is against the Constitution of Kenya. That this Court should grant the orders sought herein so as to safeguard the Petitioners' rights to engage in productive work which is an important component of human dignity as well as their economic rights.

### **Respondents' Case**

The Respondents filed a Replying Affidavit sworn on 14<sup>th</sup> September 2020 on behalf of the 1<sup>st</sup> Respondent by Dr. Salim Ali Hussein, the Assistant Director of Medical Services, Ministry of Health. He avers that Community Health Extension Worker is an operational title encompassing various disciplines with specific mandates and that the said workers provide health extension services to the Community based on their specific area of training and competencies. Further, that their functions are critical in the implementation of Universal Health Coverage (UHC) as it reinforces the primary health approach at the Community Health units' level. That only the required candidates trained in Community Health and Community Health & Development can meet such purpose.

He further avers that in advertising the positions, the Ministry of Health was guided by the fact that they required Community Health Extension Workers who were specifically trained and had requisite skill to perform the specified tasks including:

- a. To enable Universal Health Coverage (UHC) achieve its mandate of Collect and collate the community Health House data to be uploaded to the Kenya Health information system;*
- b. Supervise the Community Health Volunteers when collecting data in the Household;*
- c. Train CHVs on the 13 Community Health Volunteers modules;*
- d. Conduct Community Health Dialogue and Community Health Action days;*
- e. Give technical support to Community Health Committees and be able to provide preventive and promotive health on Maternal & Reproductive health, Family Planning, child health & New born health, Environmental Health, HIV, TB & Malaria, Non Communicable Diseases Communicable Diseases, Mental Health, Gender and Disaster Management.*

That candidates trained in Community Health and Community Health and Development are the most suitably qualified to perform the said tasks as they have undertaken a 22 module CHA III programme which exempts them from further in-service training at Kenya Medical Training Institute. That as such, upon recruitment they are deployed immediately and assigned the specified duties without further in-service training. He deposes that there is no scheme of service for Community Health Extension Workers while explaining that recruitment of an extension worker is guided by the area of need that the extension services are required; for instance, recruitment of an extension service of a nurse will target a nurse. That in this case the Ministry of Health required a Community Health Assistant III.

He further avers that the Ministry of Health used the Scheme of Service for Community Health Personnel for 2013 (annexed in his affidavit as **SAHI**) since it outlined the qualifications required for recruiting a Community Health Assistant III and which addresses the Ministry's needs. He denies that the advertisement, the subject of this application, was discriminatory since it aimed at recruiting persons with specific training. He avers that the instant Application has been brought in bad faith, is without merit and is an abuse of the court process and that it should be dismissed with costs to the Respondents.

The Application was dispensed of by way of written submissions.

### **Applicants/Petitioners' Submissions**

The Applicants/Petitioners submit that Discrimination is defined in the **International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** as follows:-

*“For the purpose of this convention the term discrimination includes-*

- a. any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*
- b. such other distinction exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the member concerned after consultation with representative employers' and workers' organizations where such exist, and with other appropriate bodies-*

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.”

That in the instant case the distinction was predicated upon academic qualification premised on the requirement that applicants to the advertised position must possess qualification in either Community Health or Community Development. That this in itself is discriminatory to prospective candidates who were desirous in applying for the positions of Community Health extension workers considering that prospective candidates from both Community Health/Development and Environmental Health are highly suitable in carrying out the duties and responsibilities as advertised.

The Applicants/Petitioners relied on the case of **Githu Muigai and another v Law Society of Kenya [2015] eKLR** where the Court held that the 1<sup>st</sup> respondent thereat did not have the power under the Act to determine the minimum qualifications for secretary/CEO or to set out the threshold of competence or eligibility as the minimum qualifications were clearly set out in statute.

They submit that **Article 232 of the Constitution of Kenya** requires the 1<sup>st</sup> Respondent to uphold the values and principles of public service including high standards of professional ethics but which constitutional provision the 1<sup>st</sup> Respondent breached. They cite the case of **Robert Muriithi Ndegwa v Minister of Tourism, Petition No. 41 of 2012 at Nairobi** where the court stated that **Section 22 of the Public Officer Ethics Act, 2003** provides that public officers shall practice and promote the principle that public officers are selected on the basis of integrity, competence and suitability or elected in fair elections. The Court in **Robert Muriithi Ndegwa** went on to conclude that the standards for undertaking public employment have thus been determined by the Constitution and by statute.

That **Section B.4 of the Public Service Commission Code of regulations (Human Resource Policies and Procedures Manual for Public Service, 2016)** provides that ministries shall advertise all vacant posts in a manner that reaches the widest pool of potential Applicants. They rely on the case of **Community' Advocacy and Awareness Trust and Others v Attorney General, Nairobi Petition No. 243 of 2011** where the Court stated that Article 10 sets out the values that must be infused in every decision making process including that of making appointments.

It is submitted by the Petitioners/Applicants that the principles to consider in granting equitable remedies were laid down in the celebrated case of **Giella v Cassman Brown** to the effect that the Applicant must show a prima facie case with a probability of success; the Applicant must demonstrate that he will suffer irreparable loss or injury which would not be compensated by an award of damages; and if the Court is in doubt, it will decide on the balance of convenience. The Petitioners further cite the case of **Center for Human Rights and Democracy and others v The Judges and Magistrates Vetting Board [2012] eKLR** where the court held that the High Court has powers to grant appropriate reliefs so that the aggrieved party is not rendered helpless or hopeless in the eyes of the wrong visited or about to be visited upon him or her, which is meant to give an interim protection order not to expose others to preventable perils or risks by inaction or omission.

That the Supreme Court in the case of **Gitarau Peter Munya v Dickson Mwenda Kithinji and 2 others (2014) eKLR** held that conservatory orders bear a more detailed public-law connotation since they are orders to facilitate orderly functioning within public agencies as well as to uphold the adjudicatory authority of the Court.

### **Respondents' Submissions**

The Respondent submits that the Application and Petition herein have been overtaken by events thus defective because the subsequent shortlisting, interviews and recruitment of candidates to the positions of Community Health Extensions Worker as referenced to in the 1<sup>st</sup> Respondent's advert have already taken effect. That it is thus not within this Court's jurisdiction to prohibit/stay an action which has already occurred as was emphasised in the case of **Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & Others, Civil Appeal No 266 of 1996** to the effect that prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision.

Further, that injunctive/stay orders are discretionary, have a limited scope and can only be granted in the most deserving circumstances which is not the case in the instant case. That the prayers ought to be denied in the interest of justice.

It is the Respondents' submission that the Petitioners have also not demonstrated how the Respondents have acted in violation of the Constitution and the applicable law. That the Petitioners are obliged to go further and prove that the advertisement, interviews and subsequent recruitment are unlawful and should be quashed. They submit that not all breaches of the law pave way for a constitutional petition as reiterated in the case of **Francis James Ndegwa v Tetu Dairy Co-operative Society Limited [2016] eKLR** where Ngaah J. quoted Lord Diplock in the case of **Harrison v Attorney General of Trinidad and Tobago [1980] AC 265**. Further, that the Petitioners have failed to set out specifically the manner in which their constitutional rights were violated as stated in **Anarita Karimi Njeru v Republic (1979) K.L.R 154**.

The Respondents cite the case of **Susan Mumbi v Kefala Grebedhin (Nairobi HCCC No. 332 of 1993)** and submit that the Petitioners have not justified their prayers as required under **Sections 108 and 109 of the Evidence Act**. They submit that the advertisement, subsequent interview and recruitment by the 1<sup>st</sup> Respondent was procedurally done within the existing regulations or scheme of service and that the Petitioners are therefore not entitled to any prayers as sought in the Application/Petition.

### **Analysis and Determination**

The issues for determination are: -

- i. Whether the Petitioner's Application dated 19<sup>th</sup> May, 2020 meets the threshold for grant of the Orders sought.

ii. Whether the impugned advertisement meets the requirements of the law.

iii. Whether the Petitioner's Application and Petition raise any issues on violation of the Constitution.

The principles governing the grant or denial of injunctive orders were laid down in the case of **Giella v Cassman Brown (1973) E.A 358** where the court held that:

*“An applicant has to demonstrate firstly, that he has a prima facie case with probability of success. Secondly, an applicant has to show that he will suffer irreparable loss or damage if the interlocutory injunction is not granted, that is what an award of damages will not adequately compensate the damage. Thirdly, if the court is in doubt on the above two requirements, then it will decide the application on the balance of convenience.”*

In **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** Bosire JA while considering what constitutes a prima facie case in civil cases observed:

*“So what is prima facie case? I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.*

*...It is not sufficient to raise issues. The evidence must show an infringement of a right and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”*

In the case **Eric V. J. Makokha & 4 others v Lawrence Sagini & 2 others [1994] eKLR** the Court of Appeal at Nairobi held that it is trite law that a court cannot stultify itself by making orders which cannot be enforced or grant an injunction which will be ineffective for practical purposes. The court in **Nicholas Mahimu v Ndima Tea Factory Ltd & another [2009] eKLR** held that the orders sought in that case if so granted would have no effect as the action had already been done. In **Mussolini Kithome v Attorney General & another [2016] eKLR**, the High Court referred to the case of **B v Attorney General [2004] 1 KLR 431** whereby Ojwang J. as he then was expressed himself that:

*“The Court does not, and ought not to be seen to make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”*

It is the Respondents' case that the Applicants are seeking stay orders for actions that have already taken place and this Court would be granting the orders sought in vain. In the case of **Githu Muigai (supra)** relied upon by the Applicants, the respondent determined the minimum qualifications contrary to what statute had set out and for that reason I do not find the case relevant to the instant case.

It is the averment of the applicants that they have been deliberately locked out by the advertisement as the Scheme of Service of Community Health Extension Worker recognises the discipline of Public Health and Environmental Health, which are not included as qualifications for the position in the advertisement. The Petitioners have annexed their certificates all of which were obtained from Kenya Medical Training College. The certificates annexed are from Njoroge Alice Nyokabi, Eric Onyango Ogachi, Dancan Monda Mankone, Muribi James Kingori and Mungai Kevin Kimani. They all hold either a certificate or a diploma in **Environmental Health Sciences**.

In the advertised position of Community Health Extension Worker which the Applicants aver to have been locked out of the requirements are **“certificate in any of the following disciplines: Community Health, or Community Health and Development from a recognised institution”**.

In the Scheme of Service for Community Health Service Personnel dated 15<sup>th</sup> January 2014, produced by the Applicants, the qualifications set out are –

**(i) Certificate in any of the following disciplines: Community Health, Psychology, Counselling, Social Work, Community Development or its equivalent qualification from a recognized institution.**

**(ii) Diploma in any of the following disciplines: Community Health Nursing, Community Health, Community Oral Health, Psychology, Nutrition, Environmental Health, Counselling, Social Work, Community Development, Health Promotion and Education or its equivalent qualification from a recognized institution.**

**(iii) Bachelors degree in any of the following disciplines: Community Health, Public Health, Environmental Health, Epidemiology, Sociology, Psychology, Anthropology, Counselling, Social Work, Community Development, Nutrition, Health Systems Management, Health Education/Promotion, Population and Health or its equivalent qualification from a recognized institution.**

**(iv) Masters degree in any of the following disciplines: Community Health, Health Systems Management, Health Promotion and Education, Nutrition, Public Health, Epidemiology or its equivalent qualification from a recognized institution.**

**(v) Certificate in Supervisory Skills Course lasting not less than two (2) weeks from a recognized institution.**

**(vi) Certificate in Management Course lasting not less than four (4) weeks from a recognized institution.**

**(vii) Certificate in Senior Management Course lasting not less than four (4) weeks from a recognized institution.**

- (viii) Certificate in Strategic Leadership Development Programme lasting not less than six (6) weeks from a recognized institution.
- (ix) Certificate in Computer Application Skills from a recognized institution.
- (x) Such other qualifications as may be adjudged to be equivalent by the Public Service Commission of Kenya.

[Emphasis added]

Community Health function is defined as –

*“The Community Health Services function entails: sensitizing communities for uptake of quality health services; managing common ailments and minor injuries at community level; tracing defaulters to ensure compliance with health interventions such as immunization, tuberculosis treatment, malaria control, antiretrovirals, malnutrition, antenatal care; conducting community health diagnosis and recommending suitable interventions; referring health cases to appropriate health facilities; and coordinating community health activities, workers and committees.*

*Further the functions entails: monitoring, evaluating and preparing community health reports; facilitating planning activities at community level; mobilizing the community and other stakeholders; advocating and mobilizing resources for community health activities; and facilitating, training and developing community health volunteers/workers and members of community health committees.”*

In the Revised Scheme of Service for Public Health Assistants and Public Health Officers dated 11<sup>th</sup> April 2014, the qualifications are –

**(i) Certificate in any of the following disciplines: Community Health, Psychology, Counselling, Social Work, Community Development or its equivalent qualification from a recognized institution.**

**(ii) Diploma in any of the following disciplines: Community Health Nursing, Community Health, Community Oral Health, Psychology, Nutrition, Environmental Health, Counselling, Social Work, Community Development, Health Promotion and Education or its equivalent qualification from a recognized institution.**

(iii) Bachelors degree in any of the following disciplines: Community Health, Public Health, Environmental Health, Epidemiology, Sociology, Psychology, Anthropology, Counselling, Social Work, Community Development, Nutrition, Health Systems Management, Health Education/Promotion, Population and Health or its equivalent qualification from a recognized institution.

(iv) Masters degree in any of the following disciplines: Community Health, Health Systems Management, Health Promotion and Education, Nutrition, Public Health, Epidemiology or its equivalent qualification from a recognized institution.

(i) Certificate in Supervisory Skills Course lasting not less than two (2) weeks from a recognized institution.

(v) Certificate in Management Course lasting not less than four (4) weeks from a recognized institution.

(vi) Certificate in Senior Management Course lasting not less than four (4) weeks from a recognized institution.

(vii) Certificate in Strategic Leadership Development Programme lasting not less than six (6) weeks from a recognized institution.

(viii) Certificate in Computer Application Skills from a recognized institution.

(ix) Such other qualifications as may be adjudged to be equivalent by the Public Service Commission of Kenya. [Emphasis added]

Public health function is defined as:

*“The Public Health Function will involve: enforcement of the Public Health Act (Cap. 242). Food, Drugs and Chemical Substances, Act. (Cap. 254), Tobacco Control Act 2007, Alcoholic Drinks Control Act, 2010, Bio-safety Act 2009, Malaria Prevention and Control Act (Cap. 246), Meat Control Act (Cap. 356) and any other relevant legislations on public health in liaison with other relevant government agencies; formulation, implementation, interpretation and review of public health policies, guidelines, standards and procedures; plan and implement promotive and preventive health programmes; coordinate with relevant Departments and other stakeholders in the implementation of public health projects and programmes; monitor and evaluate public health projects and programmes; ensure compliance to international health regulations and rules at ports, of entry; provide technical advice on promotive and preventive health; undertake research on public health, trends and other emerging issues; mobilize resources and foster collaboration and partnerships with relevant agencies in support of public health programmes; oversee the development and management of public and private mortuaries, cemeteries and crematoria; and promote innovation and modern technology in the provision of public health services.”*

From the details above, it is clear that the functions for which recruitment was to be undertaken was for community health services whose qualifications at certificate level do not include environmental health sciences in the Scheme of Service. The Scheme clearly sets out the qualifications as “Community Health, psychology, counselling, social work, community development or its equivalent qualification.” Equivalent qualification cannot be interpreted outside the subject set out in the scheme. It can only be interpreted by reference to other

modes of qualification such as Diploma or certificate in the same subjects by some other certifying or examination body.

In view of the fact that the Respondent was recruiting within the existing scheme of service, it was not within the Respondent's powers to include qualifications not specified in the Scheme of Service.

It is further clear from the foregoing that the scope of services under the scheme of service for community health workers is markedly different from the scope of service for public health officers. The certificates of the Applicants do not indicate whether their qualifications were oriented to public health or community health as they did not attach any documents that specify the scope of their qualifications or the subjects covered in their training.

For the foregoing reasons I find that the Applicants have not established a prima facie case. As was stated in the case of **Yellow Force Inns Ltd v Nduati and Co. Ltd**, the principles in **Giella v Cassman Brown** are applied sequentially, meaning that one must meet the first principle of prima facie case, then the second principle of irreparable harm. Once the first principle is not met, the applicant automatically fails on the second principle.

Having found that the Applicants have failed to establish a prima facie case, it follows that they have not established the threshold for grant of the orders sought.

With the above findings, I need not make any determination on the other issue raised by the Respondent that the application has been overtaken by events as the recruitments have since been finalised.

**For the foregoing reasons, I find the application unmerited with the result that the same is dismissed. Costs shall abide the outcome of the petition.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 1<sup>ST</sup> DAY OF DECEMBER 2020**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**