



Aseto & 4 others v Muema & another (Petition E119 of 2025)
[2025] KEHC 5980 (KLR) (Constitutional and Human Rights) (12 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5980 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E119 OF 2025

AB MWAMUYE, J

MAY 12, 2025

IN THE MATTER OF: ARTICLES 1,2,3,10,21,22,23,25,47,48,73,74,75,131& 232 (1) OF THE KENYA CONSTITUTION 2010. AND IN THE MATTER OF: ALLEGED VIOLATIONS OR THREATS OF VIOLATIONS OF ARTICLES 1,2,3,10,21,22,23,25,47,48,73,74,75,131, &232 (1) OF THE KENYA CONSTITUTION 2010. AND IN THE MATTER OF: SECTION 12 (1) & (2) OF THE EMPLOYMENT ACT AND IN THE MATTER OF: DOCTRINES OF SUPREMACY OF THE CONSTITUTION OF KENYA, BILL OF RIGHTS, CONSTITUTIONALISM, RULE OF LAW AND LEGITIMATE EXPECTATIONS -BETWEEN-

BETWEEN

EVANS ASETO 1ST PETITIONER
GLEN PETER MANDELA 2ND PETITIONER
MICHELLE WANGU MAINA 3RD PETITIONER
FELISTUS MUMBUA NDAMBUKI 4TH PETITIONER
LEILA SANKALE 5TH PETITIONER

AND

DR. EMILY MUEMA 1ST RESPONDENT
VETERINARY MEDICINES DIRECTORATE 2ND RESPONDENT

(On the Respondents' Notice of Preliminary Objection dated 05/03/2025)



RULING

1. By way of a Petition dated 05/03/2025, the Petitioners moved to the High Court seeking the following final orders:
 - “A. A declaration be and is hereby issued that the advertisements contained in MyGov. Issue No. 30/2024 – 2025 dated 4th February, 2025 and extended vide MyGov. Issue No. 31/2024 – 2025 dated 11th February, 2025 inviting members of the public to submit applications from qualified persons for consideration for employment in various positions at the 2nd Respondent are unconstitutional, null and void.
 - B. An Order of Certiorari bringing to this court and quashing the advertisements contained in MyGov. Issue No. 30/2024 – 2025 dated 4th February, 2025 and extended vide MyGov. Issue No. 31/2024 – 2025 dated 11th February, 2025 inviting members of the public to submit applications from qualified persons for consideration for employment in various positions at the 2nd Respondent.
 - C. An Order of Prohibition restraining the Respondents, either by themselves, anyone else acting at their behest, instructions or directions or any other person whosoever, from taking any action whatsoever pursuant to or in reliance on or in fulfillment the advertisements contained in MyGov. Issue No. 30/2024 – 2025 dated 4th February, 2025 and extended vide MyGov. Issue No. 31/2024 – 2025 dated 11th February, 2025 inviting members of the public to submit applications from qualified persons for consideration for employment in various positions at the 2nd Respondent.
 - D. Costs of the Petition.”
2. At the interlocutory level, the Petitioners sought the following prayers by way of the Notice of Motion Application dated 05/03/2025:
 - I. That this application be certified as urgent and heard in the first instance and service thereof be dispensed with.
 - II. That pending Hearing and determination of this Application this Honourable Court be pleased to issue a conservatory order suspending the advertisements contained in MyGov. Issue No. 30/2024 – 2025 dated 4th February, 2025 and extended vide MyGov. Issue No. 31/2024 – 2025 dated 11th February, 2025 inviting members of the public to submit applications from qualified persons for consideration for employment in various positions at the 2nd Respondent.
 - III. That pending the Hearing and determination of this Application, this Honourable Court be pleased to issue an interim order prohibiting the Respondents, either by themselves, anyone else acting at their behest, instructions or directions or any other person whosoever, from taking any action whatsoever pursuant to or in reliance on or in fulfilment of any duty or obligation or implementation of advertisements contained in MyGov. Issue No. 30/2024 – 2025 dated 4th February, 2025 and extended vide MyGov. Issue No. 31/2024 – 2025 dated 11th February, 2025.



IV. That cost of this application be provided for.”

3. In response to and in opposition of both the Application and the Petition, the Respondents filed and served a Notice of Preliminary Objection dated 05/03/2025 in which the Respondents challenged the jurisdiction of the High Court to hear and determine this matter. Specifically, the Respondents asserted in their Preliminary Objection that:

“The High Court lacks the requisite jurisdiction to hear and determine the Petitioner’s Application and Petition herein by dint of the provisions of Article 162(2) (a) as read together with Article 165(5)(b) of the Constitution, Section 12 of the Employment and Labour Relations Act and section 12(1) and 12 (2) of the Employment Act.”

4. The background to the dispute before this Court is fairly straightforward. The 2nd Respondent, the Veterinary Medicines Directorate (VMD), is a state corporation responsible for the regulation of veterinary medicines. Sometime in February 2025, the Acting Chief Executive Officer (CEO) of the 2nd Respondent caused to be published several recruitment advertisements for positions within the Directorate. The Petitioners, who describe themselves as stakeholders in the veterinary sector and/or prospective candidates for advancement within Veterinary Medicines Directorate (VMD), are aggrieved with the said recruitment advertisements. According to the Petitioners, the recruitment drive was initiated unlawfully and in a manner that violated the Constitution and the law.
5. The thrust of the Respondents’ Preliminary Objection is that it is manifestly clear from the Petition that the subject matter of the Petition concerns an employment dispute – specifically, a recruitment process by an employer, the Veterinary Medicines Directorate. They contend that recruitment is an integral part of employment, and thus by dint of the provisions of Article 162(2) (a) as read together with Article 165(5)(b) of the Constitution, Section 12 of the Employment and Labour Relations Act, and Section 12(1) and 12 (2) of the Employment Act this Court lacks the requisite jurisdiction to adjudicate over the dispute.
6. The Respondents further argued that the Employment and Labour Relations Court (ELRC) has the requisite jurisdiction to hear and determine the alleged constitutional and statutory violations raised by the Petitioners. The Respondents relied on the case of Registrar of Trade Unions –V- Nicky Njuguna & 4 Others (Eklr) in which the Court of Appeal held: -

“This same issue was central in the following matters; Prof, Daniel N. Mugendi V Kenyatta University & Others Nairobi Civil Appeal No.6 of 2012 (Unreported); U.S.I.U V A.G & others (2012) Eklr, Seven Seas Technologies V Eric Chege Nairobi HC Misc Appeal No.29 of 2013 (Unreported) and Judicial Service Commission V Gladys Boss Shollei & Another Civil Appeal No.50 of 2014. In all the aforesaid decisions by this Court differently constituted, it was emphasized that although Article 165(3) (c) of the Constitution gives the High Court Jurisdiction to determine questions involving violation of the bill of rights, the Article did not cast the jurisdiction of ELRC to deal with such issues especially when the interpretation of the Constitution is intricately interwoven with a labour issue or is central to the determination thereof. In any case the Court found that under Article 20, the Constitution gives all Courts and bodies powers to deal with constitutional matters; thus the court had jurisdiction to deal with all constitutional matter that arise before it in employment and labour dispute”

7. On whether recruitment is a matter for the Employment and Labour Relations Court, the Respondents also cited and relied on the case of Ali Jarso Wako & another v Ministry of Interior &



Coordination of National Government & 5 others; Public Service Commission & 5 others (Interested Parties) [2020] KEHC 2971 (KLR) in which the Court held that:

“The issue of jurisdiction is quite crucial in that it avoids the hearing and determination of cases by superior courts haphazardly. Issues relating to recruitment and employment of public servants or any employee belong to the Labour court. Any Constitutional issue revolving around employment or recruitment of an employee has to be dealt by the Labour Court.”

8. Consequently, the Respondents prayed that this Court finds that the present case is an employment dispute which the High Court is constitutionally barred from adjudicating, and thus, the Petition should be struck out with costs to the Respondents.
9. The Petitioners strenuously opposed the Preliminary Objection. They cited and relied on the Supreme Court’s dicta in *County Assemblies Forum v Attorney General & 3 others; Parliamentary Service Commission (Interested Party) (Petition 22 of 2017)* [2022] KESC 66 (KLR) where the Supreme Court held:-

“50. Fourth, that the dispute between the appellant and the respective county assemblies is an employment dispute, which jurisdiction is vested exclusively in the Employment and Labour Relations Courts pursuant to article 162(2) (a) of *the Constitution* and section 12 of the *Employment and Labour Relations Court Act*, No 20 of 2011. It is also contended that the issue of compensation of income for the eight-month gap can only be considered by the Salaries and Remuneration Commission pursuant to Article 230 of *the Constitution* as it is the body mandated to inquire and advise on any salaries and remuneration to be paid out of public funds.

56. On the question of appropriate forum of the dispute, the trial court found that the question of enforcement of rights and fundamental freedoms even touching on the employment and labour is within the competence of the High Court pursuant to article 22. We are inclined to agree with the trial court and add that articles 23 and 165 of *the Constitution* fortifies this position as they are the provisions that give the High Court jurisdiction to hear and determine applications for redress of denial, violation or infringement of rights or fundamental freedoms in the Bill of Rights.”

10. The Petitioners also cited instances where similar preliminary objections had been filed in the High Court but the High Court proceeded to dismiss the same having found that it has jurisdiction to hear and determine the matter; such as in *Constitutional Petition No.2 of 2019; Wambua Maithya v Pharmacy and Poisons Board; Pharmaceutical Society of Kenya & another (Interested Parties)* eKLR.
11. The entirety of the Petitioners’ case was aptly summarized at grounds 1 to 15 of their Notice of Motion Application dated 05/03/2025. Those grounds are quoted verbatim below:

“1. That the Respondents caused to be published on the weekly review of MyGov. Issue No. 30/2024 – 2025 dated 4th February, 2025 (hereinafter the “impugned advertisements”) inviting members of the public to submit applications from qualified persons for consideration for employment in various positions at the 2nd Respondent and to submit their documents at a date not later than Wednesday 17th February, 2025 at 5.00 pm.



2. That the Respondents subsequently caused to be published on the weekly review of MyGov. Issue No. 31/2024 – 2025 dated 11th February, 2025 an addendum for external advertisement for various positions extending the deadline to Monday 24th February, 2025.
3. That the Petitioners impugn the constitutional validity of the said advertisements as there subsists a previous advertisement published on the weekly review of MyGov. Issue No. 18/2023 – 2024 dated 31st October, 2023 that required applicants to submit applications not later than 6th December, 2023 at 5.00 pm
4. That the 2nd, 3rd, 4th & 5th Petitioners were duly longlisted in a process from 13th to 16th March, 2024.
5. That the interview process only stalled after the recruitment process vide a court order in ELRCPET/ E077 OF 2024; Dindi Vs Kenya Veterinary Board.
6. That the said matter has since been dismissed for want of prosecution on 21st November, 2024.
7. That the said dismissal now paves the way for finalization of the recruitment as there now subsists no court orders barring the recruitment as per the advertisement for 6th December, 2023.
8. That if this court does not intervene and bar the current recruitment process, the Petitioners are apprehensive that the Respondents may proceed and conclude with the recruitment process as the long listing process is set to commence on 25th February, 2025 and end on 1st March, 2025.
9. That the current recruitment process is a violation of the 2nd, 3rd, 4th & 5th Petitioners legitimate expectation and is therefore unconstitutional.
10. That the impugned advertisements are ultra vires as they have been issued by the 1st Respondent who is in acting position of the role of Chief Executive Officer despite their being a substantive Chief Executive Officer.
11. That the impugned advertisements are irregular, illegal and violated the constitution and is therefore null and void ab initio.
12. That owing to these violations, the Petitioner submits that the Impugned advertisements are unconstitutional, null and void.
13. That the urgency of addressing the constitutional violations is self-evident and if this Honourable court does not stop the illegal actions and/omissions done by the Respondents then constitutional violations will continue against principles of good governance and public money will be lost with no probability of recovering the same.
14. That it is important to maintain constitutionalism, rule of law, good governance and protecting the constitution. This matter is of Public interest.



15. That the danger of violating the Constitution is real and it is in the interest of Justice that the Orders sought are granted to safeguard and preserve public interest and resources.”
12. At Part D of the Petition dated 05/03/2025, the Petitioners particularize the alleged violations of the Constitution as follows:
 - D. Violations Of The Constitution
 36. The Respondents impugned actions also violate the national values and principles of governance in Article 10 of the Constitution, and the values and principles of public service in Article 232 of the Constitution.
 37. The Respondents violated the principle and national value of the rule of law under Article 10(2)(a) of the Constitution by acting outside the law.
 38. The Respondents violated Article 73(2)(c) of the Constitution by taking administrative action laced with favouritism, and other improper motives or corrupt practices against the guiding principles of leadership and integrity.
 39. The Respondents violated Articles 201(d) and 232(d) of the Constitution which, respectively, provide that public money shall be used in a prudent and responsible way; and that the values and principles of public service include efficient, effective and economic use of resources.
 40. Vide their impugned actions, the respondents violated the principles of good governance, integrity, transparency and accountability, and sustainable development under Articles 10(2)(c) & (d), 73(2)(d), 201(a), and 232(1)(e) of the Constitution.
 41. Vide their impugned actions, the Respondents violated Articles 3(1), 10(2)(c) and 259(1) of the Constitution by failing to uphold the Constitution and the rule of law.
13. An examination of the Grounds of the Application as well as the Particulars of the Alleged Violations of the Constitution contained in the Petition reveals the following critical undisputed material facts:
 - a. The interview process was halted after the recruitment process was stayed vide a court order in ELRCPET/ E077 OF 2024; Dindi Vs Kenya Veterinary Board;
 - b. The said ELRC matter was subsequently dismissed for want of prosecution on 21st November, 2024 and the Petitioners are apprehensive that the Respondents may proceed and conclude with the recruitment process as the long listing process is set to commence on 25th February, 2025 and end on 1st March, 2025;
 - c. The Petitioners contend that the impugned recruitment process is irregular as the impugned advertisements were issued by an Acting Chief Executive Officer while there was an alleged substantive office holder; and
 - d. The process is otherwise tainted by alleged favoritism and other untoward aspects.
15. Article 41 of the Constitution reads as follows:
41. Labour relations
 - (1) Every person has the right to fair labour practices.
 - (2) Every worker has the right—



- (a) to fair remuneration;
 - (b) to reasonable working conditions;
 - (c) to form, join or participate in the activities and programmes of a trade union;
- And
- (d) to go on strike.
- (3) Every employer has the right—
- (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers' organisation has the right—
- (a) to determine its own administration, programmes and activities;
 - (b) to organise; and(c)to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.
16. To my mind, Article 41(1) was deliberately crafted to encompass “every person” and not only workers or employees. This should extend the guarantee of fair labour practices to all persons, including prospective employees and persons engaged or interested in a recruitment exercise. Under the expanded locus standi footing introduced by the 2010 Apex Law, I see no reason why a civic minded Petitioner who is not herself a prospective employee or recruitment candidate cannot move to Court under Article 41(1) to ensure that the right to fair labour practices is upheld.
17. If labour practices were intended to encompass only the employment stage, Article 41(1) would not have been crafted as “every person” but rather “every worker” or a similar wording.
18. It is instructive to note that Kenya’s Article 41(1) on fair labour practices is almost identical to Section 23(1) of the Republic of South Africa’s Constitution; which reads
- “ 23. 23.(1) Everyone has the right to fair labour practices.”
19. I note with approval the position adopted by Maralize Conradie in “A Critical Analysis Of The Right To Fair Labour Practices” where at Page 194 she observed as follows on Section 23(1) of the South African Constitution:
- “If the other factors, i.e. the concept of everyone and the meaning of fairness, influencing the application of section 23(1), the history of unfair labour practice regulation and the values of the Constitution are taken into consideration, it seems justified to conclude on the concept of labour practices in the following fashion: the Constitution envisaged to prevent and prohibit the repetition of a system that was representative of unfairness in the employment relationship. Both individual – and collective employment relations have bearing on the perceived fairness of the employment relationship. All practices concerned with the employment relationship (before, during and after such a relationship) should therefore be subject to the scrutiny of the constitutional right to fair labour practices.”
- [Emphasis Mine]



20. In the same way nominations are part of the election process, recruitment is ordinarily part of the employment process. Fair, efficient, transparent, lawful, and properly instituted and undertaken recruitment is part of fair labour practices, and Article 41(1) would then apply.
21. There may be instances in which a recruitment matter either equally raises constitutional and statutory issues outside of those falling under Article 41 or its related Articles and statutory provisions OR in which the Article 41 or its related Articles and statutory provisions are tangential. In such instances, the High Court would have jurisdiction to hear and determine the matter. This is the point that distinguishes the present case from the authorities cited and relied upon by the Petitioners. Their Petition appears on its face as a run-of-the-mill labour rights issue that is devoid of any wider constitutional and statutory issues; notwithstanding the Petitioners' attempts to couch it as such.
22. I see no reason why the jurisdiction of the Employment and Labour Relations Court, a court of equal status to the High Court, should not be properly invoked by a prospective employee, a person interested in recruitment, or even a civic-minded active citizen who wishes to uphold the right accorded to every person to have fair labour practices, including fair recruitment. Section 12(1) of the [*Employment and Labour Relations Court Act*](#) is not exhaustive, and there may further be merit in having a single superior court, sitting as the trial court, hear and determine employment matters end-to-end, save for mixed grill matters and cross-cutting matters; which the present matter is not.
23. For the foregoing reasons, the Respondents' Preliminary Objection dated 05/03/2025 is upheld to the extent that this Court finds that this dispute falls within the sphere of employment and labour relations matters. Consequently, this Court lacks the requisite jurisdiction to hear and determine the Petition and its interlocutory Application, and the same are dismissed for want of jurisdiction with no orders as to costs.
24. File closed accordingly.
- Orders accordingly.

DATED, SIGNED, AND DELIVERED ON THIS 12TH DAY OF MAY 2025.

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BAHATI MWAMUYE.

JUDGE.

In the Presence Of:

Counsel for the Petitioners – Mr Mango

Counsel for the 1st Respondents - Mr Muema

Counsel for the 2nd Respondents – Mr Thande Kuria

Court Assistant – Ms. Neema

