REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCCHRPET/E344/2026

ASSOCIATION OF CONSTRUCTION MANAGERS OF KENYA VS NATIONAL CONSTRUCTION AUTHORITY AND CABINET SECRETARY -LANDS MINISTRY

RULING

BEFORE HON. JUSTICE DAVID MBURU

Introduction

1. By a Notice of Motion application dated 2nd June, 2026 filed under certificate of urgency, the Petitioner/applicant sought the following orders: -

1) Spent

2) Spent

3) Pending hearing and determination of the Petition inter partes, a conservatory order do issue restraining the Respondents whether by themselves, their officers, agents or servants from shortlisting, interviewing, appointing or in any manner proceeding with the impugned recruitment process arising from Internal Job Advertisement ISO/IEC 27001:2022, ISO 9001:2015 and the External Job Advertisement ISO/IEC 27001:2022, ISO 9001:2015.

4) Costs of this Application be provided for.

2. The Petitioner/Applicant, the Association of Construction Managers of Kenya (ACMK), brought the said application under Rules 23(1) and (2) and 24(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, seeking conservatory orders restraining the Respondents from proceeding with the recruitment process arising from the impugned internal and external job advertisements, pending the hearing and determination of the Application and the Petition.

3. The Application is premised on the grounds that the 2nd Respondent, in consultation with the 1st Respondent, commenced a recruitment exercise through Internal Job Advertisement ISO/IEC 27001:2022, ISO 9001:2015 and External Job Advertisement ISO/IEC 27001:2022, ISO 9001:2015. The Applicant contends that the Respondents unlawfully altered the eligibility criteria by introducing discriminatory, irrational and tailor-made academic qualifications, professional membership requirements and experience criteria that materially differ from those contained in previous advertisements.

4. The Applicant further alleges that the newly introduced experience requirements are excessively specific and designed to favour predetermined individuals. It maintains that some current holders of the advertised positions do not possess the newly prescribed qualifications, thereby demonstrating discriminatory and selective application of recruitment standards.

5. Additionally, the Applicant challenges the restriction of eligibility to members of only three professional associations, namely the Architectural Association of Kenya (AAK), the Institute of Quantity Surveyors of Kenya (IQSK) and the Institution of Engineers of Kenya (IEK), notwithstanding the existence of other duly registered and recognised professional associations. It similarly contests the restriction of eligibility to persons registered with only two regulatory bodies, namely the Board of Registration of Architects and Quantity Surveyors (BORAQS) and the Engineers Board of Kenya (EBK), to the exclusion of other regulatory bodies.

6. The Applicant asserts that unless the Court intervenes, the Respondents are likely to proceed with shortlisting, interviews and appointments, thereby rendering the Petition nugatory. It maintains that the recruitment process raises substantial constitutional and public interest questions concerning fairness, equality, transparency and integrity in public recruitment, warranting the grant of conservatory orders.

7. The Application is supported by the Affidavit of Ephraim Kakui, sworn on 2nd June 2026, in his capacity as the President of the Association of Construction Managers of Kenya (ACMK). He avers that he is conversant with the matters in dispute and has annexed the Association's Certificate of Registration and Constitution, marked EK-1 and EK-2, respectively.

8. The deponent states that the 2nd Respondent, in consultation with the 1st Respondent, advertised several internal vacancies, including the positions of Assistant Manager, Construction Development and Coordination in Field Services, Registration and Documentation, and Accreditation and Certification. He further avers that the Respondents advertised external vacancies, including the positions of General Manager, Construction Development and Coordination (Compliance, Enforcement and Quality Assurance), General Manager, Human Resource and Administration, and Manager, Construction Development and Coordination in Accreditation and Certification and Field Services. Copies of the respective advertisements are annexed and marked EK-3 and EK-4.

9. He contends that the Respondents arbitrarily altered the qualifications and eligibility requirements for the advertised positions by introducing discriminatory, irrational and tailor-made criteria substantially different from those previously prescribed. According to the deponent, the newly introduced experience requirements are excessively specific and designed to favour predetermined individuals. He further alleges that some officers currently occupying the affected positions do not possess the newly prescribed qualifications, demonstrating selective and discriminatory application of recruitment standards. He relies on copies of previous advertisements annexed as EK-5 and EK-6.

10. The deponent further avers that the impugned advertisements unlawfully restrict eligibility to members of three professional associations, namely the Architectural Association of Kenya (AAK), the Institute of Quantity Surveyors of Kenya (IQSK) and the Institution of Engineers of Kenya (IEK), as well as persons registered with the Board of Registration of Architects and Quantity Surveyors (BORAQS) and the Engineers Board of Kenya (EBK). He maintains that these restrictions unjustifiably exclude members of the Applicant Association and other qualified candidates belonging to duly registered and recognised professional bodies.

11. He asserts that the changes were introduced without public participation, consultation or lawful justification and that the Respondents have failed to disclose the legal basis or rationale for the revised qualifications. In his view, the recruitment process violates constitutional principles of equality, fairness, transparency, merit-based recruitment and fair administrative action, while undermining fair competition and equal employment opportunities.

12. The deponent expresses apprehension that unless the Court intervenes, the Respondents will proceed with shortlisting, interviews and appointments based on the impugned criteria, thereby prejudicing members of the Applicant Association, other qualified candidates and officers currently occupying the affected positions. He maintains that allowing the recruitment process to proceed to conclusion would render the Petition nugatory.

13. Consequently, he urges the Court to grant the conservatory orders sought, contending that the Petition raises substantial constitutional and public interest questions warranting urgent judicial intervention in the interests of justice,

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constitutionalism, transparency and good governance.

14. The Respondents, through the Hon. Attorney General, filed a Notice of Preliminary Objection dated 17th July 2026, challenging the jurisdiction of this Court to hear and determine the Petition and the Notice of Motion dated 2nd June 2026.

15. The Respondents contend that the substance of the dispute concerns employment and labour relations, specifically the recruitment process and advertisement of vacancies undertaken by the Respondents. They argue that pursuant to Article 162(2)(a) and Article 165(5)(b) of the Constitution, read together with Section 12(1) of the Employment and Labour Relations Court Act, 2011, the dispute falls within the exclusive jurisdiction of the Employment and Labour Relations Court (ELRC).

16. They further maintain that the reliefs sought by the Petitioner, including conservatory orders suspending the recruitment process and a declaration that the recruitment exercise is unconstitutional, are principally intended to challenge and halt an employment recruitment exercise. Accordingly, they argue that the nature and effect of the reliefs place the dispute squarely within the exclusive original jurisdiction of the ELRC.

17. The Respondents assert that Article 165(5)(b) of the Constitution expressly divests the High Court of jurisdiction over matters reserved for courts established under Article 162(2). They contend that the mere invocation of constitutional provisions and alleged violations of fundamental rights cannot confer jurisdiction upon the High Court where the predominant subject matter concerns employment and recruitment.

18. It is their position that jurisdiction flows exclusively from the Constitution or statute and that a court lacking jurisdiction must down its tools. Consequently, they urge the Court to find that the Petition and Application are incompetent, fatally defective and an abuse of the court process, and to strike them out with costs to the Respondents. They further seek the setting aside of any conservatory orders issued.

19. The 1st and 2nd Respondents, filed written submissions dated 3rd August 2026 in support of their Preliminary Objection dated 17th July 2026. They identify the principal issue for determination as whether this Court has jurisdiction to hear and determine the Petition and the Notice of Motion dated 2nd June 2026.

20. The Respondents submit that their Preliminary Objection raises a pure point of law within the principles established in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696**. They contend that the objection proceeds on the assumption that the facts pleaded by the Petitioner are correct and can dispose of the entire Petition and Application without requiring the Court to investigate contested facts or exercise judicial discretion.

21. On jurisdiction, the Respondents rely on **Owners of the Motor Vessel “Lillian S”**

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v Caltex Oil (Kenya) Ltd [1989] KLR 1, submitting that jurisdiction is fundamental and that a court lacking jurisdiction must immediately down its tools. They invoke Articles 162(2)(a) and 165(5)(b) of the Constitution, together with Section 12(1) of the Employment and Labour Relations Court Act, 2011, to argue that disputes relating to employment and labour relations fall within the exclusive jurisdiction of the Employment and Labour Relations Court (ELRC).

22. In support of this position, the Respondents cite **Republic v Karisa Chengo & 2 others [2017] eKLR and Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others [2019] eKLR,** submitting that the High Court and the specialised courts established under Article 162(2) of the Constitution possess distinct jurisdictions notwithstanding their equal constitutional status. They maintain that the High Court cannot assume jurisdiction over disputes expressly reserved for the ELRC merely because they are presented as constitutional petitions.

23. The Respondents further submit that the substance of the Petition concerns the recruitment and hiring process undertaken by the 2nd Respondent, particularly the advertisement of vacancies, prescribed qualifications, eligibility criteria and selection procedures. They argue that these matters are inherently connected to employment and labour relations and therefore fall within the exclusive jurisdiction of the ELRC. They rely on **Trusted Society of Human Rights Alliance v Nakuru Water and Sanitation Services Company & another [2013] eKLR, Kenya National Parents Association v Cabinet Secretary, Ministry of Education, Science & Technology & another [2015] eKLR, Philemon Mboye Kachila v County Public Service Board of Taita Taveta & another [2016] eKLR and Wilfred Murithi Kirima & others v Meru County Public Service Board [2018] eKLR.**

24. The Respondents also place reliance on **Adrian Kamotho Njenga v Judicial Service Commission & another; Law Society of Kenya (Interested Party) [2019] eKLR and Daniel N. Mugendi v Kenyatta University & 2 others [2013] eKLR**, arguing that the mere invocation of constitutional rights does not confer jurisdiction upon the High Court where the underlying dispute falls within the mandate of a specialised court. They submit that the ELRC is competent to determine constitutional questions arising incidentally or ancillary to employment and labour relations disputes.

25. Further, the Respondents **cite Havi v Judicial Service Commission & another [2024] KEELRC 798 (KLR) and Gema Watho Association & another v Kenya Airports Authority & 3 others [2025] KEELRC 1081 (KLR)** to reinforce their argument that disputes challenging recruitment, selection and appointment processes, including those undertaken by public bodies and state corporations, are properly adjudicated before the ELRC.

26. On the appropriate disposition, the Respondents rely on **Republic v Commissioner for Labour & another; Masoud (Ex parte Applicant) [2025] KEHC 7325 (KLR) and Phoenix of E.A. Assurance Company**

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Limited v S.M. Thiga t/a Newspaper Service [2019] eKLR. They submit that proceedings instituted before a court lacking jurisdiction are a nullity ab initio and cannot be transferred to another court or validated by consent of the parties. Accordingly, they maintain that the appropriate order is to strike out the proceedings rather than transfer them to the ELRC.

27. In conclusion, the Respondents submit that the Petition and Application are incompetent, fatally defective and an abuse of the court process. They urge the Court to uphold the Preliminary Objection dated 17th July 2026, strike out the Petition and Application dated 2nd June 2026, set aside any conservatory orders previously issued and award them the costs of the proceedings.

28. The Petitioner, through written submissions dated 22nd September 2026, opposes the Respondents' Preliminary Objection dated 17th July 2026, contending that the objection is misconceived and founded on an erroneous characterisation of the dispute as an ordinary employment and labour relations matter. The Petitioner submits that the Petition raises substantive constitutional questions concerning the legality, fairness, transparency and constitutionality of a public recruitment process undertaken by the Respondents, rather than a dispute arising from an existing employer-employee relationship.

29. On the legal threshold for preliminary objections, the Petitioner relies on **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, Mutungi v FEP Sacco Society Ltd & 2 Others [2024] KECA 494 (KLR), Kafa & Another v Registrar of Societies & Others [2025] KEHC 5042 (KLR) and Kangethe & Another v Wamae & 3 Others [2025] KEHC 13513 (KLR).** It submits that a preliminary objection must raise a pure point of law capable of determination without examination of contested facts or exercise of judicial discretion. According to the Petitioner, the Respondents' objection fails this threshold because the nature of the dispute and the constitutionality of the impugned recruitment criteria require substantive examination of the pleadings and evidence.

30. On jurisdiction, the Petitioner invokes Article 165(3)(d) of the Constitution, submitting that the High Court retains jurisdiction to determine questions concerning constitutional interpretation and alleged violations of constitutional rights by public bodies. It distinguishes the present proceedings from ordinary employment disputes, arguing that it is a professional association challenging discriminatory recruitment criteria in the public interest and not an employee, employer or party seeking enforcement of contractual employment rights.

31. The Petitioner principally relies on the Supreme Court decision in **Moi Teaching and Referral Hospital & 3 Others v Gikenyi & 74 Others [2026] KESC 50 (KLR),** which it interprets as establishing that the Employment and Labour Relations Court's jurisdiction over pre-employment disputes is not unlimited but depends on the nature of the dispute and the statutory categories of persons falling within Section 12 of the Employment and Labour Relations Court Act. It argues that disputes falling outside those categories remain within the

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jurisdiction of the High Court. The Petitioner maintains that its status as a professional association pursuing constitutional remedies distinguishes the present dispute from employment claims properly falling within the ELRC's jurisdiction.

32. In further support, the Petitioner cites **Agamu & Another v Kenya Civil Aviation Authority & 3 Others [2026] KEHC 13155 (KLR),** submitting that the High Court's constitutional jurisdiction is not automatically displaced merely because the impugned administrative action relates to recruitment. It further invokes Articles 22 and 258 of the Constitution, which permit proceedings to be instituted by persons acting on behalf of groups or classes of persons or in the public interest. The Petitioner argues that it has properly invoked these provisions to protect its members and challenge alleged constitutional violations arising from public recruitment.

33. The Petitioner submits that the Petition raises genuine constitutional questions under Articles 10, 27, 41, 47 and 232 of the Constitution, particularly concerning equality, non-discrimination, fair labour practices, fair administrative action, transparency, accountability and merit-based recruitment. It contends that the Respondents introduced restrictive professional membership requirements and highly specific experience criteria designed to exclude otherwise qualified professionals and favour predetermined individuals, without adequate consultation, public participation or lawful justification.

34. The Petitioner further argues that the allegations concerning alteration of qualifications, selective recognition of professional associations, discriminatory experience requirements and the qualifications of existing office holders are contested factual matters requiring examination of the relevant advertisements, statutory framework and institutional records. It maintains that these questions, together with the alleged violation of legitimate expectation, cannot properly be determined through a preliminary objection without effectively conducting a substantive hearing.

35. The Petitioner also relies on **Muthumba v Land Surveyors Board & 3 Others [2026] KEHC 2645 (KLR)** to emphasise the High Court's constitutional mandate to determine genuine controversies concerning the exercise of public power. It submits that the reliefs sought are directed at the constitutionality of the recruitment criteria and procedures rather than the appointment of particular individuals or enforcement of employment contracts. Accordingly, the Petitioner argues that the Respondents have failed to demonstrate that the dispute falls exclusively within the ELRC's jurisdiction.

36. In conclusion, the Petitioner maintains that the Preliminary Objection is unmeritorious and improperly seeks to terminate proceedings raising substantial constitutional and factual questions without a hearing on the merits. It urges the Court to uphold its jurisdiction under Article 165(3)(d) of the Constitution, dismiss the Preliminary Objection dated 17th July 2026 with costs, and direct that the Petition and accompanying Application proceed to hearing and determination on

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their merits.

Analysis and Determination

36. I have carefully considered the Notice of Preliminary Objection dated 17th July 2026, the Petition and Notice of Motion dated 2nd June 2026, the supporting affidavit and the rival submissions filed by the parties. In my view, the sole issue arising for determination is:

i. Whether the Preliminary Objection dated 17th July 2026 is merited.

37. The Respondents challenge this Court's jurisdiction to hear and determine the Petition and the accompanying Application on the grounds that the dispute concerns employment and labour relations and therefore falls within the exclusive jurisdiction of the Employment and Labour Relations Court (ELRC). The Petitioner, on the other hand, maintains that the proceedings raise constitutional questions concerning the exercise of public power, equality, non-discrimination, transparency and fair administrative action, which fall within the jurisdiction of this Court.

38. The starting point is the legal threshold governing preliminary objections. In the celebrated case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696,** the Court of Appeal for East Africa established that ***a preliminary objection consists of a pure point of law which arises from the pleadings and which, if successfully argued, may dispose of the suit. Such an objection proceeds on the assumption that the facts pleaded by the opposing party are correct and cannot properly be raised where facts require ascertainment or where judicial discretion must be exercised.***

39. The validity of any preliminary objection is measured against the requirement that it must raise pure points of law capable of disposing the dispute at once. It is, therefore, mandatory for a Court to ascertain that a preliminary objection is not caught up within the realm of factual issues that would necessitate the calling of evidence.

40. The same principles have been reiterated in **Ngetich v Ngetich & 4 Others [2023] KECA 1184 (KLR) and Salim & 2 Others v National Land Commission & Another [2026] KECA 749 (KLR).** A proper preliminary objection must raise a pure question of law, arise from the pleadings, be capable of disposing of the suit without an inquiry into the merits, and proceed upon the assumption that the facts pleaded by the opposing party are correct.

41. Similarly, the Supreme Court in **Petition No. 7 of 2013 Mary Wambui Munene v. Peter Gichuki Kingara and Six Others, [2014] eKLR,** stated that:

"jurisdiction is a pure question of law and should be resolved on

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priority basis."

42. The Respondents' objection principally raises the question of jurisdiction, which is ordinarily a pure point of law capable of determination at the preliminary stage. I therefore find that the objection satisfies the threshold of a preliminary objection to the extent that it challenges this Court's jurisdiction on the basis of the pleadings. Whether that objection is sustainable is, however, a separate question.

43. The centrality of jurisdiction was emphasized in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1,** where the Court of Appeal held that ***jurisdiction is everything and that a court without jurisdiction has no power to take any further step in the proceedings.*** It follows that this Court must first satisfy itself that it possesses the requisite jurisdiction before considering the substantive grievances raised by the Petitioner.

44. Article 165(3)(b) and (d) of the Constitution confers upon the High Court jurisdiction to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened, and to determine questions concerning the interpretation of the Constitution. However, that jurisdiction is subject to the express limitations contained in Article 165(5), which excludes matters reserved for courts contemplated under Article 162(2).

45. Article 162(2)(a) of the Constitution provides for the establishment of a court with the status of the High Court to hear and determine disputes relating to employment and labour relations. Pursuant to that provision, Parliament enacted the Employment and Labour Relations Court Act, 2011, whose Section 12(1) confers upon the ELRC exclusive original and appellate jurisdiction over disputes relating to employment and labour relations.

46. It is therefore necessary to determine whether the present dispute falls within the jurisdiction reserved for the ELRC or whether it constitutes a constitutional controversy properly falling within the jurisdiction of the High Court.

47. The Respondents have relied on several authorities, including ***Republic v Karisa Chengo & 2 others [2017] eKLR, Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others [2019] eKLR*, and *Adrian Kamotho Njenga v Judicial Service Commission & another; Law Society of Kenya (Interested Party) [2019] eKLR,*** in support of the proposition that recruitment disputes fall within the exclusive jurisdiction of the ELRC.

48. I acknowledge the established principle that a litigant cannot confer jurisdiction upon a court merely by framing an employment dispute as a constitutional petition. Equally, the jurisdiction of a court cannot be determined solely by reference to the constitutional provisions invoked or the terminology employed in the pleadings. The Court must examine the substance of the dispute, the relationship between the parties and the nature of the remedies sought.

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49. Of particular relevance to the present dispute is the recent decision of the Supreme Court in **Moi Teaching and Referral Hospital & 3 others v Gikenyi & 74 others [2026] KESC 50 (KLR)**, delivered in July 2026. In that decision, the Supreme Court considered the jurisdictional boundaries between the High Court and the ELRC in disputes concerning pre-employment recruitment processes.

50. The Supreme Court clarified that the jurisdiction of the ELRC is not confined to disputes arising from existing employer-employee relationships. It extends to pre-employment disputes, including constitutional challenges to advertisements of vacancies, shortlisting, interviews and selection processes, provided that the dispute falls within the jurisdiction contemplated under Article 162(2)(a) of the Constitution, Section 12 of the ELRC Act and other applicable employment legislation.

51. Significantly, however, the Supreme Court upheld the finding that the High Court possessed jurisdiction over the particular dispute before it. The decision therefore requires courts to examine the circumstances of each case rather than proceed on the broad assumption that every dispute touching on recruitment necessarily falls within the exclusive jurisdiction of the ELRC.

52. The foregoing distinction is material to the present proceedings. The Petitioner is the Association of Construction Managers of Kenya, a professional association which has instituted these proceedings challenging the constitutionality of recruitment criteria introduced by the National Construction Authority in consultation with the 1st Respondent.

53. From the pleadings, the Petitioner challenges the introduction of professional membership requirements restricting eligibility to members of the Architectural Association of Kenya, the Institute of Quantity Surveyors of Kenya and the Institution of Engineers of Kenya, as well as registration requirements relating to the Board of Registration of Architects and Quantity Surveyors and the Engineers Board of Kenya.

54. The Petitioner further alleges that the Respondents introduced discriminatory and tailor-made experience requirements which exclude members of other recognised professional associations, including members of the Petitioner Association. It also challenges the alleged absence of consultation, transparency and lawful justification in the alteration of the recruitment criteria.

55. It is evident that the dispute arises in the context of recruitment. However, the Petitioner does not approach this Court as an employee of either Respondent, nor does it seek enforcement of an employment contract, reinstatement, remuneration or any other remedy arising from an existing employment relationship. Rather, the proceedings have been instituted by a professional association challenging the legality and constitutionality of the criteria adopted by public bodies in the exercise of their recruitment functions.

56. I am mindful that the absence of an existing employment relationship is not, by

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itself, sufficient to exclude the jurisdiction of the ELRC. That much is clear from the Supreme Court's decision in **Moi Teaching and Referral Hospital (supra)**. The relevant inquiry is whether the dispute, having regard to the capacity of the parties, its subject matter and the applicable statutory framework, falls within the employment and labour relations jurisdiction conferred upon the ELRC.

57. In the present case, the Petitioner invokes Articles 22 and 258 of the Constitution in its representative capacity, alleging that the recruitment criteria adopted by the Respondents infringe constitutional principles governing the exercise of public power and equal access to opportunities in public service. The proceedings are therefore not presented as an individual prospective employee's challenge to an unsuccessful application for employment, but as a broader challenge to the constitutional validity of administrative criteria allegedly excluding an entire category of professionals.

58. The Court must nevertheless distinguish between the Petitioner's standing to institute proceedings and the jurisdiction of the Court before which those proceedings are instituted. Articles 22 and 258 of the Constitution confer broad standing in constitutional litigation, but do not, of themselves, displace the jurisdictional allocation established under Articles 162 and 165 of the Constitution.

59. Having examined the pleadings in their entirety, I am persuaded that the Respondents have not sufficiently demonstrated that the Petitioner, suing in its capacity as a professional association, and the particular constitutional controversy presented fall within the classes of employment and labour relations disputes contemplated under Section 12 of the ELRC Act or any other identified employment legislation.

60. The predominant question presented is whether the Respondents, as public bodies, acted consistently with the Constitution when prescribing professional qualifications, membership requirements and eligibility criteria allegedly excluding members of duly recognized professional associations. Although the controversy has a recruitment dimension, the Petitioner principally challenges the constitutional legality of the exercise of public authority and seeks public law remedies directed at the impugned administrative criteria.

61. In the circumstances, and guided by the distinction recognized in **Moi Teaching and Referral Hospital (supra)**, I am not persuaded that the mere connection between the impugned administrative action and a recruitment process is sufficient to divest this Court of jurisdiction under Article 165(3) of the Constitution.

62. The Respondents have further contended that the Petition and Application ought to be struck out for want of jurisdiction. However, having found that the jurisdictional objection has not been established, I find no basis for granting the consequential orders sought.

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63. For the avoidance of doubt, the foregoing findings are confined to the question of jurisdiction. They do not constitute a determination that the recruitment criteria were discriminatory, irrational, unlawful or unconstitutional. Those are substantive questions which must be determined upon examination of the evidence and the applicable law. Equally, the question whether the Petitioner has established the threshold for conservatory relief remains for determination in the Application.

64. In the premises, I find that the Respondents' Preliminary Objection dated 17th July 2026 is without merit and is hereby dismissed.

Disposition

62. Consequently, I make the following orders:

i. The Respondents' Preliminary Objection dated 17th July 2026 is hereby dismissed.

ii. The Notice of Motion dated 2nd June 2026 and the Petition shall proceed to determination on their merits.

iii. Costs of the Preliminary Objection shall be in the cause.

63. It is so ordered.

Dated, signed and delivered virtually at Nairobi this 5th day of November 2026.

SIGNED BY:
HON. JUSTICE DAVID MBURU

THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT CONSTITUTION AND HUMAN RIGHTS
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