

ELRC strikes out petition challenging the appointment of the Managing Director and CEO of KETRACO

17 July 2026

On 16 July 2026, the Employment and Labour Relations Court at Nairobi delivered its ruling in Consumer Federation of Kenya v Cabinet Secretary for Energy and Petroleum & 3 Others; Eng Kipkemoi Kibias (Interested Party), Petition No. E153 of 2026. The Court struck out the petition and Notice of Motion challenging the recruitment and appointment of the Managing Director and Chief Executive Officer of Kenya Electricity Transmission Company Limited (KETRACO).

The Court reached that result on two distinct grounds. First, it held that the petitioner's supporting affidavit was invalid because its annexures had not been securely sealed and marked for identification as required by Rule 9 of the Oaths and Statutory Declarations Rules. The petition and application therefore lacked a competent evidentiary foundation.

Second, applying the Supreme Court's decision in Moi Teaching and Referral Hospital & 3 others vs Dr. Magare Gikenyi & 76 others (SC Petition No. E030 as consolidated with E033 of 2025)(Judgment) (3rd July, 2026), the Court held that a public-interest organisation with no defined employment relationship, and which was not acting for an applicant or prospective employee, could not invoke the ELRC's jurisdiction. The constitutional challenge belonged before the High Court under Article **165(3)(b) and (d) of the Constitution**.

Representation: Dr. Ronald Allamano Ong'udi of Allamano & Associates appeared alongside Paul Muite SC for the Interested Party.

Emmanuel Mumia of M&E Advocates LLP appeared alongside MMA Advocates LLP for the 2nd and 3rd Respondents.

The dispute

The Consumer Federation of Kenya challenged the intended recruitment and appointment of KETRACO's Managing Director and Chief Executive Officer. The petitioner submitted that the court has the requisite jurisdiction to hear and determine the petition, as it challenges the interpretation of **section 22(3)** of the *Government Owned Enterprises Act*, which relates to the employment and qualifications of the interested party. The substantive issues in dispute were the eligibility of the interested party for appointment; the criteria governing eligibility for appointment; access to public employment; fair competition in recruitment; constitutional integrity in public appointment; and the legality of the recruitment process. The respondents raised preliminary objections on the Court's jurisdiction and on the validity of the supporting affidavit and its annexures.

What the Court decided

1 Affidavit requirements are mandatory

Rule 9 required every annexure to be securely sealed by the Commissioner for Oaths and marked with a serial identifier. The Court held that the omission destroyed the affidavits probative value. **Article 159** could not cure a defect where the law had already prescribed the required form. The supporting affidavit was invalid, leaving the petition and application without a proper evidentiary foundation.

2 The ELRC lacked jurisdiction

The petitioner was a public-interest consumer-rights organisation. It did not plead as an employee, employer, prospective employee, applicant for employment or representative of any such person. Bound by the Supreme Courts latest guidance, the Court held that the dispute was a public-law constitutional contest for the High Court, not an employment dispute for the ELRC.

Orders: The preliminary objections were allowed, the petition was struck out, and each party was directed to bear its own costs because the jurisdictional position had recently been clarified by the Supreme Court.

Why the ruling matters

- Evidentiary discipline: Constitutional litigation remains subject to the statutory rules governing affidavits and exhibits.
- Correct forum: An employment-related subject does not, by itself, place a dispute within the ELRC. The claimant's legal relationship to the employment process also matters.
- Public appointments: A general constitutional challenge brought by a public-interest body may belong before the High Court where the claimant does not sue as, or for, an employee or applicant.
- Scope of the ruling: The Court did not determine the merits of the Interested Party's appointment. It resolved the competence of the pleadings and the proper forum.

For more information Contact:

Allamano & Associates

+254 703 534 412 | info@allamanoandassociates.com

Tetezi Towers, 6th Floor, George Padmore Road off Marcus Garvey Road, Nairobi