



**Masoud v Cabinet Secretary for Labour & another; Kenya Revenue Authority (Interested Party) (Judicial Review Application E006 of 2025) [2025] KEELRC 2686 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2686 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
JUDICIAL REVIEW APPLICATION E006 OF 2025**

**M MBARŪ, J  
OCTOBER 2, 2025**

**BETWEEN**

**MUNIR ABUBAKAR MASOUD ..... APPLICANT**

**AND**

**CABINET SECRETARY FOR LABOUR ..... 1<sup>ST</sup> RESPONDENT**

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

**AND**

**KENYA REVENUE AUTHORITY ..... INTERESTED PARTY**

**RULING**

1. The applicant, Munir Abubakar Masoud, filed the application dated 28 May 2025 under the provisions of section 8(2) of the *Law Reform Act*, Order 53 rule 3(1) and (2) of the Civil Procedure Rules seeking orders;
  1. The court do issue orders of mandamus directed at the authorized labour officers in Mombasa to investigate the Kenya Revenue Authority (KRA) and if they find that KRA is in breach of section 10(3)(e), section 11 and 15 of the *Employment Act*, then proceed to charge and prosecute them as per law provided and required.
  2. Costs and expenses be provided for to the applicant.
2. The applicant filed his Supporting Affidavit on the grounds that the KRA denies its employees their right to be informed if there is any collective agreement that directly affects their terms and conditions of employment, as required under section 10(3)(e) of the *Employment Act* (the Act). KRA denies its employees' basic right to be informed of any collective agreement, as stipulated under section 11 of the Act. The obligation to provide a statement on employee rights and display it in a conspicuous



place accessible to all employees has not been fulfilled, as mandated under section 15 of the Act. The KRA has failed to inform its employees that no employment can be terminated because an employee is a member or an officer of a trade union, as provided under clause 21 of the Second Schedule of the Employment (General) Regulations.

3. The applicant further supports the application on the grounds that the breaches by KRA of sections 10(3) (e), 11, and 15 of the Act involve labour offices with a criminal element, and section 16(4) of the Act prescribes the penalties for these breaches. The employees of KRA continue to suffer irreparable loss and damage due to these breaches, which impede their rights under Article 41 of the constitution on fair labour practices. The employees fear joining or forming a trade union because KRA has created the impression that, since some employees work at border stations, they are engaging in military-like activities and are therefore not eligible to join a trade union. This is contrary to the constitution and the law, and under section 16(4) of the Act, the court has the power to direct the labour officer to investigate the matter and, if breaches are found, to charge and prosecute in accordance with the law.
4. In his Supporting Affidavit, the applicant states that the employees of KRA have never had the opportunity to form a trade union of their choice since 1995 when KRA was established. Previously, trade unions had been prohibited in the public sector. However, since 1998, the employees have attempted to form a trade union but have faced anti-union and competing interests.
5. The applicant avers that several cases have been filed in court to agitate this matter in;
  - i. BIFU v KRA & another [Nairobi High Court Misc. Appl. No.1683 of 2004.
  - ii. Munir Masoud & 6 others v Registrar of Trade Unions & another [2012] eKLR.
  - iii. Munir Abubakar Masoud v BIFU [2016] eKLR.
  - iv. BIFU v KRA [2018] eKLR.
  - v. Kenya Revenue Authority Employees Union (KEREVU) & 2 others v Registrar of Trade Union & 3 others [2016] eKLR.
  - vi. BIFU v KRA Misc. Appl. E1683 of 2024 [2023] eKLR.
  - vii. Munir Abubakar Masoud v KRA Mombasa ELRC Cause No. E088 of 2022.
  - viii. Munir Abubakar Masoud v State Law Office, Mombasa High Court JR No. E008 f 2024.
6. Despite these claims, the KRA has refused to allow its employee to join or form a trade union of their choice. The basis is that the KRA is a paramilitary border security agency and therefore its employees are not unionisable. Despite requests for the Commissioner for Labour to intervene, the KRA has failed to address the issues leading to these proceedings. The orders sought should be issued by directing the labour officer to investigate, charge, and prosecute the KRA under Section 16(4) of the Act.
7. The respondents did not respond.
8. The interested party, KRA, filed the Replying Affidavit of Dr. Emmah Omwenga, deputy commissioner of human resource management, and avers that, since its creation, the KRA has adhered to the law. The instant application is frivolous and an abuse of court process. The leave sought is a non-starter.
9. The court is without jurisdiction to grant the orders sought under section 12 of the Employment and Labour Relations Court Act. The applicant is not an employee of the KRA; hence, has no legal capacity to sue as herein done.



10. The applicant was once an employee of KRA and was dismissed for gross misconduct on 28 September 1998. There exists no employer-employee relationship to justify the training mentioned here. The law does not recognise a claim by a non-suited party.
11. Under Section 16 of the Act, the applicant seeks to enforce a complaint that ought to have been filed by an employee. Without proper standing, the applicant cannot move the court as herein done.
12. The applicant lacks the locus standi to institute proceedings for mandamus, directing the 1<sup>st</sup> respondent to charge the KRA. There is no breach of the law as alleged. There is no existing collective agreement between the KRA and any union which would form the basis for communicating union rights to its employees. Section 10(3) (e) of the Act does not obligate the KRA to include the statement of any collective agreement.
13. Dr. Omwnga aver that there is no evidence of the alleged irreparable loss or damage by the applicant. The orders sought are without merit, as Section 16 of the Act provides for the person to institute such a complaint to be dealt with pursuant to Section 86 of the Act and ought to be made by an aggrieved party, namely the employee. No complaint has been made to the labour officer under section 87 of the Act to justify the applicant invoking section 16(4) of the Act.
14. The applicant was dismissed 27 years ago and has filed this application to provoke emotions among KRA employees and the public. The application should be dismissed with costs.

#### **Determination**

15. The interested party has challenged the locus standi of the applicant to file these proceedings and also that the court lacks jurisdiction to determine his application. The basis is that there is no employer-employee relationship between the parties, the applicant left the service of the KRA 27 years ago, and hence, under section 12 of the *Employment and Labour Relations Court Act* and section 16 of the Act, without being an employee, he cannot initiate proceedings as he has done herein.
16. The applicant has provided a chronology of lawsuits filed by himself and other parties against the KRA. These lawsuits mainly concern the unionization of KRA employees.
17. The applicant does not contest that he has since left the service of the KRA. There is no employer-employee relationship. However, under section 12 of the *Employment and Labour Relations Court Act*, a party who maintains an employment relationship with another or is addressing any matters related to employment or for connected purposes can bring their case before the court, as held in *Okiya Omtatah Okoiti v Parliamentary Service Commission & another* [2021] KEELRC 1471 (KLR).
18. The applicant has opted to move the court under judicial review proceedings seeking an order of mandamus.
19. It is a common principle that a prosecutor applying for a writ of mandamus must be vested with a clear legal right to what is properly the subject of the writ, or a legal right derived from an Act of Parliament, as held in *Republic v City Council of Nairobi & another ex parte* [2013] eKLR. The basis for this is the principle outlined in the case of *Republic v Attorney General & another Ex parte James Alfred Koroso* [2013] KEHC 90 (KLR) that:

it is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it. This is one of the reasons, no doubt, why, where there is a visitor of a corporate body, the



court will not interfere in a matter within the province of the visitor, and especially this is so in matters relating to educational bodies such as colleges.

20. Orders of mandamus are therefore not automatic or a matter of right. The applicant has since left the service of the KRA, which is sued as an interested party in this matter. There is no case showing that the employees of the KRA, the right-holders under sections 10(3)(e), 11, and 15 of the Act, have successfully contested their rights to justify the invocation of section 16(4) of the Act. In any case, the rights outlined under sections 10(3), 11, and 15 of the Act are vested in the employee. More fundamentally, section 16(2) of the Act is conclusive;
  - (1) Where an employer does not give an employee a statement as required by section 10, 12 or 13 or an itemised pay statement as required by section 20, the employee may file a complaint with the labour officer and the complaint shall be deemed to be a complaint filed under section 87.
21. Therefore, unless the subject employee(s) are unable to attend court due to any reasonable cause, an application made herein by the applicant cannot be considered outside the employment relationship. The rationale is that, within employment, some terms and conditions are taken for granted. Without employment, such terms and conditions are purely academic. They do not exist as of right. To demand application of section 10(3) (e) or 11 or 15 outside the employment relationship would be to ignore the salient features of the employment relationship and shop floor regulations. There is no case that current employees of the KRA have made an effort to agitate their rights and been victimized, which would be contrary to section 46 of the Act.
22. This will suffice.
23. Shop floor rights cannot be circumvented through judicial review proceedings. The application must fail to this extent.
24. At the heart of the applicant's application is a prayer seeking an order of mandamus to issue, directing the labour officer to investigate KRA and, if found to be in breach of section 10(3) (e), 11 and 15 of the Act, to charge and prosecute them as per the law. The rationale is that, under the Act, the KRA is required to inform its employees of any collective agreement that directly affects their terms and conditions of employment, and that fundamental rights should be stated in a clear and accessible manner, displayed in a conspicuous place for all employees.
25. The applicant asserts that the KRA is in breach of the law by failing to address its employees' rights under Section 10(3) (e), 11, and 15 and hence under section 16(4) of the Act read together with Clause 21 of the Second Schedule to the Act, the labour officer should be directed to conduct investigations to make a charge and prosecute the KRA.
26. Indeed, the rights addressed by the applicant are outlined under the Act. The employer is under a legal duty to bring to the attention of its employees any collective agreement that has an impact on their terms and conditions of employment immediately upon entry at the shop floor. Furthermore, the employer has the duty to issue a statement on employee rights and publish it at a conspicuous place accessible to all employees, in accordance with sections 10(3) e), 11, and 15 of the Act.
27. The court in *John Mutia Mbithi v China Zhonxing Co Limited* [2021] eKLR; *Catherine Mbithe Maingi v [Dilip] Shah* [2017] KEELRC 1260 (KLR), emphasizing that upon the entry of an employee at the shop floor, the employer has a duty to bring to the attention of such an employee any collective agreement applicable to unionisable employees. An employer must comply with section 15 of the Act:
  15. Informing employees of their rights



An employer shall display a statement in the prescribed form of the employee's rights under this Act in a conspicuous place, which is accessible to all the employees.

28. Whether employment is based on oral or written terms, section 10(3) (e) of the Act places the burden on the employer to secure the employee's rights. The employer must provide the employee with the terms and conditions of employment, including the existence of any collective agreement that directly affects these terms and conditions.
29. Section 10(3) (e) of the *Employment Act*, 2007 directs the employer in issuing an employment contract to an employee that;
  - 3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the instalment containing them, is given of-
    - (a) any terms and conditions relating to any of the following-  
...
    - (e) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the person by whom they were made;
30. In the case of *Machungo v Stanbic Bank Kenya Limited* [2025] KEELRC 2145 (KLR) the court highlighted that the duty under section 10(3) (e) does not shift with the nature of employment. It applies to all kinds of employees and employment terms and conditions. This position is reiterated in *Kenya Plantation & Agricultural Workers Union v Rea Vipingo Limited & another* (Cause E008 of 2025) [2025] KEELRC that under section 10(3)(a)(e) of the *Employment Act*, the employer is legally obligated to bring to the employee's attention any CBA in force upon employment.
31. However, where an employer is alleged to have violated the Act, the employee can secure their rights under Section 16 of the Act.
32. Nevertheless, the Act, which preceded the *constitution* of 2010, came with rights, which are now interpreted vis-à-vis constitutional rights. Any investigations for alleged criminal conduct are the sole mandate of the Director of Public Prosecutions under Article 157 of the *constitution*. In *Murunga v Director of Public Prosecutions & 2 others; Watilili (Interested Party)* [2024] KEHC 14103 (KLR), the court held that under Article 157(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may-(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.
33. In *Republic v Commissioner for Labour & another; Masoud (Ex parte Applicant)* [2025] KEHC 7325 (KLR), the applicant herein raised similar issues before the High Court. Similar orders as those herein were sought. The matter was dismissed for lack of jurisdiction.
34. The orders sought to direct the labour officer to investigate, charge, and prosecute the KRA for alleged violation of the Act, which is a mandate removed from such a labour officer and placed with the Director of Public Prosecutions under the *constitution*. The orders sought cannot be issued as sought. The applicant is without proper standing.
35. Accordingly, the application dated 28 May 2025 is without merit and is hereby dismissed. Costs awarded to the interested party.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**M. MBARŪ**



**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

